

# RENEWING THE RELATIONSHIP

## *A Perspective on the Impact of the Royal Commission on Aboriginal Peoples*

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The report of the Royal Commission on Aboriginal Peoples (1996) is a monumental work. Its scope extends to virtually every aspect of Aboriginal life and, by implication, to every sector of Canadian public affairs. Its presentation of history challenges prevailing assumptions and argues for a different understanding of the origins and the constituent elements of Canadian society. Its proposals for renewing the relationship between Aboriginal and non-Aboriginal people call for a partnership, grounded in principle, that will produce mutual benefit.

Woven through the report is the affirmation that renewal in one aspect of policy or intercultural relations must go hand in hand with renewal in the whole spectrum of political, economical, and social life. The 440 recommendations contained in the report are, therefore, put forward as a holistic agenda for change; action is required on many fronts to achieve resolution of long-standing and resistant problems and to improve the quality of life of Aboriginal individuals, families, and communities.

My perspective on these matters is far from disinterested. I served as co-director of research throughout the life of the commission, and I

participated in drafting the text and recommendations, particularly on social and cultural issues. Since the release of the report, I have also contributed to public forums discussing its contents. My purpose in writing this chapter is to reiterate briefly the overall thrust of the commission's work and to comment on the impact the report appears to be having after two years in the public domain. I would be presumptuous to claim that these few pages could provide a balanced synopsis of the five volumes and 3500 pages of the commission's report. My comments represent a perspective, much of it grounded in the words of the commission itself that is highly selective in emphasis. I am grateful to colleagues who shared their experiences with me as this chapter was in preparation,<sup>1</sup> but the interpretations are my own responsibility.

### **The Commission's Mandate**

The Royal Commission on Aboriginal Peoples was appointed by Prime Minister Brian Mulroney in August 1991 in the aftermath of armed confrontations between Aboriginal people and the Canadian army at Oka. Seven distinguished men

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and women were named as commissioners, four of them Aboriginal persons. The commission held hearings across the country, heard testimony from over two thousand people and organizations, commissioned hundreds of research reports, and spent \$58 million over the course of five years. The commission presented its report to the government of Canada in November 1996. The scope of the commission's mandate was delineated by the Right Honourable Brian Dickson, former chief justice of the Supreme Court of Canada. His recommendations as special representative respecting the Royal Commission on Aboriginal Peoples were incorporated into the Order-in-Council establishing the commission:

The Commission of Inquiry should investigate the evolution of the relationship among aboriginal peoples (Indian, Inuit, and Metis), the Canadian government, and Canadian society as a whole. It should propose specific solutions, rooted in domestic and international experience, to the problems which have plagued those relationships and which confront aboriginal peoples today. The commission should examine all issues which it deems to be relevant to any or all of the aboriginal peoples of Canada, and in particular, should investigate and make concrete recommendations concerning ... [16 specific terms of reference] (Government of Canada, 1991; Dickson, 1991).

The comprehensive mandate of the commission, placed in the context of an evolving relationship between peoples, opened the way to address the interconnectedness of specific issues. The genius of the report is that it states clearly and consistently "everything is related," thereby reflecting and understanding basic to Aboriginal systems of knowledge.

### A Different View of History

The commission devoted the first volume of its report to a history of relations between Aboriginal and non-Aboriginal peoples because the commissioners were convinced that "consideration of this history will surely persuade the thoughtful reader that the false assumptions and abuses of power that have persuaded Canada's treatment of Aboriginal peoples are inconsistent with the morality of an enlightened nation" (RCAP, 1996, Vol. 1: 3). The emphasis on history was also a response to the oft-repeated plea from Aborigi-

nal speakers in public hearings to "set the record straight."

Canada is typically characterized as a young country that started its progress to modern civilization with the arrival of European explorers. It is now customary to begin Canadian history texts with an acknowledgement that there were tribes of Indians inhabiting the wilderness before the settlers came, but the First Nations disappear even as minor actors in historical drama after about 1800. The concept of *terra nullius*, Canada as an empty land in which settlers planted law and government, and over which nation-builders pushed iron rails from sea, is the prevailing image. The commission's report presents another view. It describes the history of the relationship between Aboriginal peoples and newcomers as passing through four stages.

The first stage was that of separate worlds, illustrated by vignettes of several nations at the time of early contact in different regions of the country. These societies provided for the sustenance of their members, regulated relations internally and with their neighbours, and developed arts and technology adapted to the environment. One of the stories describes the well-established trade routes of First Nations on the coast and in the interior of what is now British Columbia. Excerpts from the diary of Alexander Mackenzie, the first European to record a journey to the Pacific Ocean by land, are quoted. They show how he was led by First Nation guides over well-worn routes, watching Carrier people passing his party on the trail with processed furs to trade for coastal goods, being welcomed and fed along the way, until he finally reached the channel where he inscribed on a rock face: "Alexander Mackenzie, from Canada, by land, the twenty-second of July, one thousand, seven hundred and ninety-three." In this, as in many other historical encounters, the achievement of the explorer is celebrated while the vitality of Aboriginal economies is obscured and forgotten.

The second historical stage was that of contact and co-operation. It extended in eastern regions roughly from 1500 to 1800. During this period, Aboriginal and non-Aboriginal peoples established trading relations, travelled together, and shared food and knowledge of medicines. Olive Dickason (1992), in her *History of First Peoples*, for example, reports that some five hundred drugs used in modern medicine were originally used by First Nations of the Americas.



