

People to people: Nation
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*A consultation document summarizing
the main findings and recommendations
of the Royal Commission on Aboriginal Peoples*

The geese migrate because they have responsibilities to fulfil at different times and in different places. Before they fly, they gather together and store up energy. I believe strongly that our people are gathering together now, just like the geese getting ready to fly. I am tremendously optimistic that we will soon take on the responsibilities we were meant to carry in the world at large.

Jim Bourque, Métis leader

As an ordinary Canadian, I feel deeply that this wonderful country is at a crucial and very fragile juncture in its history. One of the major reasons for this fragility is the deep sense of alienation and frustration felt by, I believe, the vast majority of Canadian Indians, Inuit and Métis. Accordingly, any process of change or reform in Canada - whether constitutional, economic or social - should not proceed and cannot succeed, without aboriginal issues being an important part of the agenda.

Brian Dickson, former Chief Justice of Canada

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*Introduction*¹

In the spring of 1991, following the turbulent events of the previous year that had seen the death of the Meech Lake Accord and the stand-off at Oka, the Government of Canada announced its intention to create a Royal Commission to examine the place of Aboriginal peoples in Canada. It asked Brian Dickson, the former Chief Justice of Canada, to consult widely about what the Commission should examine and who should be on it. On his recommendation, Georges Erasmus, former national chief of the Assembly of First Nations and René Dussault, a judge of the Quebec Court of Appeal, were appointed chairpersons.²

In its 16 point mandate, the Commission was asked to:

- * determine how to "break the pattern of paternalism which has characterized the relationship between Aboriginal peoples and the Canadian government";
- * examine the links between an adequate land base, jobs and income and design effective processes for settling land disputes;
 - * look at how treaties have been interpreted and implemented and to propose ways to make sure they are honoured;
 - * study the nature and causes of poverty, sub-standard housing, unemployment, ill health, substance abuse, suicide rates and family violence among Aboriginal communities;
 - * suggest how Aboriginal peoples Canadian resume their status as self-governing and self-reliant nations in the Canadian federation.

The printed text of the Commission's final report Canadian be ordered from the Canada Communication Group at 819-956-4802 for \$249.00 or accessed on the Internet at www.libraxus.com or www.indigenous.bc.ca.

A CD-ROM including the Commission's final report, its special reports and 200 of its research studies Canadian be ordered from 613-567-2481 for \$349.00.

Justice Dickson told Commissioners to travel extensively to Aboriginal communities to listen to what those at the grass roots had to say. By December 1993, they had visited 96 communities and held 178 days of hearings. They asked community leaders, scholars and experts to study over 300 issues and advise them.

¹ This consultation document was drafted by Anthony Reynolds, former executive director of the Commission, to serve as the basis for discussions between First Nations and Inuit communities and Indian and Northern Affairs, Canada. It is not a complete summary of the Commission's report as its primary focus is on issues that directly affect First Nations and Inuit peoples. Wherever possible, the language of the report is used.

² Its other members were: Mary Sillett (former president of the Inuit women's association, Pauktuutit), Viola Robinson (former president of the Native Council of Canada), Allen Blakeney (former premier of Saskatchewan) who resigned in 1993 and was replaced by Peter Meekison (professor of political science at the University of Alberta and former Alberta deputy minister of intergovernmental affairs), Paul Chartrand, (professor in the department of native studies at the University of Manitoba) and Bertha Wilson (the first woman justice on the Supreme Court of Canada).

142 organizations, most of whom were Aboriginal, received support to present written briefs to the Commission. Commissioners submitted their final report in November, 1996.

Royal Commissions are created to bring together the widest views and the best minds to try to find solutions to pressing and long-standing problems. Once they have submitted their report, their work is done and they are disbanded.

What happens to their recommendations depends, in part, on the quality of their work. In the case of this commission, a great deal rests also on whether the conclusions reached correspond to the deeply held beliefs of the people most affected. If they do, then those people can take many steps on their own without waiting for governments to act. However, governments have a major role to play to provide the legal framework and the funds to bring about change.

Looking Forward: Looking Back³

After four years of consultations, research and reflection, Commissioners came to see that the problems that lie at the root of the relationship between Aboriginal and non-Aboriginal people in Canada cannot be addressed only as Aboriginal issues.

Rather, they are linked to certain fundamental precepts underlying Canadian laws and institutions and to the long-held assumptions that Aboriginal languages, cultures and institutions would die out and their people would be assimilated as individuals into the broader Canadian society.

While Canada assumes the role of defender of human rights in the international community, Commissioners concluded that we retain, in our conception of Canada's origins and make-up, the remnants of colonial attitudes of cultural superiority that do violence to the Aboriginal peoples to whom they are directed.

Restoring Aboriginal nations to a place of honour in our shared history, and recognizing their continuing presence as distinctive collectives with the right to participate in Canadian life through their own institutions and to occupy their own political and geographic space, are fundamental to the changes Commissioners propose.

The Commission makes the case, not only for more just treatment of Aboriginal peoples now and in the future, but also for restorative justice by which is meant the obligation to relinquish control over what was unjustly taken - the authority of Aboriginal nations to govern their own affairs; control of lands and resources essential to the livelihood of families and communities; jurisdiction over education, justice and community services.

Commissioners viewed with great concern the repeated failures of the past 25 years to effect changes in political relations between Aboriginal and non-Aboriginal people. Moving away from entrenched or polarized positions is extremely difficult when one or both sides feel threatened.

³ This section summarizes the main lines of discussion in volume one of the Commission's final report.

They asked: how do participants move towards a relationship of power-sharing, mutual respect and joint problem-solving?

Until the story of life in Canada, as Aboriginal people know it, finds a place in the wider Canadian public's knowledge of their past, the wounds of historical violence and neglect will continue to fester - denied by Canadians at large and, perversely, generating shame in Aboriginal people because they cannot shake off the sense of powerlessness that made them vulnerable to injury in the first place.

Violations of solemn promises in treaties, inhumane conditions in residential schools, the uprooting of whole communities, the denial of rights and respect to patriotic Aboriginal veterans,

and the great injustices and small indignities inflicted by the administration of the *Indian Act* - all embody injustice.

A cleansing of the wounds of the past is needed before the work of reconciliation and building a future can commence.

The Government of Canada, on behalf of the Canadian people, needs to acknowledge and express deep regret for the spiritual, cultural, economic and spiritual violence visited upon Aboriginal people, as individuals and as nations.

Aboriginal people need to free themselves from the anger and fear that is present in any individual or collective in response to insult and injury, and extend forgiveness to the representatives of the society that has wronged them.

The spiritual traditions and sacred ceremonies of many nations can help people let go of negative feelings that sap the energy needed for constructive pursuits.

The purpose of engaging in acknowledgement and forgiveness is to free both sides to embrace a shared future with a new measure of trust.

It is necessary to look back in order to be able to move forward. The past is more than something to be recalled and debated. Many of the attitudes, institutions and practices that took shape in the past influence and constrain the present.

History as understanding

The relationship between Aboriginal and non-Aboriginal peoples assumed different shapes and characteristics responding to differing circumstances. Understanding the factors that changed the relationship helps recognize what went wrong and, indeed, what is of lasting value. The Commission viewed the 500 years of shared history in four overlapping stages: **separate worlds, contact and cooperation, displacement and assimilation, and negotiation and renewal.**

In the period before 1500, Aboriginal and non-Aboriginal peoples developed as **separate worlds**. On both sides of the Atlantic, national groups with evolving systems of government - though smaller and simpler than the nations and governments we know today - flourished and grew. In the southeastern region of the North America, the Cherokee were organized into a confederacy of some 30 cities - the greatest of which was nearly as large as London when English explorers first set eyes on it. Further south, indigenous peoples have carved great empires out of the mountains and jungles long before the Spanish arrived.

The Americas were not - as the Europeans told themselves when they arrived - *terra nullius* - empty land.

Later accounts of the period of **contact and cooperation** emphasize European "discovery" and "development" but for the first 200 years the newcomers would have not been able to survive the rigours of climate, pursue their livelihoods or dodge each others' bullets without Aboriginal help. Cautious cooperation, and scattered conflict, marked the period into the eighteenth and nineteenth centuries, depending on the region.

European and Aboriginal peoples lived, for the most part, separate from and independent of each other with their relationship being defined by treaties, instruments of inter-nation relations that sprang from a long tradition for both sides. In addition, the colonial nations were engaged for much of this time in bitter rivalries for land and trade and they needed alliances with Aboriginal nations.

Aboriginal societies in North America were shaped by their environment, culture and their evolving technologies:

* the resources of sea and forest enabled west coast peoples to build societies of wealth and diversity;

* on the prairies and northern tundra, Aboriginal peoples lived in close harmony with vast, migrating herds of buffalo and caribou;

* in the forests of central Canada, they harvested wild rice from the marshes, grew corn, beans and squash and supplemented their crops by fishing and hunting;

* on the east coast and in the far north, the bounty of sea and land, and their own ingenuity, enabled Aboriginal peoples to survive harsh conditions.

1.16.2:** Can governments acknowledge that the doctrines of *terra nullius* and discovery are factually, legally and morally wrong and have no place in law or policy making or in argument before the courts.

In the 1800's, as the period of **displacement and assimilation** began, European rivalry had diminished. American and British competition was resolved following the War of 1812-14 and settler governments had no further need for alliances with Aboriginal nations. The fur trade was dying and with it the old economic partnerships. The displaced populations of Europe moved in every greater numbers

across the Atlantic and pushed for more and more land.

Non-Aboriginal people were no longer, for the most part, prepared to respect the distinctiveness of Aboriginal societies. Indeed, the dominant attitudes of racial superiority of the day provided the rationale for displacement from the land, establishment of reserves and the creation of instruments of assimilation, the *Gradual Civilization Act* followed by the *Indian Act*, residential schools and the beginnings of the relocation of communities who were in the way of the expanding need for space.

Confederation, declared in 1867, was a new partnership between French and English colonists to manage the lands

1.10.1 to 1.10.3:** The Government of Canada establish a public inquiry to investigate residential school policies and practices and recommend remedial action including apologies, compensation of communities and treatment for individuals.

****The numbered boxes summarize the Commission's recommendations on individual issues. Numbers correspond to the numbers of the recommendations in the final report. The first number represents the volume, the second the chapter and the third the recommendation number in that chapter.**

and resources north of and the 49th parallel. It was negotiated without reference to the Aboriginal nations. Its legislative instrument, the *British North America Act*, made "Indians and lands reserved for Indians" the subject of federal government regulation leading to the suppression

of Aboriginal institutions of governance and land-holding. Treaties continued to be negotiated across the less settled parts of northern North America. But it is evident that the intentions and understandings of the treaty parties differed widely. The Crown's agents regarded these as means of securing land, one-time settlements that redistributed lands in return for benefits specified in the written documents.

1.11.1 to 1.11.13: Parliament amend the *Can Human Rights Act* to authorize inquiries as to whether relocations of Aboriginal peoples were legal and conformed to Canada's human rights obligations and to permit court action to obtain appropriate redress.

For Aboriginal nations, treaties were seen as instruments that implicitly recognized their governing authority and established on-going relationships between peoples to share the land and its resources, understandings that would be revisited as circumstances changed.

But this was not to be. Early in this century, as the administration of the *Indian Act* became more and more invasive, it became a criminal act for Aboriginal people to raise money to contest their rights to land in court unless agreed to by the Indian Affairs department.

The date of 1969, the year the Government of Canada published the White Paper, can be taken to mark the beginning of the latest stage in the history of the relationship, that of **negotiation and renewal**. This change had been underway since the end of the Second World War. This period is characterized by the increasing success of Aboriginal people in having their distinctiveness recognized once again as non-Aboriginal society realizes the manifest failure of its policies of assimilation and paternalism.

Recognition

The principle of mutual recognition calls on non-Aboriginal Cans to recognize that Aboriginal people are the original inhabitants and caretakers of this land and have distinctive rights and responsibilities flowing from that status. It calls on Aboriginal people to accept that non-Aboriginal people are also of this land now, by birth and by adoption, with strong ties of love and loyalty. It requires both sides to acknowledge and relate to one another as partners, respecting each other's laws and institutions and cooperating for mutual benefit.

After almost a half century of neglect, the courts began to address questions of Aboriginal rights resulting in landmark decisions affirming Aboriginal title to lands. Years of active political struggle culminated in the recognition in the *Constitution Act of 1982* of "existing Aboriginal and treaty rights", setting the stage for major land claims agreements across the north but also continuing frustration in terms of real change in the nature of governing authority or agreement to an adequate land and resource base below the 60th parallel.

Foundations for a new relationship

Commissioners concluded that there was a fundamental contradiction at the heart of Canada. This is a country that sees itself as a modern liberal democracy. But it has been built to a significant degree upon the dispossession of Aboriginal peoples and the subversion of their institutions and life ways. The culture and values of the mainstream are recognized in the institutions of Canadian society, but indigenous cultures and values are not. In this way, the colonization of Aboriginal nations has become an institutionalized reality.

Some 500 years after the beginning of sustained contact, we find ourselves again having to define

Respect

The principle of respect calls on all Canadians to create a climate of courtesy, consideration and esteem extended to people whose languages, cultures and ways differ from their own. Respect is the essential precondition of healthy and durable relations among peoples. Living in a society where diversity thrives fosters the personal qualities needed to live and work in the global economy of the 21st century.

the terms of our joint life on the northern part of this continent. Displacement and assimilation have been discredited and their enormous human and financial costs have become painfully obvious. But Canadian governments are preoccupied with mediating conflict within the legal and political framework that has been created over time, while Aboriginal people question the foundations of the framework itself.

How, therefore, should the work of reconciliation proceed?

First, the Commission believes it requires rejection of the approaches on which the relationship foundered over the last 200 years - **assimilation, control, intrusion and coercion**. In their place need to be instituted principles of **recognition, respect, sharing and responsibility**.

Secondly, Canadians need to recognize that Aboriginal peoples are nations. They 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.

