

# CanadaWatch

PRACTICAL AND AUTHORITATIVE ANALYSIS OF KEY NATIONAL ISSUES

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## SPECIAL ISSUE: THE RCAP REPORT AND THE FUTURE OF CANADA

### ABORIGINAL SELF-DETERMINATION AND SELF-GOVERNMENT: SOVEREIGNTY BY INCLUSION

BY REG WHITAKER

Much to the chagrin of many Canadians, this country constantly finds itself interrogating its fundamental constitutional nature. In the 1997 federal election, the "national unity" issue was seen by many to have hijacked the electoral agenda. Was Canada to be a country that recognized the "distinctiveness" of Quebec within its federal structures, or was it to be a nation of strictly equal provincial units? There is the basis here for profound division and, of course, the potential for the breakup of the country. Yet this stark dichotomy of visions masks and is made possible by a missing dimension—an absence that is no accident, that is quite deliberate: the question of Aboriginal national self-determination and self-government.

Not only were First Nations left out of the so-called "national unity" debate, Aboriginal issues were shamefully absent from the electoral agenda altogether, despite the recent appearance of the for-

midable report of the Royal Commission on Aboriginal Peoples (RCAP). This silence was not the result of mere oversight; it was *strategic*. The politicians and the parties are co-conspirators in seeking to confine Aboriginal issues within square brackets, as it were, apart from the main business of the nation. This will not do, however, particularly in

### WHY JEAN CHRÉTIEN—AND THE CANADIAN PEOPLE—SHOULD READ THE REPORT OF THE RCAP

BY FRANCES ABELE

*Aboriginal peoples anticipate and desire a process for continuing the historical work of Confederation. Their goal is not to undo the Canadian federation; their goal is to complete it.* [RCAP, *The Mandate*, 1991]

The final report of the Royal Commission on Aboriginal Peoples addresses longstanding and seemingly intractable problems from a long term perspective—a feature it shares with most Canadian royal commissions. Reports

light of the unavoidable centrality of the national unity issue. Just as putting Aboriginal peoples on reserves failed to put them out of sight, out of mind, so too putting the issue of Aboriginal self-government in square brackets breaks down in practice.

Memories are short. Only fifteen years ago the *Constitution Act, 1982* included sections 25 and 35 recognizing Aboriginal rights as fundamental to the law of the land. It was not that long ago that Elijah Harper provided the final straw that broke the back of Meech Lake. It was even

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that take the long view of complicated matters tend to be long and complicated themselves; occasionally their recommendations may seem politically awkward or even utopian.

Both the complexity and the "awkwardness" of royal commission reports reduce the enthusiasm with which governments and the major institutions of the national press receive them. In the case of the

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Aboriginal Commission, the five-volume final Report had hardly reached the Band councils and libraries across Canada

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Canada to which it was mailed before pundits were solemnly enquiring about the reasons for its obscurity. This is and was an unfortunate focus. In the false crisis of immediate Cabinet indifference and in the easy stories reporting statistics about the cost of the Commission (nearly \$60 million) and the number of recommendations (440), the main idea—and the fundamental contribution of the Report—have been lost.

The five-volume Report responds to a comprehensive sixteen-item mandate drafted by former Chief Justice of the Supreme Court Brian Dickson, after extensive consultations with a wide range of Canadians. From health to education to constitutional change to access to land and resources, no area of the relations between Aboriginal peoples and Canada is omitted. A similarly broad approach was taken by the hundreds of Canadians

who made oral and written submissions to the Commission. The Commissioners embraced this mandate, seeking solutions to the broad range of issues put before them, while working to understand where the fulcrum for fundamental reform lay.

Of course, the Royal Commission devoted considerable effort to developing “actionable” recommendations whose practical consequences would be, and would be seen to be, well-considered. The final Report of the Royal Commission on Aboriginal Peoples, however, is not essentially a blueprint for the Cabinet order paper. It addresses the people of Canada, and asks them to consider and debate a new way of conceiving the country, as a consensual confederation capacious enough to include the heterogeneous and polyglot settler society as

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*Envisioning a period of negotiation, practical adjustment, and political development that might take decades, the Commissioners anticipate the ultimate emergence of “a just multinational federation that recognizes its historical foundations and values its historical nations as an integral part of the Canadian identity and the Canadian political fabric”.*

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well as the modern societies of the original North American nations. In a time of intense anxiety about the survival of Canada and in the face of the obvious mutual impact of Québécois and Aboriginal political dynamics, it is very strange that this most relevant and far-reaching feature of the Report has been overlooked.

The main elements of this vision are as follows:

1. The Aboriginal peoples of Canada have the right of self-determination.

2. The right of self-determination is grounded in emerging norms of international law and basic principles of public morality.

3. By virtue of the right of self-determination, Aboriginal peoples are entitled to freely negotiate the terms of their relationship with Canada and to establish governmental structures that they consider appropriate for their needs.

4. The above “does not ordinarily give rise to a right of secession, except in case of grave oppression or disintegration of the Canadian state.”

5. All governments in Canada should recognize that Aboriginal peoples are nations vested with the right of self-determination. The Aboriginal nations are not racial groups, but rather political and cultural collectivities with a shared history and contemporary self-awareness.