Aboriginal peoples and newcomers made treaties to cement relations of peace and friendship, and to formalize their commitment to share the land as neighbours and kin. The relationship even gave rise to a new people, the "people-in-between." The Metis, who were known by different names in different regions, embraced their heritage from two cultures and established settlements that survive to this day.

The third historical stage involved displacement and assimilation; it extended roughly from 1812 to 1969. During this period, Aboriginal societies were ravaged by new diseases—smallpox, tuberculosis, and measles. They saw their land bases and the source of their livelihoods eroded in large chunks with the sanction of treaties, while smaller chunks passed through the hands and authority of Indian agents. The *Indian Act* deposed traditional leaders and dismissed Aboriginal laws as mere "customs." Assaults on spirituality were mounted through the prohibition of medicine practices and ceremonies; spiritual teachings were labelled pagan beliefs that were incompatible with Christian civilization.

In attacking the validity of the Aboriginal worldview, the missionaries of church and state undermined the basis of ethical order in Aboriginal communities. Assaults on the structure of the Aboriginal family were carried out in the name of education and protection; children were compelled to attend residential schools and day schools that espoused the same assimilation goals. Thousands of children were scooped up from their communities to be irretrievably placed in foster and adoption homes outside their Aboriginal communities and, in some instances, even outside Canada.

All this history portraying the vitality inherent in Aboriginal cultures, the wisdom of Aboriginal teachings, the capacity for self-government that was exercised for the time immemorial, and the tragic story of displacement and loss has been neglected and suppressed. The common perception of non-Aboriginal Canadians, including many who have recently immigrated to this land, is that Aboriginal people are stuck in their savage ways and need only to join the mainstream to catch up in the march of civilized society.

The fourth historical stage, in which we now find ourselves, is that of negotiation and renewal. This stage was initiated with the rejection of the 1969 White Paper that proposed to terminate historic treaties and make Indians citizens like

any other (Government of Canada, 1969). This stage has proceeded through court battles to assert historic rights to land, but it has also involved more turbulent confrontations, such as those at Oka in Quebec, Haida Gwaii in British Columbia, and Ipperwash in Ontario. The patriation of the Constitution in 1982, and the entrenchment of existing Aboriginal and treaty rights of the Indian, Inuit, and Metis peoples, was a landmark in this period. The creation of the Royal Commission, the Supreme Court decision in *Delgamuukw v. British Columbia* ([1998] 1 C.N.L.R. 14) in 1997, and the 1998 initialling of a modern treaty with Nisga'a Nation, are other important events whose effects are still unfolding. A number of developments in this historical period are discussed in detail in other chapters of this volume.

### The Legacy of History

We are living today with the legacy of the period of displacement and assimilation. Aboriginal people are engaged in a powerful process of renewal of culture and community life to which they often give the generic name of *healing*. The healing process gains strength from many sources, but principally from rekindled confidence in traditional wisdom and a political-historical analysis of genesis of present distress.

Aboriginal people look back to a time when oral traditions and colonial records agree that communities and nations were self-regulating, self-reliant, and in remarkably good health. They examine the forces that disrupted the equilibrium—new diseases, loss of lands and livelihood, relocations that tore the fabric of community relations, the imposition of alien forms of government, and assaults on spirituality and family life. They reclaim the history that for long period was systematically erased from the story of Canada. And they acquire an analysis of present dysfunction in their midst.

The legacy of history is in the poverty, powerlessness, and breakdown of social cohesion that plague so many Aboriginal families and communities. These conditions did not come about by chance, or through a failure to modernize, or through some moral deficiency on the part of Aboriginal people. They were created by past policies that systematically dispossessed Aboriginal people of their lands and economic resources, their cultures and languages, and the



social and political institutions through which they took care of their own.

Without a political-historical analysis of the genesis of present distress, Aboriginal people are caught in self-blame. In an ironic twist they may blame their parents, thereby mirroring the colonial and racist judgments of their savagery and inferiority. Without an analysis that goes to the root of distressing conditions, non-Aboriginal governments and agencies offer programs and services that deal with symptoms of malaise. Symptomatic treatment in some cases makes the problems worse by reinforcing perceptions of incapacity.

The community of Hollow Water in southern Manitoba illustrates this problem. I had the privilege of co-leading a workshop on Aboriginal child and family issues with Burma Bushie, one of a handful of women who initiated community holistic circle healing in Hollow Water. This initiative is usually associated with Hollow Water, although it actually serves four First Nations and Metis communities in the district.

When the awful secret of child sexual abuse at Hollow Water began to come to light in 1987, existing services were deemed to be woefully inadequate to respond. Bushie (1997) reports: "The child welfare and legal system were at our door. The Community had no involvement. Offenders were sent to jail where they had to deny their offence to survive, and two or three years later they were sent back into the community to offend again."

Community holistic circle healing is a deliberate strategy to protect and empower victims of abuse, to confront offenders, and to create environments where they admit and take responsibility for their behaviour. The whole community, along with the families of victims and offenders (who are often one and the same), is helped to assume responsibility for restoring safety, health, and balance. There is a step-by-step program in which the violent behaviour and the impact on the community are laid bare to public scrutiny. Expectations of behavioural change are published and enforced by the whole community, and the possibility of reconciliation is embraced as the motive for change.