Room must now be made in the Canadian legal and political framework for Aboriginal nations to resume their self-governing status. Commissioners see a time when three orders of government will be in place, with Aboriginal governments exercising sovereign powers in their own sphere. In contrast to recent policy based on delegating

Sharing

Canadians have long shown a commitment to the personal and social benefits that flow from sharing the fruits of one's knowledge, labour and resources. People see themselves not only as calculators of immediate advantage but as partners engaged in relations of mutual benefit and reciprocity over time. Reciprocity is not possible in conditions of poverty and dependence. Conditions that restore the possibility for self-reliance are prerequisites to a relationship of sharing.

Responsibility

Responsibility is the hallmark of a mature relationship. It involves the transformation of the colonial relationship of guardian and ward into one of true partnership. Partners are accountable for the promises they have made, for behaving honourably, and for the impact of their actions on the well-being of the other. The partnership between Aboriginal peoples and Canada is political and constitutional and therefore both have an obligation to act in good faith towards the other.

municipal-type powers to

Aboriginal people at the community level, the Commission believes that the right of Aboriginal self-government is inherent, that it cannot be delegated from another government.

Aboriginal people do not see recognition of their nationhood as a denial of the rights of other Canadians, let alone as challenging the sovereignty of the Canadian state. On the contrary, what they envision is a restructuring of the relationship so that Aboriginal people govern their own members on their own territories, in accordance with

their own value systems and as one of three orders of government within a flexible and cooperative Canadian federation.

Restructuring the Relationship⁴

The Commission proposes 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 -- rebalancing political authority and economic resources on the one hand, and restoring health and effectiveness to individuals, families, communities and nations on the other.

Treaties⁵

The Commission believes that treaties should be the central instrument of the renewed relationship. By their nature, treaties recognize distinctive and shared sovereignties and regularize the way in which governments and peoples relate to each other. But the story of the treaties in Canada is, sadly, replete with examples of failed communications, as peoples with vastly different views of the world attempted to make agreements. Those differences denied them a true consensus on many points leading to frustration and animosity.

But the very act of entering into a treaty represents, then and now, a profound commitment by both parties to the idea of peaceful relations between peoples.

Treaty making can enable the deepest differences to be set aside in favour of a consensual and peaceful relationship. The parties to a treaty need not surrender their fundamental cultural precepts to make an agreement to coexist. They need only to communicate their joint desire to live together in peace, to embody in their own laws and institutions respect for each other, and to fulfil their mutual promises.

In 1982, existing Aboriginal and treaty rights were acknowledged and recognized in the *Constitution Act, 1982*. Subsequently, in 1984, provision was made that all new treaties could be given constitutional protection. The Supreme Court of Canada has stated that Aboriginal and treaty rights are part of the legal regime that defines the rule of law in Canada. But it is clear that the courts are limited in their ability to prescribe outcomes that foster reconciliation. In the end, solutions must be found by a negotiated political settlement based on such rights as the courts find to exist.

Interpreting treaties

⁴ This section covers the contents of volume 2 of the Commission's report.

⁵ For greater detail see chapter 2, *Treaties*, in volume 2 of the Commission's report.

Canadian courts have struggled with the legal character of treaties with Aboriginal nations. A series of cases have concluded that:

- a) the treaties, though not international in kind, are of a unique nature and confer legal rights and obligations upon their signatories;
- b) they should be given a "just, broad and liberal interpretation";
- c) where doubts as to interpretation arise, these should be resolved in favour of Aboriginal people;
- d) the treaties confer a fiduciary responsibility on the Crown;
- e) the Crown's honour is always involved where treaties are being interpreted or implemented;
- f) the relationship between the Crown and Aboriginal people is "trust-like rather than adversarial".

Courts examining treaties entered into in the last 25 years have recognized that the understanding of the process by all parties was much higher than in earlier treaties and that therefore interpretation of agreements must recognize the intentions and interests of all parties to the agreements.

Central to the establishment of a renewed relationship is the question of interpretation and implementation of existing treaties, particularly those known as historic treaties, entered into prior to 1975.

It is evident that the intentions and approaches of the parties to these treaties were markedly different. From the Crown's side, its officials were exchanging benefits as specified in written treaties in return for the extinguishment of Aboriginal rights to their traditional lands. Treaty nations hold that their ancestors were agreeing to a sharing of their traditional lands in return for protection by the Crown and assistance in adjusting their lives to the changing circumstances created by the arrival of European settlers. They hold, with virtual unanimity, that regardless of the written terms of the treaties, their ancestors were not extinguishing their rights to traditional lands.

In the manner of Aboriginal treaty-making, discussions prior to most treaty agreements took place over many days and involved the exchange of numerous verbal undertakings. Oral history supported by evidence from letters, diaries and memos confirms that many issues around which understandings were reached in the verbal exchanges did not find their way into the written texts of the treaties. Treaty nations claim the extinguishment clauses that appear in strikingly similar

language in many treaties, could not have been understood by the Aboriginal parties who affixed their marks to the documents.

Action Issue: A new treaty process

It should be implicit in any new negotiations that the principle of sharing which was central to the treaty nations' purposes in making their treaties, entitles them to an adequate land base to satisfy their contemporary cultural and economic requirements and to support their governments.

2.2.3 to 2.2.5: A treaty process interpret and implement the spirit and intent of historic treaties by reference to oral as well as written sources, recognizing that treaty nations intended to share their land and not extinguish their land rights and that the treaties affirmed their inherent right of governance.

The Commissioners believe that a treaty renewal and implementation process is the way to address those issues where it was doubtful that a real meeting of minds was arrived at in the original treaties. This would not entail a renegotiation of the treaties, unless that was sought by both treaty parties, but a clarification of the treaties' spirit and intent in a contemporary context.

The treaty process, whether for the negotiation of new treaties or the interpretation of existing ones, needs to be available to all Aboriginal peoples who meet the nation criteria set out in the governance section that follows. This means inclusion of the signatories of the earliest "peace and friendship" treaties who for many years were excluded from the federal government's treaty process, the comprehensive claims policy, because it was held that their rights to land had been superseded by law. It also means inclusion of those Métis groups who meet the nation criteria.

2.2.6: A new treaty process be established that excludes extinguishment, allows for governance to be part of the treaty and is open to all Aboriginal peoples who meet the definition of nation, including signatories of the early "peace and friendship" treaties.

These agreements may be variously called treaties, accords or land claims agreements, depending on the terminology various groups adopt. They should be able to define land rights, governance arrangements, economic rights as well as other matters such as education or health and be eligible for constitutional protection under section 35 of the *Constitution Act, 1982*.

A new Royal Proclamation would mark a turning point in the relationship. It would:

- *reaffirm of the *Royal Proclamation of 1763*
- *acknowledge the injuries of the past
- *express the will for reconciliation
- *commit to the renewal and implementation of existing treaties and the creation of new treaties through a new treaty process
- *commit to recognizing the inherent rights of self-government and Aboriginal governments as one of three orders of government in Canada.

Action issue: A Royal Proclamation and companion legislation

The Commissioners believe that the importance of establishing a renewed relationship justifies an act of high symbolic importance. They call on the Government of Canada to issue a new Royal Proclamation in the name of the Crown and in the person of the monarch to supplement the landmark recognition of Aboriginal rights set out in the *Royal Proclamation of 1763*. For many treaty nations, the relationship with the monarch is seen as the

guarantor of their original agreements. The new proclamation should embody the living commitment of the Crown to fulfilling its treaty undertakings with treaty nations. It should be drafted in full consultation with Aboriginal peoples.

Without legislation to implement the changed policies, the Royal Proclamation would be only symbolism. The Commission therefore recommends that companion legislation, an Aboriginal Treaties Implementation Act, be introduced in Parliament to establish the guiding principles of the treaty process and the institutions to implement them. Provincial and territorial governments will need to participate in treaty processes and will therefore need their own measures to give them authority.

2.2.8 to 2.2.10: The federal government pass treaty legislation to establish new principles to govern treaty renewal and treaty making processes; provinces and territories take similar measures.

2.2.15, 2.2.16: Regional treaty commissions be established as permanent, neutral and independent bodies to facilitate the treaty negotiations, monitor the conduct of the parties, oversee equitable cost-sharing, conduct research on issues in dispute, provide mediation services, remedies for abuse of process and arbitration.

The institutions to implement the new treaty process would consist of independent regional Treaty Commissions to facilitate and oversee treaty negotiations and an Aboriginal Lands and Treaties Tribunal as a forum of last resort to ensure negotiations in good faith, a fair allocation of funding for the treaty processes and the conclusion of interim measures to guide resource development and the sharing of related revenues while a territory is subject to land claims negotiation. More detail on the tribunal will be explained in the section on land and resources.

*Governance*⁶

Self-determining peoples have the freedom to choose the pathways that best express their identity, their sense of themselves and the character of their relations with others. Self-determination is the power of choice in action: it is an attribute of sovereignty.

The concepts of sovereignty and self-determination, which for some Canadians have largely secular definitions, all retain a spiritual dimension in contemporary Aboriginal thinking. Sovereignty is seen as an inherent attribute, flowing from sources within a people or a nation rather than from external sources such as international law, common law or the Constitution. It also has an historical basis in the extensive diplomatic relations between Aboriginal peoples and the European powers from the early period of contact onward.

The Commission concludes that the right of self-determination is vested in all the Aboriginal peoples of Canada, including the Indian, Inuit and Métis peoples. The right finds its foundation in emerging norms of international law and basic principles of public morality. By virtue of this right, Aboriginal peoples are entitled to negotiate freely the terms of their ongoing relationship with Canada and to establish governmental structures that they consider appropriate for their needs. The right of self-determination does not ordinarily give rise to a right of secession, except in the case of grave oppression or disintegration of the Canadian state.

Self-government is one path Aboriginal peoples may take in putting the principle of self-determination into effect. But the right of self-determination is not the only basis for self-governing initiatives. Aboriginal peoples also possess the inherent right of self-government within Canada as a matter of Canadian constitutional law. This right stems from the original status of Aboriginal peoples as independent and sovereign nations in the territories that they occupied, as this status was recognized and recast in numerous treaties. The Commission believes that the inherent right of Aboriginal self-government was recognized and affirmed in section 35(1) of the *Constitution Act, 1982* as an existing Aboriginal and treaty-protected right.

⁶ For greater detail, see chapter 3, *Governance*, in volume 2 of the Commission's report.

The diversity of Aboriginal peoples is reflected in their culture, traditions, social and economic circumstances and in their visions of governance. But these visions have a common core. Ultimately, Aboriginal people want greater control over their lives, freedom from external interference. They do not want to be dependent on others. Aboriginal peoples see self-government as one of the main vehicles for repairing the damage done to their national cultures and restoring the vitality of their languages, ways of life and basic identities.

Action Issue: *The nature of Aboriginal jurisdiction*

Accordingly, Aboriginal visions of governance embrace two distinct but related goals. The first involves greater authority over a traditional territory and its inhabitants, whether this territory be exclusive to a particular Aboriginal people or shared with others. The second involves greater control over matters that affect the particular Aboriginal nation in question: its culture, identity and collective well-being.

The core of Aboriginal jurisdiction includes all matters that (a) are of vital concern to the life and welfare of a particular Aboriginal

2.3.4 to 2.3.6: All governments in Canada recognize the inherent right of Aboriginal self-government as an existing right affirmed in the *Constitution Act, 1982* and that it encompasses all matters relating to the good governance and welfare of Aboriginal peoples and their territories and is divided into core areas which may be implemented by self-starting initiatives and peripheral areas that require negotiated agreements with other governments.

people, its culture and identity, (b) do not have a major impact on adjacent

jurisdictions, and (c) are not otherwise the object of transcendent federal or provincial concern. With respect to these matters, an Aboriginal group has the right to exercise authority and legislate at its own initiative, without the need to conclude federal and provincial agreements.

The remainder of inherent Aboriginal jurisdiction concerns matters that have a major impact on adjacent jurisdictions

or attract transcendent federal or provincial concern. Such matters require a substantial degree of coordination among Aboriginal, federal and provincial governments. In the Commission's view, an Aboriginal group cannot legislate at its own initiative in these areas until a self-government agreement has been concluded with the Crown.

The Commission concludes that when an Aboriginal government passes legislation dealing with subject matters falling within the core areas, it automatically displaces any inconsistent federal or provincial legislation. Federal and provincial laws apply where there is no inconsistent Aboriginal legislation occupying the field. In instances that meet the strict standard laid down by the Supreme Court of Canada in the *Sparrow* case, where federal law serves a compelling and substantial need and is consistent with the Crown's fiduciary responsibility to Aboriginal peoples,

Which Aboriginal groups hold the right of self-determination? Is the right vested in small local communities? The Commission concludes that the right of self-determination, as it is recognized in international law, is vested in "peoples" or in "nations". As understood here, an Aboriginal nation is a sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a certain territory or group of territories.

A nation has a collective sense of identity seen in a common history, language, culture, traditions, political consciousness, laws, governmental structures, spirituality, ancestry, homeland. It is of sufficient size and capacity to enable it to assume and exercise powers flowing from the right of self-determination in an effective manner.

Currently there are between 60 and 80 historically based Aboriginal nations in Canada, compared with over 1,000 local Aboriginal communities.

federal law may take precedence over Aboriginal law.

The Commission believes that the enactment of section 35 of the *Constitution Act, 1982* confirms the status of Aboriginal peoples as equal partners in the complex federal arrangements that make up Canada. It provides the basis for recognizing Aboriginal governments as one of three distinct orders of government in Canada: Aboriginal, provincial and federal. The governments making up these three orders are sovereign within their several spheres and hold their powers by virtue of their inherent or constitutional status rather than by delegation. They share the sovereign powers of Canada as a whole, powers that represent a pooling of existing sovereignties.