6. Canada requires a “a neutral and transparent process for identifying Aboriginal groups entitled to exercise the right of self-determination as nations.”

7. Once identified, the Aboriginal nations would either affirm, renegotiate, or commence to negotiate their relationships with Canada, in a spirit of mutual recognition and respect.

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and political development that might take decades, the Commissioners anticipate the ultimate emergence of “a just multinational federation that recognizes its historical foundations and values its historical nations as an integral part of the Canadian identity and the Canadian political fabric”. Questions of financing, jurisdiction, land reform, and institutions of integration and cooperation on many fronts would all be addressed within the basic framework provided by the solemn recognition of the right of self-determination. Reflecting upon many decades of frustration and stalemate (and worse) in the relations between Aboriginal peoples and Canadian governing institutions, the Commissioners decided that a fresh start was in order, this time based upon

the common knowledge of the real origins of Canada and upon *mutual* respect. As they note in the beginning of their long letter to Canadians:

"A country cannot be built on a living lie. We know now, if the original settlers did not, that this country was not *terra nullius* at the time of contact and that the newcomers did not 'discover' it in any meaningful sense. We know also that the peoples who lived here had their own systems of law and governance, their own customs, languages and cultures".

The first two Volumes of the final Report of the Royal Commission on Aboriginal Peoples explain the basis for this perspective on the future of Canada. The Commissioners did not come to this conception easily or lightly, and they surely did not expect that their views would find immediate and wide acceptance in the land. What they and the country have a right to expect is a full public exploration of the reasons for the conclusions to which the Commission came. To do less will be to toss away a potentially useful tool in the kit we will all need to establish a more stable and a more just federation. 

*Frances Abele is Director of the School of Public Administration at Carleton University. She was seconded to the Royal Commission on Aboriginal Peoples during 1992-94, where she worked on research and policy questions. The views expressed in this article are her own, however, and do not necessarily reflect the views of the Commissioners or her former colleagues on the staff. The author would like to thank her husband, George Kinloch, for his help in several ways.*

## ABORIGINAL LANDS AND RESOURCES: AN ASSESSMENT OF THE ROYAL COMMISSION'S RECOMMENDATIONS

BY KENT MCNEIL

The Aboriginal peoples have been living on the land in what is now Canada and deriving their livelihood from its natural resources for thousands of years. Elder Alex Stead, at a public hearing held by the Royal Commission on Aboriginal Peoples (RCAP) in Winnipeg on April 22, 1992, put it this way: "We are so close to the land. This is my body when you see this mother earth, because I live by it. Without that water, we dry up, we die. Without food from the animals, we die, because we got to live on that. That's why I call that spirit, and that's why we communicate with spirits. We thank them every day that we are alive" (RCAP Report, vol.2, pt. 2, 435-36).

The Aboriginal peoples' connection with the land is not just economic—it is spiritual, and it is social and political as well. Their very existence as peoples with distinctive cultures depends on maintenance, and in some cases expansion or re-acquisition, of a land base, and on access to adequate natural resources. It is for this reason that land claims are of such vital importance for the Aboriginal peoples.

In its Report, RCAP points out many problems with the way the issues of Aboriginal lands and resources have been handled by the Canadian and provincial governments in the past. In many parts of Canada—particularly in the Atlantic Prov-

inces, Quebec, and British Columbia—lands were taken from the Aboriginal peoples without their consent and without payment of compensation. Where there was a form of consent in the treaties, these documents have usually been interpreted by non-Aboriginal governments and courts as absolute surrenders of lands, whereas the Aboriginal peoples who signed them often intended to share the lands with the newcomers while preserving their own land uses and traditional ways of life.

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*[M]any reserves have been drastically reduced in size by surrenders, sometimes through government coercion or misrepresentation, and occasionally through outright fraud.*

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Lands set aside as reserves for the Aboriginal peoples were generally poor lands with limited natural resources (although in a few instances there was undiscovered oil, gas, or minerals below the surface, as in the case of some Alberta reserves). As a result, the reserves generally do not provide adequate economic bases for self-sufficiency. Moreover, many reserves have been drastically reduced in size by surrenders, some-

times through government coercion or misrepresentation, and occasionally through outright fraud.

Due to these wrongs, most Aboriginal peoples today do not have adequate lands and resources to be economically self-sufficient, making it impossible for them to finance self-government. Their economies and ways of life have been seriously interfered with, and in some cases virtually destroyed. The RCAP Report contains a number of recommendations to redress these past wrongs, so that the Aboriginal peoples can regain their self-sufficiency and political autonomy within Canada.

The Report recommends that the treaties be interpreted in accordance with the understanding of the Aboriginal peoples who signed them, so that they involve a sharing of lands and resources where that was intended, rather than an extinguishment of Aboriginal title. The treaties should be implemented according to their spirit and intent, and violations of them should be rectified. Where lands set aside as reserves are insufficient for current populations to be economically self-reliant and politically autonomous, non-Aboriginal governments should provide additional lands to foster these objectives. This is in the interest of all Canadians, as the cycle of dependency that so many Aboriginal people are caught in is a debilitating burden on the whole of Canadian society.

The Report also contains recommendations for the settlement of Aboriginal title issues in areas of Canada where treaties and modern land-claims agreements have not yet been signed. Among these are recommendations

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