The Hollow Water approach was devised and refined in relation to the knowledge and experience of the citizens of the affected communities. It uses traditional communal talking ceremonies and sweat lodges. But it also draws in the expertise of psychologists and lawyers as adjuncts

to culture-based therapies, when required by law or when this is the preference of the participants,

The restoration of community authority to apply culturally appropriate healing methods does not come easily. As Bushie (1997) reports: "We will work within the law and in cooperation with the RCMP and the courts, but if we had to follow agency and police protocols and regulations we would be doing damage in our community." Nevertheless, Hollow Water makes use of the array of social and health services funded by government agencies to support the personnel involved in holistic healing, and to engage professional therapists as required.

Community holistic circle healing goes far beyond the administration of services designed and monitored by external agencies. It does not stop with addressing individual needs. It goes to the heart of the malaise in those communities — the internalized sense that they are powerless to confront and resolve the violence and pain in their midst. The Hollow Water experience illustrates why it is essential for Aboriginal people to resume control of healing services, so that they can institute effective, cost-efficient, holistic responses to their self-defined needs. Nevertheless, even the most sensitive, culturally appropriate efforts at healing will be short-lived, patchwork solutions, unless the authority for self-determined choices and the foundations of self-reliant economics are restored to Aboriginal peoples.

### *Restructuring the Relationship*

The central thrust of the commission's proposals revolve around the strongly related concepts of: (1) a *renewed relationship* between Aboriginal and non-Aboriginal peoples in Canada; (2) *self-determination* expressed in new structures of self-government; (3) *self-reliance* through restoration of a land base and economic development; and, (4) *healing* to achieve vibrant communities and healthy individuals equipped to fulfill the responsibilities of citizenship.

A renewed relationship is the necessary context and an essential contributor to change in other spheres. Self-determination is an important element in achieving self-reliance. A greater degree of autonomy in the political realm is illusory without a strong economic base. And both of these elements will contribute to and be nourished by the process of healing. The commission emphasized that "[t]he challenge ... is not only to recognize interdependence among the elements



but also to change the dynamic among them so that a positive cycle of development occurs" (RCAP, 1996, Vol. 1: 697).

### Principles of a Renewed Relationship<sup>2</sup>

The first principle proposed by the commission is *mutual recognition*. This means that Aboriginal and non-Aboriginal peoples acknowledge and relate to one another as equals, co-existing side by side, and governing themselves according to their own laws and institutions. The commission argues that mutual recognition is already formalized in historic treaties and that it is entirely consistent with the federal makeup of Canada.

The second principle is *mutual respect*, "the quality of courtesy, consideration and esteem extended to people whose languages, cultures, and ways differ from our own but who are valued fellow-members of the larger communities to which we all belong" (RCAP, 1996, Vol. 1: 682). The failure to extend respect in the past treatment of Aboriginal peoples, and the importance of public institutions modelling respectful attitudes, are underlined.

The third principle is *sharing*. The reciprocity that characterized early relations between Aboriginal and non-Aboriginal people has become unbalanced as Aboriginal people have been displaced from their traditional sources of wealth. The principle of sharing would restore Aboriginal peoples' access to resources in their homelands and open avenues of participation that would result in mutual benefits for all partners. The commission cites the congruence of this vision with prevailing values about the benefits to be derived from participation in the Canadian federation.

The fourth principle is *mutual responsibility*. The commission proposes that, in the future, Aboriginal peoples and Canada should seek to actualize relationships as partners who have a duty to act responsibly towards one another and also towards the land they share. This will require deliberate measures to transform the colonial relationship of dominance and dependence and to rebuild trust between partners so that both can fulfill their responsibilities.

The commission proposes that treaties (or today what might also be referred to as agreements or accords) are the most appropriate vehicles for achieving relationships consistent with the foregoing principles. The commission sees the need to interpret anew the terms, spirit, and

intent of historic treaties, and to enter into modern agreements and accords that restructure political and economic relations to reflect true partnership. Treaties were the instruments through which Aboriginal nations and the French and British Crowns recognized each other's prerogatives as nations, and agreed to peaceful co-existence and sharing of the land. Treaties continue to be the means preferred by most Aboriginal peoples for ordering intergovernmental relations. They are also important to Aboriginal peoples because, since 1982, treaties enjoy protection from the highest law of the land—the Constitution.

### Self-Determination and Self Government

The commission concludes that Aboriginal nations have a unique legal and historical right to govern themselves within the Canadian federation. This right derives from their status as peoples with an inherent right to freely determine their political status and to pursue their economic, social, and cultural development.<sup>3</sup> This right is recognized in emerging international law, affirmed in historic treaties, and protected in the Constitution. From the commission's perspective, the right of self-government vests in nations or peoples rather than in the bands defined by the *Indian Act*. Self-government can be exercised in a variety of forms—within defined territories, in relation to citizens in dispersed locations, or through public forms of government that also include non-Aboriginal constituents.<sup>4</sup>

### Self-Reliance

The commission proposes a multi-pronged strategy for restoring economic vitality to Aboriginal communities, a requisite for sustaining political autonomy. Just and timely settlement of outstanding land claims, and reconsideration of the commitments made in historic treaties, will contribute substantially to re-establishing economic bases for some nations. Co-management and sharing of the resources derived from traditional lands will benefit others. Investments in education and training, and support for entrepreneurial activity to participate in the market economy, will also be necessary to improve prospects for the burgeoning population of young Aboriginal people and for the large numbers of Aboriginal people who make their homes in urban society (see RCAP, 1996, Vol. 2.2, chaps. 4,5).