Action Issue: Models of self-government

The exercise of Aboriginal self-government will assume a number of forms according to peoples' differing circumstances and capacities for change. Three models of Aboriginal government are set out not as prescriptions, but rather as a source of guidance from which Aboriginal peoples will choose their own particular direction.

Under the nation model, Aboriginal peoples would organize their governments on the basis of Aboriginal nations. Aboriginal nation governments would operate from an identifiable land base comprising the nation's own lands and resources and the lands would be administered in accord with a nation's traditions of tenure and governance.

Within the nation, jurisdiction would be exercised over core powers as described above with respect to all persons resident in its territory. A nation government would have authority to make laws (legislative), administer those laws (executive) and interpret and enforce them (judicial). Non-Aboriginal citizens living on the nation's territory would need to be represented in the decision-making bodies of its government.

Subject matters may be allocated to different levels of government. For example, the authority to deliver certain services may appropriately be exercised by community governments while the passage and interpretation of laws for those same matters may be exercised at the nation level. Some powers may reside exclusively at the nation level, such as the authority to conduct relations with other Canadian governments. Other areas, such as the allocation of local land, might best be decided by local authority.

Eligibility for citizenship in a nation would be based on criteria set by the nation's constitution, citizenship law or code. Aboriginal peoples are not exclusively racial groups; they are organic political and cultural entities. Although contemporary Aboriginal groups stem historically from the original peoples of North America, they often have mixed genetic heritages and include individuals of varied ancestries. As political entities, they have the capacity to evolve over time and change in their internal composition.

While Aboriginal nation governments may establish "charters" or other instruments to protect and shield individuals and individual rights from the abusive exercise of power by government, the *Canadian Charter of Rights and Freedoms* also applies to Aboriginal governments and regulates relations with individuals falling within their jurisdiction. The Charter must be interpreted flexibly according to section 25 to take account of the culture, values and traditions of the people.

Persons could be eligible for citizenship in the Aboriginal nation on the basis, among other things, of community acceptance, self-identification, ancestry, adoption, marriage, residence. Nations would establish independent appeal mechanisms to ensure fairness in citizenship decisions. Individuals would be members of an Aboriginal nation and citizens of Canada.

A second model expresses Aboriginal self-determination through a public government. Aboriginal public governments would be established to represent all residents of a particular region or territory where the Aboriginal people constitute a majority of residents. Land ownership would vary between areas owned directly by the Aboriginal peoples on the territory and those that are private land or owned by the public government on behalf of all its residents.

The Commission concludes that the constitutional right of self-government is vested in the people that make up Aboriginal nations, not in local communities as such. Only nations can exercise the range of governmental powers available in the core areas of Aboriginal jurisdiction, and nations alone have the power to conclude self-government treaties regarding matters falling within the periphery. Nevertheless, local communities of Aboriginal people have access to inherent governmental powers if they join together in their national units and agree to a constitution allocating powers between the national and local levels.

These governments will have powers and authorities over a range of matters variously recognized, transferred or devolved by other Canadian governments. Procedures, including rules for leadership selection, decision-making processes and accountability mechanisms could be adapted to reflect the cultures and traditions of the Aboriginal peoples participating in the public government. These government would also have legislative, executive and judicial powers within their area of jurisdiction. Authorities could be shared between community and territorial governments as in the Aboriginal nation model.

A third approach to Aboriginal governance is premised on an Aboriginal community of interest. In urban centres, Aboriginal people from many nations form a minority of the population. They are not "nations" as defined above, though they will be members of other nations. They nevertheless want a measure of self-government - especially in relation to education, health care, economic development and protection of their cultures. Urban Aboriginal institutions could operate effectively within municipal boundaries, with voluntary membership and powers delegated from Aboriginal nation governments or the relevant provincial government. While these authorities would have administrative powers, they would not likely have legislative or judicial authority.

These approaches do not exhaust the range of possibilities for Aboriginal self-government and self-determination. Should Aboriginal peoples choose to follow one or other of these three paths, the outcomes will be as richly diverse as are the traditions and experiences of Aboriginal peoples in Canada.

Action Issue: Nation rebuilding and recognition

The Commission sees the principal task in the area of governance as rebuilding Aboriginal nations: assuring them financial and administrative support until they become more economically self-sufficient and administratively autonomous; creating a jurisdictional space within which they can act as one of three orders of government; and allocating an adequate land and resource base

upon which economic self-reliance and local autonomy can be based.

This would begin by the reflection of these intentions in the Royal Proclamation described in the Treaties section. In this case, the relevant companion legislation to give form and content to the intentions in the proclamation would be an Aboriginal Nations Recognition and Government Act. This legislation would set out the criteria and process for nation recognition. Aboriginal nations do not require federal legislation to exercise constitutional authority to function as governments. But in the complex arrangements of a modern federal state, guidance is needed to make relations between governments operate effectively. Governments need to "recognize" each other in order that their authority is respected.

The process of moving towards nation status and recognition is a political process that will involve bringing groups that have been separated, in some cases for generations, by the *Indian Act* or other legislation to agreement on what values and institutions should define their life.

One of the most important tasks will be defining membership. Self-government as recognized within section 35 of the *Constitution Act 1982* is subject to the requirement in subsection (4) of equality between the sexes. The artificial distinction between status and non-status people would

2.3.27 An Aboriginal Nations Recognition and Government Act would:

- a) establish criteria for recognition including evidence of common attributes and adequate size, a constitution, a citizenship code and appeal mechanism, and fair processes involving all citizens in steps leading to nation formation;
 - b) create independent panels under the Aboriginal Lands and Treaties Tribunal to examine and advise the federal government on applications for recognition;
 - c) enable the federal government to vacate legislative authority under section 91(24) of the *Constitution Act 1867* with respect to core powers exercised by the Aboriginal government ;
 - d) provide enhanced financial resources to enable the Aboriginal government to exercise expanded authority over a larger population base.
-

be eliminated by a fair membership code as would eligibility based on residency. Funding arrangements would no longer be based on such distinctions. The Government of Canada's treaty obligations in the future would be to Aboriginal nations not to status individuals, with related funds being administered by the nation government for the benefit of all members.

Developing a fundamental law or a constitution for the nation, designing the institutions of government and the functions to be performed by the community and the nation, ensuring appropriate checks and balances on the exercise of power and necessary accountability, are activities that, once completed, would need to be submitted to all citizens for approval.

Once a nation has completed these foundational tasks it could then seek formal recognition from other Canadian governments. This proposal should be examined by a neutral body, one at arm's-length from any government. The Commission proposes that the Aboriginal Lands and

Treaties Tribunal have authority to appoint recognition panels whose task it would be to assess applications against the criteria established in the Government and Recognition Act.

The panel would advise the federal government which would have the final decision. Should that decision be against recognition, the reasons would need to be given. Once recognized, interim

fiscal arrangements would be entered into with the nation government to finance its extended mandate and its responsibility for an expanded population base. In addition, as negotiated with the nation, the federal government would vacate section 91(24) authority under the *Constitution Act 1867* and amend the application of the *Indian Act*.

Action Issue: Nation rebuilding and the new treaty process

The Commission sees as a natural progression that recognized Aboriginal nations would then proceed to negotiate new or renewed treaties to arrive at agreements as to the long-term jurisdiction of their governments, the nature of the land and resources that would belong to the nation as well as that portion of its traditional lands over which it would share jurisdiction with other governments. Transfers of financial resources to meet negotiated treaty obligations as well as long-term fiscal arrangements would also be part of this process.

The financing of Aboriginal governments will require, in most cases, a significant redistribution of lands and resources through the treaty process. This will enable them, over time, to become largely self-financing through access to own-source revenues - taxation, returns on investment, royalties, user fees, proceeds from gaming, revenues from public corporations and borrowing. Aboriginal governments will be required to raise these revenues from all residents and from activity on their territory.

2.3.20 and 2.3.21: Aboriginal citizens living on their territory pay personal income tax to their governments. Those living off the territory continue to pay income taxes to the federal and provincial governments. For non-Aboriginal citizens living on nation territory various options are possible to ensure equivalent tax treatment. Aboriginal governments reimburse provincial governments for services provided.

As with other governments in Canada, Aboriginal governments should be assured of equalization payments based both on the tax capacity of their economies and requirements to provide their citizens with levels of public service equivalent to what other Canadians receive. As with current fiscal arrangements, these transfers would be dependent on Aboriginal governments implementing taxation effort equivalent to what other recipient governments undertake.

2.3.28: The federal government convene a meeting of premiers, territorial leaders and leaders of national Aboriginal organizations to mandate a forum to draw up a Canada-wide framework agreement to create policy guidelines concerning:

- a) areas of jurisdiction to be exercised by Aboriginal governments;
- b) fiscal arrangements with those governments;
- c) the allocation of lands and resources and the exercise of co-jurisdiction on other lands;
- d) the nature of interim arrangements to govern the development of land subject to treaty negotiation.

Action Issue: First Ministers and Aboriginal leaders meeting

Recognizing the labour-intensive nature of these developmental and negotiating processes, the Commission recommends the creation of a Canada-wide framework agreement to guide the creation of self-government agreements and treaties. It proposes that a meeting of premiers, territorial leaders and the leaders of national Aboriginal organizations mandate a special forum to design such an agreement and that it have the year 2000 as the completion date for its work.

Lands and Resources⁷

If self-government is to become a reality, Aboriginal people need substantially more land and resources than they now have. While these alone cannot guarantee self-reliance, Aboriginal peoples will be unable to build their societies and economies without an adequate land base.

Except in the far north (including northern Quebec) where comprehensive claims settlements since 1975 have improved the situation, the present land base of Aboriginal communities is inadequate. Lands acknowledged as Aboriginal south of the 60th parallel make up less than one half of one percent of the Canadian land mass. In the United States (excluding Alaska), where Aboriginal people make up a much smaller percentage of the total population, the comparable figure is three percent.

The Commission concludes that the current land base of Aboriginal peoples should be expanded significantly and there should be major improvement in Aboriginal access to or control of lands and resources outside of this expanded land base. This is both a matter of justice - of redressing past wrongs - and a fundamental precondition for a new relationship of dignity and equality.

Land is fundamental to Aboriginal identity. It is reflected in the language, culture and spiritual values of all Aboriginal peoples. Aboriginal concepts of territory, property, tenure, of resource management and ecological knowledge may differ profoundly from those of other Canadians, but they are no less entitled to respect.

Conflict over lands and resources remains the principal source of friction in relations between Aboriginal and non-Aboriginal people. If that friction is not resolved, the events of the '90's from Oka to Ipperwash will only get worse. These are not new problems. But until very recently, governments have either ignored or failed to address the basic causes - historic dispossession, rigidity of treaty interpretation, unwillingness to cede new lands to reflect growing populations and a critical need for the resources that could replace welfare dependence by self-reliance.

The history of Aboriginal title

Despite claims of territorial sovereignty over North America by European nation-states at the time of contact, Aboriginal relationships to land and its resources were initially respected by imperial authorities. The law of Aboriginal title emerged out of the practices of Aboriginal and colonial officials to maintain peace and cooperation. It recognized Aboriginal occupation and use of ancestral lands. It restricted non-Aboriginal settlement until a treaty with the Crown was in place. It prohibited transfer of Aboriginal lands to others without the approval of Crown authorities and it imposes fiduciary obligations on the Crown with respect to Aboriginal lands and resources.

But this view of Aboriginal title did not survive 19th century pressures to open the land to settlement and governments began to regard land agreements as administrative conveniences with no contemporary relevance. The federal Indian commissioner in British Columbia described

⁷ For greater detail see chapter 4, *Lands and Resources*, in volume 2 of the Commission's report.

Aboriginal title in 1927 as "a canker in the minds of Indians". In the same year, Parliament amended the *Indian Act* requiring anyone soliciting funds for Indian legal claims to obtain a licence from federal authorities.

As late as 1969, the federal government described claims of Aboriginal title in the White Paper as "so general and undefined that it is not realistic to think of them as specific claims capable of remedy" except through a policy that equates Indians' rights with those of other Canadians. This policy changed fundamentally following the *Calder* case in the Supreme Court in 1973 which confirmed that Indian title is a valid right in common law. The federal government then indicated its willingness to negotiate "an agreed form of compensation or benefit...to native peoples in return for their interest".

Despite the enormous delays and costs of the current lands claims processes, some notable progress has been made. This has demonstrated that allocating increased territory and agreeing to Aboriginal governments' jurisdictional authority over it provides Aboriginal nations a far greater chance to achieve economic, cultural and political self-sufficiency.

After more than a century of relative inaction on the rights of Aboriginal peoples to lands and resources, the law is finally beginning to recognize that they have a strong moral case for redress. They also have recognized rights to an expanded land and resource base and to a share in jurisdiction over traditional territories that now fall within the category of Crown lands.

But current jurisprudence will not accomplish what is needed to restore an adequate land base. The courts cannot be a substitute for negotiations which permit parties to address each other's real needs and make complex and mutually-agreeable trade-offs. A negotiated outcome is also more likely to achieve legitimacy than a court-imposed solution. The law of Aboriginal title provides the legal and moral legitimacy to spur negotiated settlements and imposes extensive obligations on the Crown to protect Aboriginal lands and resources. These oblige Parliament to enact fair and effective institutional processes to facilitate negotiated solutions.

The Inuvialuit in the western Arctic gained 30 percent of the land in the settlement area as fee simple or community lands and a share in the management of Crown resources throughout the settlement area. In the Yukon, First Nations will have eight percent of the land under exclusive ownership and shared management over additional lands. Similar provisions will be enjoyed by the Inuit in the eastern Arctic under the Nunavut agreement.

The Commission concludes that Aboriginal claims are not entreaties against the Crown's superior underlying title. Aboriginal claims are assertions of Aboriginal rights - rights that inhere in Aboriginal nations because of time-

Negotiations provide the best hope for solution. But for negotiation to work, the present system of resolving land claims must be replaced.

It assumes the land belongs to the Crown until proven otherwise. This is at odds with historical fact, at odds with the doctrine of continuing Aboriginal title, at odds with the duty of the Crown to be the protector of Aboriginal interests.

It still requires the extinguishment of Aboriginal land rights as a condition for the settlement of land claims. It is clear that there are other ways of achieving the needed certainty for all parties that still respect Aboriginal land rights.

The government itself is in a clear conflict of interest. It controls the process. It makes the rulings. It is prosecutor, judge and jury. This cannot be the way to protect both the rights of Aboriginal peoples and defend the interests of the Crown as currently interpreted.

honoured relationships with the land, which predate European contact. Aboriginal rights do not exist by virtue of Crown title; they exist notwithstanding Crown title. They are recognized by section 35 of the *Constitution Act, 1982*. Instead of readily invoking public interest to go against them, the Crown is required by law to act in the interests of Aboriginal people.

Action Issue: A new approach to land and resource allocation

Current land claims determination is subject to government control of substance and procedure. Government determines what types of claims it will recognize and how it will respond. These policies are created, interpreted and amended unilaterally by government. They are not entrenched in law or subject to judicial review.

The rights of Aboriginal peoples to lands and resources should not be subject to the shifting sands of policy developed unilaterally by governments. They require independent, legislated processes that allow for extensive Aboriginal participation.

The Commission proposes that the treaty-making and treaty-renewal processes set out earlier supersede the comprehensive and specific claims procedures of the recent past. All Aboriginal groups that can meet the nation criteria proposed in the recognition act should have access to treaty-making processes. Many specific claims and claims of a third kind would become specific items for discussion in broader treaty implementation and renewal negotiations.

2.4.2 to 2.4.4: The goal of negotiations should be to ensure that Aboriginal nations have:

- a) lands sufficient in size and quality to foster economic self-reliance and cultural and political autonomy;
 - b) and on their traditional lands
 - * access to resources;
 - * a guaranteed share of revenues flowing from resource development
 - * preferred access to economic opportunities flowing from development;
 - c) in addition to land, receive financial transfers based on
 - * developmental needs and
 - * partial compensation for past and present use of resources on the nation's traditional territory.
-

2.4.5 Negotiations on amount and quality of land be guided by:

- a) size of the traditional territory;
 - b) nature of resources traditionally accessible;
 - c) current and projected Aboriginal population and their economic and cultural requirements;
 - d) amount of land currently owned;
 - e) productivity, expected return from land;
 - f) extent of available Crown land and nature of third-party interests.
-

Federal policy with respect to

treaty-renewal and treaty-making should be guided by the goal of achieving a just allocation of land and resources. If parties wish to establish a per capita formula or a ceiling as part of a negotiated settlement that is their prerogative. Governments however should not impose such as a precondition for negotiation. The land available for selection will vary by region. Where territory is extensively populated, it may be appropriate for the Crown to provide a limited amount of land plus sufficient funds to enable the Aboriginal party to purchase additional land from willing sellers.

Lands under negotiation should be categorized in three ways: wholly-own Aboriginal territory, land which is under co-management and co-jurisdiction and a third category comprising Crown and private land.

The objective of providing sufficient land to Aboriginal nations to foster self-sufficiency must be balanced with the need to protect third-party rights. These would include rights under common and civil law including general rights to use Crown land.

Private lands would not be included in Category I lands unless there was a willing seller or unless the lands had special significance such as containing sacred sites. Where lands were covered by licensing agreements, these could be included but with the rights of the licensee in place until the license expires. The inclusion of such lands in Category II would not change the nature of the rights of private ownership but would subject the property to regulations drawn up by co-management agencies.

Action Issue: A Lands and Treaties Tribunal

The Commission proposes that the companion legislation to the Royal Proclamation include an Aboriginal Lands and Treaties Tribunal Act. Experience clearly indicates that without an enforcement mechanism, it is all too likely that disputes will continue to be protracted. A body with power only to make recommendations is of limited value in effecting settlements.

Resort to the courts is slow and expensive. Judges are independent but often lack the necessary expertise. In addition, the adversarial procedures of the court are often inappropriate in coming to solutions. Independent administrative tribunals are increasingly used for the resolution of specialized concerns such as these.

The tribunal's role is not intended to be a substitute for negotiation. Treaty arrangements are first and foremost a political agreement that carries the commitment of all parties to its implementation. The tribunal is meant therefore to play only a supportive role, helping make the process fair to all and legitimizing its functions. As the federal government currently has constitutional authority over "Indians and lands reserved for Indians", the tribunal can be created by federal law. But if it is to operate effectively, provincial legislatures will need over time to confer necessary authority to discharge its mandate with respect to provincial Crown lands.

2.4.10 to 2.4.14: Negotiations should focus on three categories of land to define the right of each party.

1) In the first category, full rights of ownership and jurisdiction over lands, resources and waters would belong to the Aboriginal nation in accordance with the traditions of land tenure of the nation. Such lands would consist of all those currently owned by the nation and additional lands that it obtains through treaty negotiations.

2) On lands in the second category which would consist of a portion of the nation's traditional lands, the quantity should be determined by the capacity of Category I lands to provide self-reliance. Joint agencies staffed by the Aboriginal nation and the province would co-manage various aspects the lands and their development. Management of traplines, fishing and hunting rights might be undertaken according to Aboriginal tenure systems while mining exploration might proceed following provincial regulations. Revenue sharing from development would be negotiated between the parties. Private and Crown ownership of these lands could be extensive but would operate under shared jurisdiction.

3) On Category III lands the Crown would have full rights of land ownership and governance and private, third party ownership would be regulated by provincial regulation, subject to residual Aboriginal rights to access historical and sacred sites and hunting, fishing and trapping grounds. If the Category III land was part of a nation's traditional territory, that nation would participate in public ceremonies and have symbolic representation in public institutions. These lands would usually constitute the largest of the three categories.

2.4.32 to 2.4.36: The tribunal act with respect to specific claims and treaty-making, implementation and renewal processes.

For specific claims the tribunal:

- a) rule on adequacy of funding for claimants to pursue their case;
- b) monitor negotiations and make binding orders of any breach of good faith;
- c) adjudicate specific claims referred by Aboriginal claimants and provide appropriate remedy.

For treaty processes:

- a) rule on adequacy of funding;
- b) supervise negotiation of interim agreements, imposing terms in event of breach of good faith;
- c) arbitrating issues where both parties agree
- d) adjudicating questions of Aboriginal rights which are justiciable in law at the request of the Aboriginal party;
- e) investigating non-compliance with a treaty undertaking and awarding a remedy when so empowered by both parties;
- f) through panels, recommending to the federal government whether a group asserting the right of self-governance should be recognized as an Aboriginal nation.

Action Issue: Interim measures to enhance self-reliance - lands

The full resolution of an adequate land and resource base with Aboriginal nations through

a new treaty process is an exercise that will take a generation to complete.

While a number of these agreements could be ready for implementation in the next five years, for the majority of Aboriginal communities, the process of nation rebuilding and the creation of their nation institutions of government, the achievement of recognition and the determination of their goals through a new treaty process, and finally the achievement of these goals will be the work of a lifetime.

In the meantime, it is critical that many Aboriginal

communities have access to a much wider economic base to permit their progress towards greater self-sufficiency.

Increased land can be transferred through the completion of treaty land entitlement arrangements such as those currently underway in Saskatchewan and Manitoba. In addition, funds can be made available as part of interim treaty arrangements for Aboriginal communities to purchase additional lands on the open market. Further, Aboriginal lands were surrendered at various times to the federal government so that they could be sold for their benefit. A surprising amount of these were never sold and should now be transferred back into reserve land status. Other lands have been expropriated over the decades for a wide variety of purposes. In circumstances where the original use for the land no longer exists,

2.4.49 and 2.4.50: With respect to forest resources, the federal government:

- a) fund completion of forest inventories, management plans on Indian lands and provision of forestry expertise;
- b) continue the Indian forest lands program but delivered by Aboriginal organizations;
- c) improve access to Crown forests and promote Aboriginal involvement in forest management and planning;

Provincial governments:

- a) encourage partnerships and joint ventures between Aboriginal communities and timber licensees;
- b) give Aboriginal communities right of first refusal on new licenses on neighbouring lands;
- c) provide role for Aboriginal governments in reviewing forest management plans within their traditional territories

2.4.51 to 2.4.57: With respect to mining oil and natural gas:

the federal government

- a) renegotiate agreements with provinces to give First Nations full interest in minerals, oil and gas on reserves;
- b) amend regulations to require companies operating on reserve to employ First Nations' residents and transfer management technical skills.

provincial governments

- a) require companies to protect traditional Aboriginal harvesting areas and sacred sites
- b) provide First Nations with intervener funding to protect environment
- c) establish compensation funds to offset damages to Aboriginal land financed through licensing fees or as allowable operating expenses.

2.4.70, 2.4.72 and 2.4.73: With respect to hunting and trapping:
 a) acknowledge that hunting and trapping rights extend across a treaty area without regard to provincial boundaries;
 b) provide specific quotas and seasons for non-Aboriginal northern residents;
 c) devolve management of traplines and trapping reserves to Aboriginal governments.

Aboriginal communities should have the right of first refusal with costs of acquisition being negotiated contingent upon the fairness of the compensation given the community when land was first expropriated. Environmental clean-up costs should be borne by the Crown or the private party depending on ownership.

Action Issue: *Interim measures - resources*

Of perhaps greater significance would be a large number of measures that could be taken to enhance Aboriginal peoples' access to resources outside reserves or community lands. Aboriginal communities are often the closest human habitation to resource development projects but have rarely been able to access licenses to develop these resources or significant numbers of jobs from the companies who do develop the resources. Some jurisdictions such as British Columbia and Saskatchewan have made considerable advances in improving access to resources on provincial crown land and these initiatives have had an immediate impact on the economic life of their communities.

2.4.62 to 2.4.69: With respect to fish and wildlife:
 a) for the purpose of the *Sparrow* priorities the definition of conservation be determined in consultation with Aboriginal people;
 b) the subsistence needs of non-Aboriginal people living in remote communities be ranked next to Aboriginal people for *Sparrow* priority;
 c) provinces buy up commercial fishing quotas and make available to Aboriginal people as partial restitution for historical inequities in allocation;
 d) apply *Sparrow* priorities to Aboriginal commercial fisheries in times of scarcity;
 e) involve Aboriginal people in studies to determine size of Aboriginal harvest.

2.4.74 to 2.4.77: With respect to water resources:
 a) Aboriginal communities be able to negotiate a share in revenues from existing commercial water development on their traditional territories including hydroelectric projects;
 b) they be given first right of refusal for new sites on their traditional territories;
 c) where such rights on traditional territories are already held by non-Aboriginal companies, they be required to negotiate economic benefits with the relevant communities;
 d) water management policy and legislation be amended to allow participation by Aboriginal people in these processes on their territories.

2.4.71: With respect to tourism: increase allocation of tourist outfitter's licences to Aboriginal people and encourage development of outfitting based on Aboriginal cultural values.

Jobs and Incomes for Those Who Need Them⁸

What is the current situation?

With traditional ways of making a living disrupted and communities reduced to a fraction of their original land, poverty and dependence on welfare are very high. 43% of individuals living on reserve were on welfare in 1992 compared to 9.7% for the mainstream population. This ranged from 23% in Ontario to 74% in the Maritimes. 57% of the adult Aboriginal population was employed in 1991. Even in cities, unemployment among Aboriginal people was over twice the rate for others. 54% of those with incomes made less than \$10,000 a year. By any measures, this indicates widespread poverty.

What does it take for self-reliance to take the place of poverty and dependence? Seven factors are found to be important:

- * **political sovereignty:** the degree to which a nation has real control over decision-making and the use of its resources;
- * **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 get hold of investment from your own resources, from private partners, from governments;
- * **the presence of resources:** minerals, water, timber, fish, fertile land, wildlife, oil and gas;
- * **market opportunity:** products or services at a price and quality that local, regional or global markets are willing to pay;
- * **institutions of governance:** when these are stable and effective and are seen by the people to be legitimate, they encourage a productive environment;
- * **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.

A nation does not have to be wealthy to be self-determining. But it needs to be able to supply most of its peoples' needs for food, clothing, shelter and a meaningful life from the incomes it generates itself. Owning land and resources is necessary to be able to do this. But skills and organization are needed to turn resources into income. Mastering the skills of a modern economy or organizing communities to follow a mix of traditional and wage pursuits will provide the keys to self-reliance

Self-reliance can be practised by following the caribou herd across Labrador, by working as a doctor or an engineer, by pursuing a mix of part-time wage jobs and hunting and fishing, by running a community-owned airline or tourism hotel, by working in a day-care centre.

300,000 more jobs for Aboriginal people will have to be created by 2016 if Aboriginal people are

⁸ This section covers material from volume 2, chapter 5, *Economic Development*, from the Commission's final report.

to reach the same levels of employment as other Canadians.

Action Issue: Accessing lands and resources

The single most important factor to achieve these jobs on Aboriginal territories will be the restoration of fair shares of lands and resources.

Over half of the Aboriginal population still lives on traditional territories and others would choose to return if adequate jobs were available. With ownership of resources comes control over the manner of development and leverage in negotiation with outside corporations and governments for the creation of jobs and revenues.

2.5.9 to 2.5.13 Governments recognize the primary role of land and resources in creating self-reliance and require companies operating on Aboriginal lands to negotiate significant Aboriginal participation. Aboriginal nations create the capacity to manage and develop their lands and resources, undertaking urgent training of needed personnel.

Action Issue: Controlling development decisions

Those communities that have made the most progress in generating their own jobs and incomes are those with governments which are stable and have jurisdiction over development programs and decisions, which create a climate hospitable to investors from within the nation or outside, and build institutions that assist in business formation whether by individuals or collectively-owned companies.

2.5.1 to 2.5.4: Governments enter into long-term development agreements with Aboriginal nations to provide multi-year funding for economic development. Once the goals and principles of these agreements are negotiated, Aboriginal nations design the programs and make the investment decisions. Nations establish economic development institutions that reflect their values, are accountable and operate free of political interference.