## Healing

The commission's recommendations on healing are presented with passion and urgency. They are directed to mitigating the harsh legacy of past abuse and neglect; to removing excessive threats to health and well-being; and to expanding opportunities for education, employment, and community participation. They touch on family life, health and social services, housing, education, and cultural conservation and expression. Although the commission's recommendations clearly favour collective solutions, placing authority and resources for responding to social and cultural needs under Aboriginal control, they also acknowledge that immediate threats to well-being require prompt responses within current regimes. Moreover, even when self-government is fully realized, the commission points out that there will be a civic obligation to acknowledge, affirm, and accommodate the Aboriginal presence in Canadian life through culturally responsive public institutions and services.

### "In two short years . . ."

As I write this chapter, two years have elapsed since the release of the commission's report. It is just over one year since the Honourable Jane Stewart minister of Indian Affairs and northern development, along with the Honourable Ralph Goodale, federal interlocutor for Metis and Non-Status Indians, responded to the report on behalf of the Government of Canada. Much has happened in the interval, although some would say little has changed.

This section sketches some recent developments in the context of the major thrusts of the report. References to relations between the federal government and First Nations predominate in this discussion; this reflects the focus of the government's response, since there has been relatively little movement in restructuring relations with the Metis or with off-reserve Aboriginal people. Inuit affairs are a specialized area with which I have limited contact and on which I will refrain from comment, except to say that the formation of Nunavut on April 1, 1999, marked a watershed event in the history of Inuit-Canada relations.

In a meeting when commissioners were grappling with the enormous responsibility of finding the right solution and consensus on a

critical, conflict-ridden issue, Georges Erasmus, co-chair of the commission, made the observation: "The movement of Aboriginal people to take charge of their lives didn't start with the Commission and it won't end with our Report" (Erasmus, 1999). It is useful to remember that wisdom when reflecting on the impact of the commission's work.

It would be futile to try to determine what came about as a result of the commission and what was the outcome of generations of struggle on the part of Aboriginal nations and individuals, and the efforts of a comparable progression of ministers of the Crown, officials, and negotiators on the government side. In the next section I note convergences as well as some divergences between recent developments and the commission's recommendations. I do not try to establish causes and effects.

## On Reconciliation

The ceremonial gathering in Ottawa on January 7, 1998, at which ministers of the Crown responded to the commission's final report, was a moving occasion for those who attended, as well as for the limited audience that was able to observe the proceedings on cable or satellite television. On behalf of the government of Canada, the Honourable Jane Stewart, in a statement of reconciliation, formally expressed to all Aboriginal people in Canada "profound regret for the past actions of the federal government which have contributed to ... difficult pages in the history of our relationship together" (Indian and Northern Affairs, 1998b). To give substance to the offer of reconciliation, Minister Stewart announced the commitment of \$350 million for community-based healing—a first step to deal with the legacy of physical and sexual abuse at residential schools. She further announced a comprehensive framework for action to renew the partnership between Aboriginal and non-Aboriginal people in Canada, to strengthen Aboriginal governance, to design a new fiscal relationship, and to sustain the growth of strong, healthy Aboriginal communities. Details of the framework are published as *Gathering Strength: Canada's Aboriginal Action Plan* (Indian and Northern Affairs, 1997).

Minister Stewart acknowledged the fundamental thrust of the commission's work when she observed that "over and above hundreds of individuals recommendations, the Commissioners



directed us to examine the very core of how we have lived together in this country" (Indian and Northern Affairs, 1998b). Accordingly, *Gathering Strength* reflects the federal government's commitment to set a new, non-adversarial course in its relations with Aboriginal people and their representatives. *Gathering Strength* parallels closely the content of *An Agenda for Action with First Nations*, which was developed in consultation with the Assembly of First Nations and released only days after the gathering in Ottawa (Indian and Northern Affairs, 1998a). Metis and other Aboriginal groups that were included late in the process were critical of the lack of consultation with them in the preparation of the statement of reconciliation, but they have accepted subsequent opportunities to negotiate new relationships with the federal government.<sup>5</sup>

For First Nations people, those affiliated with historic nations and particular territories, the statements in the action plan that treaties are "the basic building blocks in the creation of our country" and "a basis for developing a strengthened and forward-looking partnership" has been very encouraging (Indian and Northern Affairs, 1998a: 10). A concrete expression of these sentiments is seen in the *Statement of Treaty Issues: Treaties as a Bridge to the Future* (Arnot, 1998) published by the Office of the Treaty Commissioner for Saskatchewan. Saskatchewan First Nations and representatives of the government of Canada met at an exploratory treaty table with the province of Saskatchewan represented as an observer. The parties explicitly adopted the principles of mutual recognition, mutual respect, reciprocity, and mutual responsibility articulated in the commission's report. The progress made in finding common positions provides a basis for the major work of restructuring relations to implement treaty-based self-government among Saskatchewan First Nations.