Action Issue: Acquiring management and professional skills

The next most important need is 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

2.5.46: Strengthen teaching of business, resource management, mathematics and sciences and pay particular attention to measures to encourage retention of students until course completion.

added proficiency in technical and professional skills will make economic development the servant of the community rather than the other way around.

Action Issue: Getting hold of capital

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. All businesses need equity capital invested by the owners. Without that, banks and other financial institutions will not extend loan financing. 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.

Action Issue: Giving priority to employment development

If a 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, close collaboration needs to be established between large private and public employers, training institutions and Aboriginal organizations. Armed with

2.5.36: Governments fund a major 10 year program where Aboriginal youth are trained for upcoming jobs and placed in private and public corporations for one year for job experience with wages subsidized by government, thereafter competing for jobs on merit.

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 would subsidize the first years' wages and 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.

Action Issue: 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

2.5.25 to 2.5.33: The federal government:

- a) continue to provide equity programs to Aboriginal entrepreneurs at funding levels equal to past maximums;
- b) provide operating subsidies for Aboriginal Capital Corporations, permit them to administer housing funds and subsidize interest on capital that they raise privately;
- c) extend tax credits to investors in Aboriginal venture capital corporations in the same manner as labour venture capital corporations.
- d) establish a National Aboriginal Development Bank along with Aboriginal investors to provide equity, loan funding and expertise to large Aboriginal business projects.

spend significant time on the land, or require participation in training programs to provide life and employment skills.

2.5.48 and 2.5.49: Governments permit innovative use of social assistance funds under control of Aboriginal nations to provide wage employment to improve community social and economic infrastructure and to sponsor programs to enhance employment and life skills and to encourage continued participation in the traditional mixed economy by supporting the income of hunters and fishers.

*Gathering Strength*⁹

Aboriginal people in Canada endure ill health, insufficient and unsafe housing, polluted water, inadequate education, poverty and family break-down at levels unusually associated with impoverished, developing countries. The persistence of such social conditions in this country - which is judged by many to be the best place in the world to live - constitutes an embarrassment to Canadians, an assault on the self-esteem of Aboriginal people and a challenge to policy makers.

Current social problems are in large part a legacy of the historical policies of displacement and assimilation. Their solution lies in recognizing the authority of Aboriginal people to chart their own course within the Canadian federation.

However, solutions cannot wait until effective self-government becomes a reality. Aboriginal nations need a strong foundation on which to build self-government. That foundation is people - healthy, educated individuals who will be able to seize the opportunities opened up by the changes outlined in the previous sections.

All the issues discussed in this section fall the within Commission's view of what should be the core areas of Aboriginal jurisdiction. That means that Aboriginal nations can proceed to implement these measures without waiting for agreements with other governments. The cooperation of other governments will be of great value in making financial resources and expertise available, but the initiative and will for change does not depend on outside authorities.

*The centrality of family*¹⁰

Two themes emerged again and again in Commission hearings: an overwhelming concern for the well-being of children and the belief that families are at the crux of personal and community healing.

⁹ This section covers the principal findings and recommendations in volume 3, *Gathering Strength*.

¹⁰ This section covers chapter 2 in volume 3, *The Family* in the Commission's report.

A series of severe challenges place many Aboriginal children and families in jeopardy. The inability of tens of thousands of families to find meaningful work and a life style that offers stability and independence puts the children of these families at high risk. The abuse and the absence of parenting models that resulted from residential schools is keenly felt in subsequent generations.

Action Issue: Aboriginal control of child welfare agencies

Aboriginal child welfare agencies have faced a long

struggle to be able to include Aboriginal values and approaches into their operation. Children judged to be vulnerable were routinely made wards of provincial agencies and placed in non-Aboriginal foster homes.

External agencies have been slow to understand the profound cultural differences and adjust their approaches accordingly. Fragmented services across a series of federal and provincial agencies ignores the integration that would permit a holistic approach. Some Aboriginal agencies, operating with minimal funding, untrained staff and under intense community pressure have also failed to protect their charges. In many situations, social agencies are overwhelmed with the human cost of social disruption. Effective solutions for these problems are further explored in the section on health and housing yet to come.

Action Issue: Combatting family violence

Family violence is of course a contributing factor to the fragile environment of many children. Violence against families and dependency relationships are found in every social class, every ethnic community and every region. They takes many forms: physical violence including sexual abuse; psychological violence in which vulnerable people are battered by demeaning words, and economic abuse of women and elders who are dependent on others for financial resources.

Until the persistent efforts of women brought the secret of violence into the open, the greatest barrier to correcting the problem was denial. Men are the most frequent perpetrators as unemployment, poverty and powerlessness contribute to hopelessness and anger. The exercise of intimidation and violence may be the last resort for those that are down-trodden. Without measures that point to an end to powerlessness and poverty, efforts to address family violence will only be patch-work.

3.2.1 to 3.2.5: Canadian governments:

- a) acknowledge Aboriginal governments' authority for child welfare;
- b) replace per capita allowances with block funding to encourage continuing preventative services;
- c) recognize and fund Aboriginal agencies in urban centres at levels equivalent to mainstream units.

Aboriginal family violence is distinct in that it has, at times, invaded whole communities and cannot be considered just the problem of a particular household. It is distinct too in that many of the factors that contribute to it are systemic in nature - joblessness, poor housing, the breakdown of cultural and societal norms.

Aboriginal people asked the Commission for help in putting an end to violence. They said: don't stereotype Aboriginal perpetrators of violence; don't make cultural or social excuses for violence; don't imagine that family violence can be addressed as a single problem; root out the inequality and racism that feed violence; attend to the safety of the vulnerable.

3.2.6: Aboriginal leaders take a firm, public stand against violence against any members of their communities and advocate zero tolerance of actions that violate the physical or emotional safety of their people.

It is urgent that community standards be reestablished where people are at risk. It is particularly important for leaders to break the silence when they become aware of violence in their communities.

Family matters, including marriage, divorce, adoption, the custody of children will be among the first areas where Aboriginal governments will assume jurisdiction. It will take much work to devise laws that preserve the non-coercive and non-invasive cultures that Aboriginal people are determined to uphold and at the same time protect the vulnerable in an often turbulent environment.

3.2.10 to 3.2.13: Canadian governments acknowledge the validity of Aboriginal customary law in areas of family law and make needed legislative amendments; Aboriginal governments involve women in drawing up measures to address the ownership of family assets, rights of inheritance and questions of child protection and custody that reflect Aboriginal cultures.

Health and Healing¹¹

The gap separating Aboriginal and non-Aboriginal people in Canada in terms of quality of life remains stubbornly wide. During the Commission's public hearings, many Aboriginal people, and particularly women, placed great emphasis on the importance of health and healing. Many believe it is a prerequisite for progress towards self-government and economic self-reliance.

The Commission believes that substantial improvements in the health and welfare of Aboriginal people will not be accomplished by tinkering with existing programs and services. A major departure from current practice is needed.

Commissioners were deeply troubled by the evidence that despite the extension of medical and social services in some form to every Aboriginal community, and despite the large sums of money now spent by Canadian governments to provide these services, Aboriginal people still suffer from unacceptable rates of illness and distress.

- * Registered Indians can expect to die 7 to 8 years younger than other Canadians because of high infant mortality and high rates of accidental death;
- * Infectious diseases of all kinds still occur at higher rates among Aboriginal people than other Canadians;
- * Chronic and degenerative diseases such as diabetes are increasing in frequency at alarming rates;
- * Rates of self-destructive behaviour such as substance abuse and suicide are high.

An effective strategy needs to aim at health outcomes for Aboriginal people that are equivalent to those experienced by other Canadians. Equal services do not always deliver equal outcomes. Where health threats are elevated above the norm, greater measures are needed. This is particularly the case where the threat to health is spreading with particular rapidity - as is the case with tuberculosis and diabetes. Where the burden of ill health is greater, so must be the healing response.

Aboriginal people advised the Commission consistently that health of body, mind, emotions and spirit must be understood holistically. "Whole health" is a state of well-being in the individual and harmony with social and environmental systems. Health policy in Canada today is

¹¹ This section covers material in volume 3, chapter 3, *Health and Healing*, from the Commission's final report.

mostly concerned with maximizing access to bio-medical treatment and healthy lifestyle choices. Research and analysis at the forefront of population health studies indicate that other factors are equally or more significant in the determination of health.

Socio-economic status is a good predictor of life expectancy and the incidence of illness. Unemployment has been correlated with mental and physical ill health and to early death. Early childhood experience is now known to have a lifelong impact on behaviour, cognition and coping skills, thus contributing to variations in health status. And the health of air, water and soil, matters greatly to our own health.

The concepts of interconnectedness and control have concrete implications for the design and delivery of medical and social services. The relationship between powerlessness and ill-health has been demonstrated for individuals and communities. The legacy of enforced dependence on the Canadian state has left most Aboriginal nations without the levers of authority and control over health and social services.

Programs and services are based on the norms and values of other cultures and are most often directed by care-givers from other cultures. Programs come and go, expand or contract, add new rules without notice to or approval from the people they are intended to help.

The Commission believes that health and healing systems for Aboriginal people should be free to diverge from the bio-medical and social welfare models that predominate in non-Aboriginal society. Aboriginal people told the Commission that effective control will permit them to redesign health and social programs to more fully reflect their values, diverse cultures and community needs.

The strategy which the Commission proposes has four dimensions which complement and support one another.

Action Issue: Integrated delivery of health and social services

The first dimension is the restructuring of health and social service delivery so that these services work together in a coordinated fashion through community healing centres. Such centres could bring together resources to support families, monitor health, devise health education programs, facilitate access to specialist services, emphasize local and regional priorities. Different human programs for health care, income support, child protection, mental health or home care have been operated by separate agencies, often housed in different government departments, functioning largely in relative isolation from each other. This is not the Aboriginal way to

Aboriginal people have well-articulated insights into what ails them individually and collectively and these insights converge with leading-edge research in health sciences on the determinants of health. This convergence provides support for an approach to a health strategy based on the following principles:

- * equitable outcomes in health states;
- * holistic approaches to treatment and preventative services;
- * Aboriginal control of services; and
- * a diversity of approaches that respond to cultural priorities and community needs.

3.3.6 to 3.3.11: Canadian governments collaborate with Aboriginal nations to develop a series of healing centres and residential lodges to provide integrated health and social services in culturally appropriate forms.

healing.

A team approach is required to meeting human need involving traditional healers, elders, health workers, addiction counsellors and social workers. In smaller communities, specialized service providers would not be required full-time. Regional centres would have the full range of services that can be drawn upon by smaller communities through local health workers trained in a holistic approach to health and social problems.

Healing centres would be the first point of contact for community members and would continue their role of primary responsibility for an individual even though he or she could be referred to outside specialists. The community focus will also enable traditional methods of providing care through kin-based networks to reinstate mutual-aid. Local ownership and involvement can replace the present sense of powerlessness and alienation which many Aboriginal people feel.

Complementing the healing centres should be a network of healing lodges for residential treatment oriented to family and community healing. There is an acute need for facilities that can provide both treatment and lodging for people who become overwhelmed by social problems. A strong start has been made by the excellent services provided by some Aboriginal residential facilities which have gained excellent reputations for treating addictions and training counsellors. Many have identified the need to involve whole families in the healing process and to have facilities that can accommodate them.

There is a large array of services supported by Canadian governments providing services to virtually all reserves and Inuit communities today. Métis and other off-reserve communities are not as fortunate. Control of these services continues, largely, in the hands of external agencies, making the provision of holistic services that are tuned to community needs difficult to provide. Building on the existing investment, and continuing the transformation that is already underway in many communities, the challenge will be to require agencies to restructure their approaches to promote integrated services.

3.3.12: Governments support the assumption by regional Aboriginal agencies of responsibility for planning of health and social services and the formation of such agencies where they do not now exist.

Action Issue: Training 10,000 professionals

The second dimension is the mobilization and training of 10,000 Aboriginal professionals over a ten-year period in health and social services, including medicine, nursing, social work, dentistry, nutrition, community development, among others. If half those Aboriginal people involved in health and social service professions were to upgrade their education to permit them to assume professional and supervisory roles, training positions for 6,700 people would be needed. Much of the challenge is to shift the emphasis from short-term certificates to long-term degree training.

It is the Commission's view that a strong Aboriginal presence in the professional and supervisory aspects of health services is essential to transform present systems and better pursue the goal of whole health. Part of the human resource requirement is to train personnel to develop distinct

Aboriginal institutions and apply Aboriginal knowledge in unique ways. Aboriginal people can mobilize the capacity for self-care and mutual aid which is an essential complement to professional services.

Promoting traditional Aboriginal healing practices is an essential component of Aboriginal healing systems. Access to existing services, protection and promotion of traditional knowledge, regulation of these practices by Aboriginal healers and cooperation between traditional Aboriginal and western health practitioners are the issues that need to be addressed. As responsibility for health and healing activities is increasingly assumed by Aboriginal nations, it will fall to them to decide the place of traditional healing.

3.3.21 to 3.3.23: Health authorities and traditional practitioners:

- a) cooperate to protect and extend traditional healing practices and explore their application to contemporary health problems;
- b) strive to enhance mutual respect between traditional healers and bio-medical practitioners;
- c) encourage educational institutions to make health students aware of and open to cooperation with traditional practices.

Action Issue: *Changing mainstream institutions*

The third dimension of the proposed strategy is the adaptation of Canadian institutions engaged in the delivery of health and social services. While Aboriginal institutions operating under the jurisdiction of Aboriginal governments form a significant part of the future the Commission envisages for health services, they will not occupy the whole field, even for their own citizens living on their own territories. In addition, the mobility of Aboriginal persons between their home territories and towns and cities will undoubtedly continue.

A part of this requirement is to involve Aboriginal people in mainstream institutions as managers, professionals and informed consumers. Mainstream institutions will also have a role in supporting the development of health and healing centres, by providing back-up and specialist services and mentoring Aboriginal personnel.

Action Issue: *Housing and infrastructure*

The fourth dimension of the strategy is an infrastructure program to bring housing, water supply and waste management in Aboriginal communities to generally accepted Canadian standards of health and safety. Immediate threats resulting from inadequate infrastructure are so devastating that solutions cannot await the development of new partnerships or reformed service delivery systems. This will be discussed further in a following section.

3.3.14 to 3.3.20: Canadian governments within their respective roles finance:

- a) the training of 10,000 Aboriginal health professionals over 10 years;
- b) the development of effective training programs with a preference given to those in Aboriginal institutions;
- c) participation by Aboriginal communities in planning program development and training.

Post-secondary institutions:

- a) take special measures to support student to complete their programs;
- b) expand specialized programs and modify curricula to increase Aboriginal approaches to health and provide these as well to existing health-care workers;
- c) recognize and incorporate Aboriginal knowledge and experience into curricula.

3.3.24 and 3.3.25: Non-Aboriginal institution

- a) examine how to improve the effectiveness of their delivery to Aboriginal people;
- b) involve representatives of Aboriginal communities in doing this;
- c) monitor implementation.

Provincial governments:

- a) establish goals for services to Aboriginal people; and
- b) tie funding of non-Aboriginal health institutions which serve a significant Aboriginal population to achieving those goals.

Health and social services will be among those policy sectors where Aboriginal nations will wish to exercise authority under self-government regimes at an early date. Federal, provincial and territorial governments can cooperate with Aboriginal governments and organizations to transform a fragmented and inefficient service delivery system, to fill gaps where populations have been neglected, and to modify services to make them more appropriate to the distinct needs of Aboriginal people.

Peter Penashue, an Innu leader, speaking to a circumpolar health conference in 1984 said the following:

"The WHO has recognized that individual good health can best be assured through maintenance of healthy socio-economic and cultural systems and that conversely, the exploitation and humiliation of societies will inevitably lead to both collective and individual ill health."

The challenge for policy-makers in the next decade will be to make room for Aboriginal initiative. Aboriginal institutions mandated by Aboriginal governments will have a major role to play in pushing the boundaries of what is possible. Mainstream institutions will have an equally important contribution to make, in clearing the field for Aboriginal

initiative and assuming a collegial rather than a supervisory role. At the same time, Aboriginal-specific adaptations of mainstream institutions should become a growing presence in Canadian life.

*Housing*¹²

The inadequacy of Aboriginal housing and community services is visible evidence of the poverty and marginalization experienced disproportionately by Aboriginal people. The problem is threefold: lack of adequate incomes to support the private acquisition of housing; absence of a functioning housing market where many Aboriginal people live; and lack of clarity and agreement of the nature and extent of government responsibility to solve the problem.

The Commission proposes 5-year and 10-year strategies to bring community services and housing respectively up to Canadian standards.

Homes where people try to raise families, the water they drink, the opportunity for privacy, a quiet place to study - these are vital elements in life quality. The absence of these is a major contributor to ill-health, poor morale, jeopardized personal and environmental safety.

Many Aboriginal people believe that adequate housing is a treaty right, part of the compensation owed them for their transfer of land and resources to the newcomers. They argue that if these resources were still in Aboriginal hands, there would be few housing problems. The federal government takes the position that housing is provided as a matter of social policy and not as a treaty or Aboriginal right. Assistance is then provided on the basis of 'need'.

These different perspectives have in fact led to less money being available for Aboriginal housing than need would recommend, in part because of a refusal of some Aboriginal communities to participate in housing programs that are based on the assumption of some financial obligation.

¹² This section covers material found in volume 3, chapter 4, *Housing* in the Commission's final report.

Adequate shelter has been recognized as a fundamental social right as identified in the United Nations Charter on Economic, Social and Cultural Rights of which Canada is a signatory. It is true that the dispossession of Aboriginal people from their traditional lands is a major cause of the poverty many face, which in turn robs them of the resources to finance their own dwellings. Until such time that an adequate economic base is available, the Commission concludes that governments should bear the main burden of financing adequate shelter. It also believes that the treaty process proposed above is the avenue within which to have treaty rights clarified.

3.4.1: The following policy principles guide the delivery of housing and community services;

- a) governments have an obligation to ensure adequate standards of shelter and sanitation;
- b) governments have an obligation to restore an adequate economic base;
- c) Aboriginal people have a responsibility to meet their housing needs according to their ability to pay;
- d) Aboriginal nations assume authority for all housing issues as a core responsibility;
- e) acute risks to health and safety be treated as an emergency;
- f) governments clarify with First Nations a mutual understanding of treaty terms with respect to housing;
- g) the Government of Canada provide resources to ensure adequate sanitation facilities are in place in all Aboriginal communities within five years.

The Commission found that governments have not provided housing assistance to the same degree as they have to other Canadians. Capital-subsidy support for low-income Aboriginal people on reserve has not met basic needs whereas it has for other Canadians. The shelter component of social housing has been withheld from the poorest reserve residents except those occupying social housing, and financial support for social housing on reserve has not been as generous as elsewhere.

The obstacles to ensuring an adequate housing stock on reserve are embedded in the structures of government, land tenure and subsidy programs. Clarification of authority and responsibility, establishment of effective ownership or leasing arrangements and renewed efforts to marshal resources will be required. There are some 74,000 dwellings on reserve of which close to half need significant repair. Six thousand are unsalvageable and need replacement and there is a backlog of 11,000 houses.

Action Issue: Regaining authority for housing

Authority for virtually everything having to do with housing on reserve remains with the federal government. First Nations lack the authority to regulate land use, dwelling possession and use, landlord-tenant relations, buying and selling, etc. Aboriginal self-government provides the opportunity to rectify this paralyzing situation. Aboriginal governments can then create an environment favourable to investment in housing by establishing effective ground rules.

Action Issue: Debt financing

Both Canadian governments and Aboriginal communities have been reluctant to use debt financing as a means of increasing housing stocks on reserve because of their apprehension about future financial liability. But debt financing in the form of mortgages is universally used as the means to provide housing. If housing is addressed in the context of the broader measures the Commission recommends to provide Aboriginal nations an effective economic base and steps are taken to clarify ownership arrangements, the uncertainties about future government liabilities will not be fully removed, but the likelihood of future affordability will be greatly increased.

Action Issue: Joint funding by Canadian governments and Aboriginal people

Economic development is an essential component to substantially increase the numbers of Aboriginal families who can afford to finance a substantial part of their own housing. Adequately organized, housing and infrastructure construction can, of course, contribute to that economic development. But the priority of adequate shelter is too pressing to wait for full self-government and economic self-reliance, though these are the basis for the policy in the longer term.

For a 10 year catch-up program, the Commission estimates that Aboriginal people could contribute up to one third of the cost and the federal government should invest in the balance with half of that being a capital subsidy and the other half debt on which it would make the instalment payments.

Action Issue: Restoring off-reserve housing programs

With respect to Aboriginal housing off reserve, About 3% of the country's social housing stock has been assured to Aboriginal households in need while it is estimated that they make up between five and six percent of households in need.

Both the federal government and most provincial/territorial governments have operated social housing programs but these have been significantly reduced in recent years. Considerable progress had been made both in the provision of housing stock and in the development of Aboriginal agencies to deliver assistance. Both objectives are now in peril because of government cutbacks. The Commission believes that the withdrawal of the federal government from this area is at odds with its responsibilities to Aboriginal people and that effective programs of rental subsidy or capital assistance for ownership for those that meet a needs test must be resumed.

Home building is more than assembling bricks and boards. In Oujé-Bougoumou, Quebec, a project to build a new village using traditional culture and design along with modern technology, became the starting point for community healing and renewal. Just a decade ago, the living conditions of the Crees of Oujé-Bougoumou were described as "the worst in the developed world". Today, their situation has improved to the point where the United Nations recently chose their new village as one of 50 exemplary communities around the world.

Education¹³

The destiny of a people is intricately bound to the way its children are educated. Education is the

3.4.6 to 3.4.11: The Government of Canada increase in a 2-to-1 ratio the resources First Nations provide for housing by:

- a) providing capital and loan subsidies for construction;
- b) fund maintenance and property insurance and rental subsidies for those receiving social assistance equivalent to off-reserve programs;
- c) offer financial incentives for home ownership.

First Nations governments:

- a) require rent or mortgage payments, maintenance fees, and sweat equity to increase resources available for housing;
 - b) assume jurisdiction over housing and enact laws regarding tenure and create incentives for house maintenance;
 - c) develop institutions at the nation level to deliver housing programs and administer tenure regimes.
-

¹³ This section covers volume 3, chapter 5, *Education*, in the Commission's report.

transmission of cultural DNA from one generation to the next. It shapes the language and pathways of thinking, the contours of character and values, the social skills and creative potential of individuals. It determines the productive skills of a people.

For more than 25 years, Aboriginal people have been articulating their goals for their education. They want education to prepare them to participate fully in the economic life of their communities and in Canadian society. But this is only part of their vision. The Commission was told that education must develop Aboriginal citizens, linguistically and culturally competent to assume the responsibilities of their nations. Youth that emerge from school must be grounded in a strong, positive Aboriginal identity. Consistent with Aboriginal traditions, education must develop the whole child, intellectually, spiritually, emotionally and physically.

Current education policies fail to realize these goals. The majority of Aboriginal youth do not complete high school. They leave the school system without the requisite skills for employment, and without the language and cultural knowledge of their people. Rather than nurturing the individual, the school experience typically erodes identity and self-worth.

3.5.3: Canadian governments:

- a) support an integrated early childhood education strategy available to all Aboriginal children with maximum Aboriginal control over service design and administration;
 - b) encourage all elementary schools to adopt curriculums that reflect Aboriginal cultures and realities.
-

Because early childhood is regarded as so important to later development, educators have turned a spotlight on learning before formal education normally begins. Trauma, dislocation and inconsistency in early childhood can affect the rest of an individual's life. If the child's environment is rich in love, intellectual stimulation and security, the capacity to grow is invigorated.

Traditional family life provided a foundation of security and family encouragement for children. Today, Aboriginal families are increasingly unable to provide this. Parents may be hampered by the effects of poverty, alienation, the residential school experience or dysfunctional relationships. Many Aboriginal children arrive at school with special needs for understanding and support.

Action Issue: Early childhood education

The 1994 Ontario Royal Commission on Learning found the evidence for early childhood programs so compelling, they recommended all children have access to such programs from the age of three. The federal government's Brighter Futures, Aboriginal Head Start and the First Nations and Inuit Child Care Initiative provide such support on a limited scale. The latter two programs were developed following consultations with Aboriginal communities. There is a strong need for continuity of these programs.

Action Issue: Developing Aboriginal curricula

It is critical to development in the early years that there be as much continuity as possible between the home environment and the school. For many Aboriginal children, the values modelled in the home such as non-interference or cooperation rather than competition are not those observed in the school. The teaching of Aboriginal languages, the staffing of schools with Aboriginal

Much can be learned from the Akwesasne science and math curriculum.

- * Mohawk knowledge, values and beliefs are its central focus, not a supplement to a western curriculum;
- * It does not reject western concepts but makes clear the differences with Mohawk approaches, pointing out the complementary strengths;
- * The curriculum is holistic; it does not separate the elements but focuses on interconnections;
- * It links experiential components with theory and provides community experience such as environmental monitoring;
- * All elements of the community contributed to the project with elders and spiritual leaders playing a role alongside scientists;
- * Non-Aboriginal school authorities cooperated in its creation but control was under Mohawk leadership.

teachers, the inclusion of elders in the classroom, and the development of curricula rooted in the history, traditions and values of Aboriginal people are attempts to fit formal education into a broader learning process that begins in the family.

But curriculum development to incorporate Aboriginal knowledge and experience faces major barriers. First Nations' schools are required to sign funding agreements that insist that their programs conform to provincial guidelines. Parents are fearful that their children's education would not be recognized by outside institutions. It is not a question of loosening standards but of incorporating material that is directly relevant to children's environments.

3.5.4 to 3.5.6: All governments:

- a) find ways to recognize each other's education institutions;
 - b) continue to develop curricula that reflect Aboriginal cultures and realities;
 - c) assign Aboriginal language programs a priority in early education where parents want it and numbers warrant and recognize it for second-language credits.
-

Education and curricula development will be an early area for self-government.

Action Issue: *The importance of language*

The intimate relationship between language, culture and thought processes underlie the priority Aboriginal people place on language education. Evidence shows that mastering a primary language fluently is critical to progress in other areas of learning. At the beginning of formal education, children do not have a strong base in any language, and the shift Aboriginal children face to learning in another language at that stage appears detrimental. Reinforcing the primary language in early years of education is vital. But the education system alone will not preserve Aboriginal language use. Without family and community commitment to use their languages as a source of wealth in communication of all kinds, they will not thrive.

3.5.9: School boards serving Aboriginal students implement a comprehensive Aboriginal education strategy developed in collaboration with Aboriginal parents, elders and educators.

Some youth, whose aboriginality has been nurtured in the family and through childhood schooling, function comfortably as bicultural individuals. Others have been raised in environments where their heritage is peripheral to daily life and live primarily in mainstream society. Most Aboriginal youth, however, are caught between the expectations, values

and demands of two worlds, unable to find a balance. Their despair shows itself in early school leaving, substance abuse, suicide attempts, defiance of the law and teen pregnancy.

Youth who spoke to the Commission expressed a deep desire to be involved in their communities, to see school relate to the real issues in their lives, to see relevance in what they are learning. The sense of distance between learning in school and the world around them does not need to exist.

Action Issue: *Reorienting education for adolescents*

One way to achieve this is to cast aside the walls of the school and treat the whole community as an education site. The Akwesasne curriculum noted above did this. Another, called transformative education, takes the student's personal experience as a springboard for deeper analysis. The education process is participatory involving experiential learning. Courses in history, literature, Aboriginal studies, science, geography, etc, can be used to transform experiences into intelligible patterns with local or global implications.