Treaty-making as the basis for redefining ongoing relations is at the core if the Nisga'a Agreement initialled on August 4, 1998 (Nisga'a Tribal Council, Government of Canada, Province of British Columbia, 1998). Initiatives of the Nisga'a Nation to settle "the land question" date back to 1887. However, the course of the relationship changed significantly after the 1973 Supreme Court decision on Nisga'a claims in *Calder v. Attorney-General of British Columbia* (7 C.N.L.C. 91). This decision prompted the government of Canada to finally enter into settlement negotiations. The *Nisga'a Final Agreement*,

and the ceremonies surrounding initialling of the document, reflect the spirit of co-existence and mutual responsibility advocated by the commission and taken up in *Gathering Strength* (Indian and Northern Affairs, 1997).

In its 1995 special report, *Treaty Making in the Spirit of Co-existence*, the Royal Commission proposed an approach whereby

Negotiations would aim to describe the territory in question in terms of several categories of land in order to identify, as exhaustively and precisely as possible, the rights of each of the parties with respect to lands and governance (Royal Commission, 1995: 60).

As Minister Stewart noted in her remarks, in addition to being British Columbia's first modern-day treaty, the Nisga'a agreement will become the first treaty in Canada to deal explicitly with land claims and self-government together (Indian and Northern Affairs, 1998c). The significance of treaties in realizing new relationships was reiterated by Minister Stewart in these words:

Treaties provide the basis for a common vision. They offer a framework for a vibrant and respectful relationship between people. They offer us a way to live together without imposing our values on each other. They speak directly to the Canadian way of life. In our shared land, people can live together in both harmony and diversity.

At the time of writing, the Nisga'a agreement has hurdles to pass before it becomes a constitutionally protected treaty. Nevertheless, it is a substantial expression of the firm intention of Canadian and Aboriginal governments to negotiate rather than litigate.

The readiness of Canadian governments to listen more respectfully to Aboriginal views of reality and to engage in negotiations has been advanced by rulings of the Supreme Court of Canada, most recently the judgement in *Delgamuukw v. British Columbia* ([1998] 1 C.N.L.R. 14). On the claim of the Gitksan and Wet'suwet'en Nations to Aboriginal title to their traditional lands, Chief Justice Lamer found that the trial judge had erred in dismissing the claims without giving adequate weight to the oral histories presented by the Aboriginal claimants. He ordered a new trial but noted:



By ordering a new trial, I do not necessarily encourage the parties to proceed to litigation and settle their dispute through courts.... Ultimately it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgements of this Court, that we will achieve ... the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown. Let us face it, we are all here to stay (para. 186).

Chief Justice Lamer made reference to the Royal Commission's commentary on oral history to elaborate the context of legal reasons for the decision. Again, without attributing degrees of influence, we see a convergence between the analysis and conclusions of the commission and the pronouncements of influential public institutions agreement.

On the path to reconciliation between peoples, the leadership of public institutions in adopting a more respectful stance is extremely important. In elaborating the principle of *respect*, the commission noted:

We emphasize the idea of public attitudes because respect involves more than a change of heart within individuals. It requires us to examine our public institutions, their make-up, practices and symbols, to ensure that they embody the basic consideration and esteem that are owed to Aboriginal and non-Aboriginal languages and cultures alike.... Respect for the unique position of Canada's First Peoples — and more generally for the diversity of peoples and cultures making up this country — should be a fundamental characteristics of Canada's civic ethos (RCAP, 1996, Vol. 1: 683, 685).

## Self-Government

The *Nisga'a Final Agreement* was cited earlier as an expression of new approaches to treaty-making. It is also a practical expression of the hard-won recognition of the inherent right of Aboriginal self-government. Although the Nisga'a maintain that the terms of agreement are particular to their nation and territory, the agreement will undoubtedly influence the course of self-government negotiations proceeding at eighty discussion tables established across the country.

The agreement is between the Nisga'a Nation, Canada, and British Columbia. It transfers title of 1992 square kilometres of land in

the lower Nass Valley, including lands previously set aside as Indian reserves, to the Nisga'a Nation. It protects existing third-party interests, and it secures Nisga'a rights to fish, wildlife, and water resources in the region. It withdraws application of the *Indian Act* to the Nisga'a, except for the purpose of defining who is and "Indian" eligible for programs and services. Fiscal transfers from Canada and British Columbia to support community services roughly equal to public services available in the rest of the region will continue, taking into account the capacity of the Nisga'a government to generate own-source revenues, including taxation revenues. Current exemptions from taxation under the *Indian Act* will be eliminated after an eight- to twelve-year transition period. The Nisga'a continue to be an Aboriginal rights, including their Aboriginal title, to the limits set out in the agreement (Nisga'a Tribal Council, Government of Canada, Province of British Columbia, 1998).

The Nisga'a agreement differs from the previous land claims settlements in recognizing the authority of the Aboriginal government to enact legislation that will prevail in specific areas of jurisdiction in the event of conflict with federal or provincial law. The areas where Nisga'a law is paramount are Nisga'a government, citizenship, culture, language lands, and assets (Nisga'a Tribal Council, Government of Canada, Province of British Columbia, 1998). In other areas, such as public order, peace and safety on Nisga'a lands, traffic and transportation, health, education, and child protection, Nisga'a law must be harmonized with federal and provincial laws. In the case of conflict, the latter will prevail. In some areas, such as criminal law, the Nisga'a government does not have authority to legislate. In the case of adoption and solemnization of marriages, and in the case of Nisga'a constitutional provisions relating to the participation in Nisga'a government of Nisga'a citizens residing outside the Nass area, Nisga'a laws have effect outside Nisga'a lands. The *Canadian Charter of Rights and Freedoms* applies to Nisga'a government in respect of all matters within its authority (Nisga'a Tribal Council, Government of Canada, Province of British Columbia, 1998).