Action Issue: *Bringing secondary education closer to the community*

The absence of secondary school facilities in many isolated communities forces very young adolescents to transfer, usually to distant towns where they are intensely alone. They are not ready at this age for this separation from family and cultural base. Other options must be developed such as distance education taken in the communities supplemented by short-term periods out of the community for courses requiring specialized facilities. Another option is the creation of regional high-schools in Aboriginal communities where at least the community and cultural base is familiar.

3.5.11 and 3.5.12 : High school programs be extended to communities including regional high schools in Aboriginal communities, culturally structured distance education and seasonal courses, and special facilities such as on-site day-care, flexible timetables, and coop programs be available where needed for youth who return to complete schooling.

Aboriginal young people are returning to complete schooling after having dropped out but frequently need special services to be successful such as on-site day care, co-op opportunities to mix work and academic experiences, flexible timetables and outreach counselling.

Action Issue: *Training many more Aboriginal teachers*

It has been recognized for decades that having Aboriginal teachers in the classroom is the first line of change in the education of Aboriginal young people. At least three times as many Aboriginal teachers are currently needed to reach parity with the number of non-Aboriginal teachers serving non-Aboriginal children. And it is vital that the training of Aboriginal teachers include major emphases on Aboriginal traditions, cultures and ways of learning. Community-based teacher training is already proving a major encouragement for many to access the qualifications needed.

The number of Aboriginal teachers certified to teach at the

An exhaustive study of the education system in Nunavik in northern Quebec found that even though Inuktitut language and Inuit culture had been introduced into the curriculum, young people were continuing to leave school before completion and become involved in self-destructive behaviour. The study recommended adopting high academic standards, moving to a 12 month school year, giving older students significant responsibility across the school, offering high-impact adventure programs, developing a fully integrated, culture-based curriculum and providing an alternative "culture track" school.

3.5.19: Design and delivery of adult program needs to be under Aboriginal control and involve multi-year block funding arrangements with Aboriginal nation governments.

secondary level, where youth are most likely to drop out, is abysmally low. Special efforts are needed to attract candidates to secondary school teaching as a career. Those already teaching would be given assistance to complete requirements for certification including time-off, community-based courses, scholarships and forgivable loans.

Action Issue: Supporting Aboriginal post-secondary institutions

Many Aboriginal people reach adulthood without the skills or credentials needed to find jobs or take up positions of responsibility in their communities. Their needs range from basic literacy to advanced professional training. Governments sponsor a range of programs but too few are accessible in or near their communities and courses often lack relevance to their lives or their entry requirements are inappropriate for their backgrounds and life experiences.

Aboriginal colleges have grown up to meet these requirements - colleges such as Saskatchewan

Federated Indian College, Old Sun in Alberta, the Nicola Valley Institute of Technology in B.C. They have achieved a high rate of retention. They need to be recognized and supported as an essential component of the post-secondary education system and to have their funding placed on a secure basis.

3.5.26: Governments establish and support Aboriginal post-secondary institutions by providing:

- a) funding commensurate with services and equivalent to levels provided other such institutions;
- b) funds for new colleges;

and these institutions:

- a) establish standards for accrediting their programs;
- b) negotiate mutual recognition of course credits with non-Aboriginal institutions;
- c) establish working relationships with mainstream accreditation bodies.

With Aboriginal people 25 years of age and younger being 56% of the Aboriginal population, there will be greatly heightened demand for post-secondary funding. This generation presents the best opportunity to break the cycle of poverty and dependency. But the gap between Aboriginal

people who complete post-secondary education and the

mainstream continues to be very high. Available assistance does not extend to all Aboriginal people. Métis, non-Aboriginal-status Indians and others who have not sustained their connections with their communities of origin, have great difficulty in financing post-secondary education.

3.5.20 to 3.5.22: Canadian governments:

- a) sustain obligations for the full range of education services including post-secondary education for all treaty people increasing the resources to meet the higher demands brought about by increased candidates and costs;
- b) establish a scholarship fund for Métis and non-status persons to be designed in consultation with Aboriginal leaders.

Action Issue: An Aboriginal university

The Commission concluded that in the longer term an Aboriginal Peoples' International University, (APIU), should be established to promote traditional knowledge and scholarship, undertake applied research related to self-government and to economic development and to disseminate information necessary to achieve broad Aboriginal goals. Because of geographic

3.5.32 and 3.5.33: An Aboriginal Peoples' International University be established through affiliated institutions across Canada to promote traditional knowledge, applied research and disseminate information to achieve development goals. The federal government fund a steering group of Aboriginal leaders with a three year mandate to prepare a plan for implementation.

dispersion and cultural and linguistic diversity, no single institution could properly represent all traditions. Rather a network of affiliated institutions and programs, reflecting local expertise and priorities, would operate together as a university without walls.

The APIU would articulate a unifying vision within which diverse peoples could promote the study of their traditional knowledge. It would give Aboriginal scholars the opportunity to meet and study with elders. It would push the boundaries of knowledge by developing frameworks of analysis and

interpretation defined by Aboriginal perspectives. Non-Aboriginal scholars could study with the acknowledged experts of the Aboriginal world. It would create the opportunity to unite its research capacity to the needs of Aboriginal governments such as projects in the areas of education or economics.

Action Issue: Education for self-government

For more than two decades, Aboriginal administrations have been growing in scale and complexity. There is today a severe shortage of skilled Aboriginal personnel for the number of existing jobs in administration. Self-government will open an even broader array of jobs. Yukon First Nations and the Inuit of Nunavut are taking a highly focussed approach to the requirements of their administrations and the education and training needed to supply these. A similar priority needs to be put on supplying skilled people for self-government emerging elsewhere.

Arts and Heritage¹⁴

Traditional Aboriginal culture is a way of life shaped by intimate relationships with the land, reinforced by a world view attributing life and spirit to all the elements of the biosphere, and expressed in ethically ordered behaviours in social, economic and political spheres. Contemporary Aboriginal people reach into their traditions for wisdom and strength to cope with diverse responsibilities in a modern environment.

Living in a culture under stress does not lead people to abandon their identity and warmly embrace the culture of the dominant society, which is seen as the source of the distress. But the legacy of this colonial history not only creates cultural stress. It also distorts the perceptions of

3.5.37 to 3.5.44: Canadian governments:

- a) fund education for self-government programs with post-secondary institutions that have entered into partnerships with Aboriginal governments to supply training in priority areas;**
- b) support incentives such as paid leave, time-off for concurrent study, scholarships, forgivable loans to enable students to complete bachelor and masters programs in needed fields;**
- c) promote coop, internships and executive interchange programs enlisting private corporations as well;**
- d) encourage professional organizations to support training in areas of credentials, recruitment, mentoring, establishing scholarships and introducing Aboriginal perspectives into their training programs;**
- e) fund a Canada-wide Aboriginal human resources inventory.**

¹⁴ For greater detail, refer to volume 3, chapter 6, *Arts and Heritage*, of the Commission's report.

people in mainstream society sustaining a readiness to relegate Aboriginal people to the margins of society. Aboriginal people need effective means of communication to share with each other and the wider society who they are and how their cultural traditions continue to be relevant for themselves and for society as a whole.

As they gradually lost control of their land, Aboriginal people became separated from many of their symbols of history and culture. Protection of historical and sacred sites, recovery of human remains so that proper burial can be arranged, repatriation of artifacts - these are essential to the spiritual health of nations and communities.

Action Issue: Protecting sacred sites and artifacts

Territory itself is important to Aboriginal nations, but certain areas hold special significance. Ancestral burial grounds and sites for spiritual ceremonies are considered sacred land. Other areas are significant for their role in the history of peoples. All too often the desire to have access to or protect sites has led to conflict.

Items taken from Aboriginal individuals or communities may be secular or sacred. Concerns centre on two issues: the illegitimate acquisition of these artifacts and the inappropriate display and use of cultural items. The repatriation of cultural objects has been constrained by the limited capacity of Aboriginal institutions to house them. The capacity of Aboriginal communities to receive, conserve and display repatriated items and participate in the joint management of museums needs to be developed.

Aboriginal people are not calling for museums to divest themselves of all Aboriginal artifacts. Items that have no sacred value can be kept and displayed with community consent, but where repatriation is called for, this should be respected by museums. Indeed, Aboriginal people should be involved in cataloguing museum holdings and advising on modes of display and interpretation.

Action Issue: Revising intellectual property legislation

A further dimension of this issue relates to intellectual property rights with respect to oral traditions, songs, traditional designs and remedies.

Aboriginal people want to share these with the world but ensure that their knowledge is used appropriately and that they share in fair remuneration when this knowledge is used commercially.

3.6.1 to 3.6.6: Canadian governments:

- a) prepare a comprehensive inventory of historic and sacred sites in collaboration with Aboriginal communities;
- b) review legislation affecting sacred and historic sites to ensure Aboriginal communities can prevent damage to them;
- c) review legislation concerning sites and artifacts to ensure Aboriginal participation in protecting, repatriating and displaying them;
- d) ensure Aboriginal people share in any economic benefits from such sites or artifacts;
- e) provide access to heritage education and resources to develop display facilities;
- f) review intellectual property legislation and revise it to protect Aboriginal interests.

Institutions:

- a) adopt ethical guidelines developed with Aboriginal communities concerning collection and display of artifacts;
 - b) make inventories of their holdings available to Aboriginal people;
 - c) repatriate when requested objects that are sacred or integral to a people's identity;
 - d) return human remains on request;
 - e) provide Aboriginal people access to training opportunities;
-

But current intellectual property law is unsuited to protecting this knowledge because it only protects rights for a specific time period after which these become public property. By this definition, almost all traditional property would be considered to be in the public domain. In addition, the current law only recognizes the rights of individuals, not those of communities or societies.

Language is one of the main instruments for transmitting culture from one generation to the next, for communicating meaning and making sense of collective experience. In Canada there are 11 Aboriginal language families and between 53 and 70 different languages. Today only one Aboriginal person in three speaks one of these languages. Even those languages in most frequent use - Mi'kmaq, Montagnais, Cree, Ojibwa, Inuktitut and some Dene languages - are in danger of extinction because of declining fluency among the young.

The underlying reason for this decline is the rupture in language transmission from older to younger generations and the low regard many Aboriginal people have for traditional language proficiency as a result of policies devised by government and enforced through schools and churches.

3.6.8 to 3.6.10: Aboriginal nations:

- a) determine the priority they attach to language revitalization; and, in the light of that
- b) decide on initiatives to support its use in education, family and community life, in public forums and government business; and
- c) cooperate with others in the same language group to promote its development.

The federal government endow an Aboriginal Languages Foundation to support Aboriginal initiatives to conserve and revitalize Aboriginal languages.

bilingual, who carry on their normal lives in the Aboriginal language. Continual exposure to the dominant language and a requirement to use it in everyday life will lead to the decline of the Aboriginal language. Each nation therefore has to decide what level of linguistic and cultural autonomy it wishes and can realistically achieve.

Communications

Mainstream Canadian communications technology and content have played a critical role in the social history of Aboriginal people. They have reinforced outside authority, commercialized information flows, dampened traditional means of creating cohesion in the community and promoted cultural

Action Issue: Action to sustain Aboriginal languages

Language protection requires maintaining or increasing fluency and usage in everyday life and a recognition of the relationship between language and identity. Action to sustain a language must originate at the community level and be directed by those who can ensure intergenerational transmission in family and community networks. Declaring a language official does little other than confer political status unless usage recovers across the community.

Language retention

requires, as a minimum a relatively large body or people, while perhaps

Communications is much more than the cultural glue holding a geographically huge country together. Through identifying with the images and cultural narratives that dominate our ways of seeing and representing the world, we actually construct who we are.

For Aboriginal people, however, the image and identity forged by the media all too often bear the traits of exclusion or stereotyping. Media images that focus primarily on conflict and confrontation make communication more difficult for ordinary people and reconciliation harder to achieve. Aboriginal people come across as alien, unknowable and ultimately a threat to civil order.

replacement. In 1974, the CBC received funding to permit coverage for communities of more than 500 people but no money was allocated for programming. Baker Lake watched the same shows as Saskatoon. Story-telling and the highly informal networks of interaction and mutual aid died as television became the focus of leisure hours.

Aboriginal people became increasingly aware of the role communication was playing reshaping their societies. The Inuit pioneered radio and television coverage across the north through the Inuit Broadcasting Corporation. Within a decade, Inuit content moved from story-telling to news, documentaries, drama and children's programs. Among First Nations, communication societies developed radio programming and a network of newspapers to respond to local needs. Governments slowly began to recognize their responsibility to support Aboriginal languages and cultures through broadcast facilities. Several hundred local radio stations, regional radio networks, newspapers and a pan-northern Aboriginal television network, Television Northern Canada, developed as a result. However, funding for these activities has been severely cut forcing a number of facilities to close their doors. Only four of the original eleven Aboriginal newspapers have survived the cutbacks.

Action Issue: Making Aboriginal broadcasting a license requirement

The Caplan-Sauvageau report on broadcasting policy in 1986 recommended that Aboriginal-language broadcasting be entrenched in the *Broadcasting Act* but this recommendation was not acted upon. Voluntary arrangements to provide Aboriginal broadcasting and Aboriginal-language programming in areas in the south with significant Aboriginal populations have not been effective. It appears that making inclusion of such programming a condition of licensing from the CRTC may be required for change to occur.

3.6.11 to 3.6.18 :The federal government:

- a) recognize the status of Aboriginal broadcasting in legislation;
- b) require the CRTC to make Aboriginal broadcasting and joint ventures with Aboriginal producers a condition of licenses in areas with significant Aboriginal populations;
- c) provide core funding and tax incentives for investment in Aboriginal media;

Public and private media outlets:

- a) broadcast programming produced by independent Aboriginal producers;
 - b) implement plans to train and employ many more Aboriginal people.
-

Recently, Canada has begun to see a new form of expression of the Aboriginal voice in the emergence of Aboriginal literature. After the death in 1913 of the first Aboriginal author to be published in Canada, Pauline Johnson, it was 60 years before Aboriginal authors reappeared on the Canadian literary scene.