In publications on the subject of governance, including its final report, the Royal Commission on Aboriginal Peoples consistently took the position that Aboriginal self-government could provide a large degree of the autonomy sought by Aboriginal peoples without doing violence to the



principles of federalism on which the Canadian law and government are founded.<sup>6</sup> Accommodation of Aboriginal nation governments in Canada would, however, require re-conceptualizing the nature of the Canadian federation to give due regard to the role of Aboriginal peoples in the evolution of this country, and give effect to the Aboriginal and treaty rights protected by section 35 of the Constitution.

The *Nisga'a Final Agreement*, after decades of negotiation, embodies some important breakthroughs in gaining Canada's recognition of positions long held by Aboriginal peoples. These positions include, for example, the Aboriginal nations relate to the Crown as nations, that they have the right to self-government as an order of government with jurisdictions concurrent with federal and provincial laws and not subordinate to them, and that treaties be seen as the means of sharing the wealth of the land, not relinquishing all rights forever.

Some of the limitations specified in the agreement are more restrictive than the commission's proposals. For example, the jurisdiction of the Nisga'a government to enact laws is more narrowly defined than in the "core" areas proposed by the commission.<sup>7</sup> Further, the agreement that the Nisga'a will release all further claim to Aboriginal rights under section 35 of the Constitution varies from the commission's recommendation that "agreements be worded to allow the Aboriginal rights they recognize to evolve in light of favourable legal developments" (Royal Commission, 1995: 71).

Relinquishment of all section 35 rights could make it difficult for the Nisga'a to opt for a different model of self-government in the future. The commission was of the view that "an Aboriginal group's right of self-determination is not exhausted for all time when it agrees to a particular governmental structure" (RCAP, 1996, Vol. 2: 175). Circumstances could change in ways that might affect the justness or viability of the original arrangement. In such a case, the commission was of the view that the Aboriginal governments should be entitled to exercise their right of self-determination afresh. Not everyone applauds the terms of the *Nisga'a Final Agreement*. The president of the Union of B.C. Indian Chiefs, for example, has argued that the provisions designed to bring "certainty" with respect to land rights in the Nass Valley are really about extinguishing the Indian nations (Terry, 1998).

Differences of opinions on the most favourable resolution of contentious issues will continue. Nevertheless, the disclosure on Aboriginal self-government has been transformed in the decade since 1987, when a series of first ministers' conferences foundered on irreconcilable differences about the meaning of "the inherent right of self-government." The resolve of the Nisga'a Nation has contributed immensely to bringing about the present degree of recognition. The work of the Royal Commission has also advanced the dialogue. The optimum terms and the practical interpretation of agreements will be continued to be debated, but it is also appropriate to celebrate the historic moment described by Nisga'a chief Joseph Gosnell (1998) in these words:

We have worked for justice for more than a century. Now, it is time to ratify the Nisga'a Treaty, for aboriginal and non-aboriginal people to come together and write a new chapter in the history of our Nation, our province, our country and indeed the world. The world is our witness.

### Self-Reliance

Wien (1999) reviews the major recommendations of the commission's report to promote economic development and self-reliance of Aboriginal communities. He also examines related government responses (proposed or implemented) since the release of the report. He notes that the report appears to have become the dominant framework guiding policy and process, at least within the department of Indian affairs. Further, he states the tone of relations has become more supportive of partnership and Aboriginal authority, significant initiatives are largely confined to First Nations and Inuit concerns. Land claims and treaty land entitlements are boosting economic activity for some First Nations, but are leaving most untouched, and Metis and off-reserve Aboriginal groups continue to be excluded from many programs.

Much broader provincial involvement will be necessary to increase the land and resource base for the majority of Aboriginal communities and to implement policies inclusive of all Aboriginal groups. In areas including education and training, capacity-building for effective governance, and development of Aboriginal institutions for economic leadership, Wien concludes that the



range and scale of effort is not commensurate with the dimensions of the issues or with the commission's recommendations. On the other hand, initiatives to engage the private sector in strengthening Aboriginal participation, as well as an emphasis on technological innovation, go beyond the public sector strategies that were the focus of the commission's economic recommendations.

## Healing

As mentioned earlier, in conjunction with the *Statement of Reconciliation*, the minister of Indian affairs announced a \$350-million fund for community-based healing of the legacy of physical and sexual abuse in residential schools. Although the terms and implications of most measures to implement a new relationship remain as good intentions, agreements in principle, or initiatives just getting underway, the healing fund is an immediate and substantive commitment. In some ways, it can be seen as foreshadowing how other practical arrangements for developing Aboriginal institutions and organizing program delivery could take shape.

The commission came down squarely in favour of developing Aboriginal institutions with stable funding to serve social needs and maintain the cultural identities of Aboriginal peoples. However, the report also argued that responding to urgent needs should not await the implementation of self-government, and that priorities for immediate action should be identified in consultation with diverse Aboriginal peoples and communities.

Awareness of the trauma inflicted on countless numbers of Aboriginal people by the residential school experience has been growing in recent years, among both Aboriginal and non-Aboriginal people. Disclosures of abuse have prompted community healing initiatives, legal actions, and public apologies from churches. The government's decision to focus on healing the legacy of residential schools, therefore, responded to the concerns of Aboriginal people, symbolized the federal intent to take a less litigious and more responsive course in relations with Aboriginal people, and created an opportunity to prove the effectiveness of broadly based, self-directed Aboriginal initiatives.

In consultation with representative of five national Aboriginal organizations, a founding board of directors was constituted to apply for

incorporation as the Aboriginal Healing Foundation<sup>8</sup> and to conclude an agreement with the federal government to administer the healing fund. Although the foundation operates as a non-profit corporation governed by a board of directors, it is bound not to enact bylaws in conflict with the funding agreement. The bylaws require that relatively fixed numbers of board members be drawn from particular Aboriginal constituencies — First Nations, Metis, Inuit, off-reserve Aboriginal people, and Native women. There is also a provision for two federal government representatives (Aboriginal Healing Foundation, 1998).

In many respects, the Aboriginal Healing Foundation resembles a government program; objectives, functions, funding resources, and reporting requirements are defined by formal regulations that reflect federal government norms. On the other hand, the board of directors, which to date has been made up entirely of Aboriginal persons, is free to set priorities and organize its activities in response to direction from the Aboriginal community. The foundation has fixed funding that is to be allocated over five years and dispersed over a maximum of ten years. It is the first national organization to represent the interests of all Aboriginal constituencies as a unitary body. It has a mandate to be innovative and to collaborate with other government services (rather than take direction from them). The board has already considered the need to create a charitable foundation with a parallel mandate to pursue healing initiatives not covered by the present bylaws, and to extend activities beyond the term set by the funding agreement now in place.

In *Gathering Strength*, Indian Affairs (1997) identified program developments on many other fronts as goals or priorities. Economic development, and labour market and other initiatives designed to boost Aboriginal economies are detailed elsewhere in this volume. Capacity-building to support community vitality and human resource development also appear to be priorities endorsed both by governments and by Aboriginal organizations. Furthermore, despite fiscal restraint, new funds have been allocated for Aboriginal language conservation, for on-reserve housing, and for extending coverage of Aboriginal Headstart programs, which assist Aboriginal children to prepare for entry into the regular school system. Moreover, Aboriginal organiza-



tions acknowledge that the partnership approach has improved the environment for interaction.

At the same time, there is scepticism about federal government's commitment to address fundamental concerns. An official with the Assembly of First Nations, for example, characterizes the new partnership approach to political development as a good beginning, but he cautions that the assembly has concerns about the federal government's political will to follow through on key commitments, notably the creation of an independent specific claims commission (Switzer, 1998).

For the Metis, the lack of movement towards recognizing federal responsibility under section 91(24) of the Constitution is a roadblock to substantive change on key issues such as a land base for the Metis. Since there is no acknowledgement of federal responsibility, there is no infrastructure analogous to Indian Affairs through which Metis concerns can be addressed. However, where provinces are amenable, the Metis are involved in tripartite discussions about the delivery of health, child welfare, training, education, and other programs. As one example, the Louis Riel Institute, chartered some years ago as a provincially recognized educational agency in Manitoba, has taken on new life in an atmosphere where Metis participation is officially encouraged (Chartrand, 1998).

Engagement of urban and off-reserve constituencies in policy development has likewise been evolving slowly. A 1997 position statement of the Congress of Aboriginal Peoples cited the board's two primary concerns: the exclusion of the congress from consultations leading to the federal government's response to the Royal Commission's report, and the potential for the federal government to ignore the commission's recommendations concerning its responsibility under the Constitution for all Aboriginal people (Congress of Aboriginal Peoples, 1997).

The signing of a 1998 political accord has paved the way for Congress of Aboriginal People's involvement in future consultations. The accord establishes a general forum with the federal interlocutor for Metis and Non-Status Indians, and a special forum with the minister of Indian affairs. These will provide opportunities to discuss implementation of *Gathering Strength* as it affects the congress's off-reserve Aboriginal constituency.

The congress is handicapped by not having an infrastructure for service delivery that would

raise its profile among potential urban constituents. Urban services are typically delivered by friendship centres or by specifically mandated service agencies such as those for child, family, or women's services. The role of friendship centres as vehicles for service delivery has been strengthened by the devolution of the administration of national program funding to the National Association of Friendship Centres. However this transition has not been accompanied by an increasing voice in discussions about urban policy. Nor does there appear to be increased funding available to address the needs of an expanding urban Aboriginal population (Maracle, 1998).

Friendship centres do not claim to be political representatives of off-reserve Aboriginal people. Nevertheless, their commitment to community development obliges them to reflect the will of the community. In what may become a more common response to ongoing jurisdictional uncertainty, at least one regional organization has urged friendship centres to become more involved in governance issues. The Ontario Federation of Indian Friendship Centres sees the need to establish co-operative relationships with local governments, First Nations communities, and treaty organizations, and to develop protocols that address both service co-ordination and co-operative action on governance issues (Ontario Federation of Friendship Centres, n.d.).

## Conclusion

This chapter has cited many indications that there is a will among Aboriginal leaders and the governments of Canada to renew a relationship based on mutuality and respect. Stimulated and in some cases guided by the work of the Royal Commission on Aboriginal Peoples, governments and Aboriginal nations and organizations have achieved some landmark understandings and agreements. However, in most quarters, the gap between the quality of life enjoyed by Aboriginal people and the standards available to others in Canada remains stubbornly wide.

Implementation of an Aboriginal/non-Aboriginal partnership is most visible where vehicles like treaties, or well-advanced land claims negotiations, already exist. Pre-existing forums and accords to engage the participation of Metis and urban Aboriginal people have taken on some new vigour, but they await commitments from governments to support substantive change. Aboriginal institutions for residential school heal-



ing and education are garnering resources, but most services are still bound by departmental mandates that frustrate Aboriginal efforts towards holistic well-being. Respect for Aboriginal worldviews and cultures are expressed by public institutions, but governments move cautiously to avoid a popular backlash against "giving away" too much to Aboriginal people. The language of recognition, respect, sharing, and responsibility has found a place in the vocabulary of relationships, but most participants and observers consider that it is too early to make judgements about what substance will follow the words.

As I look at the uneven progress towards a more just and balanced relationship between Aboriginal people and the rest of Canadian society, I wonder whether the promises being voiced now, with palpable sincerity, will survive past the next election campaign. The history of the relationship between Aboriginal and non-Aboriginal peoples is littered with failed promises.

In an analysis of policy disclosure on Aboriginal affairs from 1965 to 1992, researchers have observed that

Concepts such as partnership, self-government, and Aboriginal rights have been used consistently in different periods, by different people talking about different issues.... Problems arise ... when two key policy participants talk about different things using the same words. This dissonance frustrates efforts to achieve a common vision and ultimately undermines dialogue (Graham, Dittburner, and Abele, 1996: 352-53).

The report of the Royal Commission of Aboriginal Peoples unmask the false assumptions that have informed policy decisions in the past, calls for reconciliation in the present, and clearly articulates the principles and conditions that will facilitate partnership in the future. There are indications in public statements from governments and Aboriginal leaders that the commission has helped to establish both a language and benchmarks for productive dialogue. There are also indications that some of the specific solutions proposed by the commission, such as recognition of the inherent right of Aboriginal self-government within the federal structure of Canada, are proving influential in negotiations.

The commission's report is not being adopted in its entirety. It would probably be a disaster if it were, not because its recommenda-

tions are faulty, but because no commission or document should pre-empt the right of Aboriginal peoples to set their own courses, to define their own priorities, and to negotiate the terms of their own relationships. However, the commission pointed out that an unambiguous commitment to changing the structure of a historically flawed relationship is required in addition to reforms on particular policy fronts. It recommended that the sovereign issue a Royal Proclamation to signal that commitment, and to establish a new framework for government ministries and legislation. To correct the wrongs that continue to distort the relationship between Aboriginal and non-Aboriginal peoples in Canada will require transformation on a broader scale than we see thus far.

Introducing its report, the commission (Royal Commission, 1996, 1: 18) wrote:

It is our conviction that appreciation of the distinctive place that Aboriginal nations occupy in the Canadian federation and of the mutual, continuing responsibilities engendered by that relationship, must permeate Canadian intellectual and ceremonial life.

The large work of transforming consciousness has begun. The challenge for Aboriginal and non-Aboriginal people alike is to ensure that it continues and reaches into every corner of Canadian life. In this undertaking, the commission's report is an instrument forged with reason, passion, and good will—one which will become effective to the extent that it is taken up and used by citizens who share the vision of a renewed relationship that serves the common good.

## NOTES

1. Paul Chartrand, former commissioner of the Royal Commission, and David Hawkes and Fred Wien of the commission's research directorate generously shared their recent experiences and writings.
2. This discussion of principles draws substantially on Royal Commission 1996, 1: 675-97.
3. See "Draft Declaration on the Rights of Indigenous Peoples" ((1994) 1 C.N.L.R. 40). The draft was drawn up by the Working Group on Indigenous Populations and has been under consideration by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.
4. For a full discussion of this subject see the chapter on governance in the commission's report (1996, vol. 2.1, chap. 3).



5. The Metis National Council leads consultants on implementation of *Gathering Strength* on behalf of its constituency. In 1998, the Congress of Aboriginal Peoples renewed an earlier accord with the government of Canada that affirmed that the congress would have access to forums on the action plan as its affects off-reserve and Non-Status Aboriginal people.
  6. Royal Commission publications on governance issues include *The Right of Aboriginal Self-Government and the Constitution: A Commentary* (1992), *Partners in Confederation, Aboriginal Peoples, Self-Government and the Constitution* (1993), and vol. 3 of the final report (1996).
  7. In recommendation 2.3.5, the commission proposed that the core area of jurisdiction for the exercise of the inherent right of Aboriginal self-government should include "all matters that are vital concern for the life and welfare of a particular Aboriginal people, its culture and identity, do not have a major impact on adjacent jurisdictions, and are not otherwise the object of transcendent federal or provincial concern" (Royal Commission, 1996, Vol. 2: 225).
  8. Members of the founding board of the Aboriginal Healing Foundation included representatives of the Assembly of First Nations, the Metis National Council, the Inuit Tapirisat, the Congress of Aboriginal Peoples, the Native Women's Association of Canada and the government of Canada.
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