But while major publishers have produced numerous books *about* Aboriginal people, Aboriginal authors, almost without exception, have been published by small, independent presses. In bookstores, creative works are usually found not in the literature but in the Aboriginal studies section. There are about 20 Aboriginal publishers in Canada but they receive far fewer grants, proportionately, from the Canada Council or other government support programs than do mainstream organizations.

The Canada Council has recently established a First Peoples Committee to provide it advice and

has amended Council guidelines to better reflect Aboriginal perspectives and appointed more Aboriginal people to juries and staff positions. The dissemination of authentic Aboriginal voice through Aboriginal literature and performing arts is essential to educate Canadians about this rich heritage.

3.6.19 to 3.6.21: Canadian governments:
a) establish an Aboriginal Arts Council with a 20 years mandate and a budget equivalent to five percent of that of the Canada Council;
b) encourage public agencies and private organizations to review their criteria for awards and for membership on juries and decision-making bodies to include Aboriginal arts and artists;
c) encourage training programs in arts schools to accommodate Aboriginal artists;
d) feature Aboriginal art and performance in the design of public facilities.

Action Issue: Support for Aboriginal literary, visual and performing arts

Like Aboriginal writers, Aboriginal visual and performing artists strengthen and affirm Aboriginal identities as well as contributing to the cultural definition and identity of Canada itself as the recent installation of Bill Reid's *Spirit Canoe* has done for the Canadian embassy in Washington. But here also official and corporate support is rarely available for Aboriginal output. For mainstream performing arts, core funding from official art support programs makes these products less costly and hence more attractive to private sponsors. Aboriginal companies do not have these advantages. Because the fostering of Aboriginal talent has been neglected even as its voice in earlier times was actively suppressed, the Commission

concludes that there is a need for active support for Aboriginal arts for at least a generation.

Perspectives and Realities¹⁵

Aboriginal people do not constitute a monolithic entity, speaking with one voice. They embrace a diversity of cultural traditions and social experiences. There are those born in remote communities, living according to the traditions of their forebears. Others live at the heart of Canada's great cities, surrounded by a multitude of cultures.

There are differences among and within the Métis, Inuit and First Nations people. The Commission's hearings demonstrated that within each of these communities, elders, women and youth often have distinct perspectives and different priorities. In contemporary Aboriginal society, these groups have often had to struggle to have their perspectives heard and to have a meaningful place in the decision-making processes of their communities. It is a frequent experience that those who have been themselves marginalized, in turn push the vulnerable in their midst to the side. Each of these groups has a profoundly important role to play in the rebuilding of Aboriginal societies and nations.

Women¹⁶

¹⁵ This section covers some of the material found in volume, *Perspectives and Realities*, of the report.

¹⁶ This section covers issues from *Women's Perspectives*, chapter 2 of volume 4 of the Commission's report.

For First Nations' women, a consistent theme in the Commission's hearings reflecting the central nature of this issue, was the impact of the *Indian Act* on their place and the place of their children in their communities.

The Canadian legislation that applied to Aboriginal people in the period after Confederation found its conceptual origins in Victorian notions of race and patriarchy. Its effect was increasingly to marginalize women in Aboriginal society and diminish their social and political roles in community life. Women were denied the right to vote in band elections and on land-surrender decisions. Indian women could no longer control their cultural identity which became dependent of the identity of their husbands.

The sense of belonging, the "common mental experience" implied by membership in an Aboriginal nation was determined on the basis of a nation's traditions of recognition, acceptance and kinship.

In some cases, membership was confined to those born into or who married into the nation. In others, such as the Haudenosaunee, wholesale adoption of entire groups was permitted. In all cases, there was no externally imposed definition of who could identify with and belong to a particular nation.

Canadian law changed all that, beginning in the historical period of displacement and assimilation.

This profoundly affected the lives of thousands of Aboriginal women and the lives of their descendants, leading to their loss of status, of membership in their nation and in many cases removal from their ancestral communities.

The challenges by Aboriginal women in Canadian courts and before the United Nations and the 1982 creation of the *Canadian Charter of Rights and Freedoms* led to a process that ultimately required the government to amend the *Indian Act* that discriminated against women. Bill C-31 granted Indian status to those who had at least one parent with status. Those who had lost their status through enfranchisement could have it restored.

Membership in an Indian band and legal status under the *Indian Act* were formally separated with bands being given authority to decide membership according to its own rules. However, when they took control of their membership procedure, bands were required to accept as members all those who had acquired status as a result of Bill C-31. This caused conflict because of the pressure on limited community resources arising from the increase in eligible members.

This legislation had added 95,429 persons to the status list as of June 30, 1995. Women made up the majority of those who gained their status. But women express continuing concerns arising from the amendments. Some who regained their status can pass it on to their children, but not their children's children if their children marry someone who has no status. So the restrictions on being recognized legally as an Indian person are still in place but do not come into effect for a couple of generations.

Action Issue: Ensuring fair membership criteria and processes

The provisions in the legislation determining band membership and the rights of band members also contribute to confusion and exclusion. There is no guarantee of a process by which those

who believe they are part of a community can be assured of criteria that will respect their rights including the right to an impartial appeal of exclusion from membership..

The Commission recommended that the process of nation building set out earlier in this document transfer full responsibility for membership to the nation government and eliminate status and non-status categories. Recognition of the nation government would depend, in part, on it having a membership code that respected international human rights standards and an appeal process against arbitrary administration of those criteria.

Action Item: *Women in management of health facilities*

The importance of healing from the consequences of displacement and assimilation was another major concern of the hundreds of women who appeared before the Commission. Many said that this healing was a prerequisite for effective self-government. They said that Aboriginal control of healing processes and the use of traditional values and approaches relating both to spiritual and physical dysfunction was vitally important. Their insights informed the proposals the Commission makes earlier in the chapter of health. They want a central role in the design and management of all healing processes.

4.2.2: Aboriginal governments provide for the full participation of women in the governing bodies of all health and healing institutions.

Action Issue: *Ending family violence*

They also spoke out forcefully on the question of family violence and called for places of refuge where women, particularly in smaller communities, who are overwhelmed with the breakdown in their relationships can find shelter. They call for a high priority on culturally effective approaches to both perpetrators and victims of violence.

4.2.1: The Government of Canada fund women's groups to ensure their full participation in all stages leading to the development of nation building and self-government including the development of membership criteria and related processes.

Action Issue: *Women's role nation building*

Many of the women and their organizations who spoke to the Commission placed a high priority in the reestablishment of their Aboriginal nations, stressing that their sense of identity is linked with their historic, linguistic nation rather than the band governments that exercise authority today. They place a high value on building systems that would ensure accountability, fairness, and equality.

***Youth*¹⁷**

The Commission heard from hundreds of youth, meeting them in their places of recreation, of

¹⁷ Material in this section can be found in greater detail in *The Search for Belonging: Perspective of Youth*, chapter 4 in volume 4 of the Commission's report.

study, or work and in special youth circles. A special team of young people was employed to ensure that their perspectives were heard and understood across the Commission's mandate.

Young men and women, 25 years of age and younger, make up 56% of the population of Aboriginal people in Canada. To young people the artificial distinctions of status or community mean little. They do not identify with labels fabricated for administrative purposes by governments. They are first and foremost Mi'kmaq, Inuit, Sauteaux, Métis - members of an Aboriginal nation.

4.4.3 to 4.4.5: Governments create an Aboriginal sports council to promote programs that are community driven, sustained over time and build leadership and coaching capacity at the local level.

All Aboriginal young people have common concerns. They are the generation that is paying the price of cultural genocide. They have seen parents and peers fall into a chasm of despair, listlessness and self-destruction. They fear for themselves and their future as they stand on the edge. The importance of a secure sense of identity is crucial. Giving them the chance to learn their language and experience their culture teaches them

they are valid and valued individuals.

Action Issue: *Youth seek involvement, tools and programs*

Taken together, the things that the youth who spoke to the Commission most wanted were:

Recognition and involvement - they want to participate more fully in community and nation life and work with their peers from other nations on issues of common concern;

Empowerment - young people want the tools and skills to solve their own problems and to equip them to play a larger role in deciding the directions of their communities and nations. They want to be at the table when these matters are decided. And they want economic empowerment, recognizing they need to acquire the knowledge and experience that opens the job market and breaks the cycle of dependence in which some of their kin have been trapped; and,

Healing - from trauma and low self-esteem, from having their cultures put down, from a sense that there is no place for them in a contemporary world, from fear and anger, from bodies that have at a young age lived the ravages of physical or substance abuse. They want a spiritual foundation; food for their minds that recognizes their place in and contribution to the

4.4.1 to 4.4.2: Centres geared to youth with programs that build their cultural identity and life skills and offer a challenging alternative to social disruption need to be established in their communities and in the cities.

Wilderness camps are also needed where youth can link with elders, rediscover traditional skills and knowledge and interact with peers from other Aboriginal nations and with non-Aboriginal youth.

4.4.7 to 4.4.10: Canadian governments add in consultation with Aboriginal youth a framework of goals and principles to guide youth initiatives with the following priorities:

- a) Education - combining Aboriginal culture and transformative education approaches with the mainstream curriculum;
- b) Justice - corrections activity use Aboriginal approaches to emphasize reintegration of young people into the community;
- c) Health - stressing counselling and the use of Aboriginal mentors;
- d) Sports and recreation - increased resources for facilities, programs and trained leadership at the community level;
- e) Urban initiatives - programs to bridge the traditional and urban worlds ;
- f) Support a national conference of Aboriginal youth every two years to review progress, advise governments and set new priorities.

world around; the chance to share their emotional load with Elders, counsellors and each other; and challenges for their bodies in sport and adventure that build bonds in their communities and leadership and teamwork skills.

Elders¹⁸

Traditional wisdom is both content and process. It speaks of how things should be done as well as what should be done. It is normative. It embodies the values of the people in the lessons that are taught. What is right and appropriate can be found in the teachings.

The North American intellectual tradition is, for the most part, an oral one. The transmission of knowledge is an interpersonal and often an intergenerational one. All that must be remembered must be spoken aloud. Oral societies depend on cultural memory. Elders link the coming generations with the teachings of the past generations. The cultural teachings are the foundation of Aboriginal peoples' identity.

4.3.1: Acknowledge the central role elders must play in rebuilding Aboriginal nations and reconstructing institutions by:
a) involving Elders in the planning and monitoring of nation building;
b) supporting gatherings and networks of Elders to explore the application of traditional knowledge to contemporary issues.

The Commission heard from many about the central role that Elders must play. They were told that Elders are the keepers of the culture - the ceremonies, rituals, prophecies, the proper way to behave, the right time for things to happen, and the values that underlie all things.

Action Issue: Access to sites and respect for spiritual ways

Elders have been constrained from accessing sites and resources to practice their spirituality and have had their sacred objects seized when they crossed international borders. Many of their spiritual places are now in private hands or in public parks where access is governed by external regulations. Elders are able to share their knowledge both as to the significance of these sites and the manner in which they should be managed.

4.3.2 and 4.3.3: Elders need to be involved in implementing policies for the preservation and co-management of sacred sites. They need to assured access to public lands to gather herbs and other plants for the purposes of traditional medicine.

Elders play a vital role in the retention, renewal and celebration of Aboriginal languages. The interrelatedness of language, culture and values speaks loudly for the inclusion of Elders in the determination of these matters.

Action Issue: Opportunities to teach in traditional ways

Traditionally Elders taught by doing and young people learned from them by doing. The world around them was the classroom. Elders would rather offer their teachings in culture camps or on the trapline.

Action Issue: Elders' role in contemporary society

¹⁸ Material in this section is taken from *Elders' Perspectives*, chapter 3 in volume 4 of the Commission's report.

The Commission was told that, because of the central importance of values in an Aboriginal society, Elders have a role to play in the development of Aboriginal justice systems, in the creation of social policy, in the delivery of health and healing service, in the structuring of the institutions of Aboriginal governance, and in the management of lands and resources. Elders stressed urgency - if the language is to be spoken, it must be spoken now; if the ceremonies are important, they must be practised; if sacred places are important, they must be preserved; if land and air and water are important, they must be nurtured; if Elders are important, they must be fully involved.

What happens after the Royal Commission's report?

The Government of Canada is currently examining the Commission's report and is expected to respond in the context of ongoing work on Aboriginal issues. The Commission's recommendations have implications for many aspects of the government's responsibilities and many departments' mandates and therefore any definitive response involves much analysis and consultation. As part of this analysis, the Department of Indian and Northern Affairs wants direct feedback from First Nations and Inuit governments and organizations with respect to their reaction to the report and its many recommendations.

The limits of change

The Royal Commission on Aboriginal Peoples has woven a wide tapestry, every strand of which leads to change - some which is fundamental and goes to the very basis of the relationship between Aboriginal peoples and other Canadians, and other aspects of which can be implemented relatively simply. Clearly, not all of what is proposed could or should be put in place immediately, for several reasons.

Firstly, because peoples' capacity for change has limits. For change to be effective, those involved have to have a clear sense of ownership of that change and some ability to control it. If too much happens, too quickly, that ownership cannot take root and people lose a sense of responsibility for the outcome.

Secondly, the skills and capacity to implement and manage change are not all there yet. A recurring theme in the Commission's report is the requirement for a broad range of skills to be acquired so that the vision of political autonomy and economic self-reliance can be realized.

Thirdly, the financial resources to do all that could be done will not be available in the short-term. The political reality is that Canadians are committed to deficit elimination and perhaps debt reduction. They have become increasingly conscious of getting value for their tax dollars. They are seeing major cutbacks in their schoolrooms, hospitals, in community and social facilities that at one point appeared secure and untouchable.

They are, generally, aware that Aboriginal people benefit far less from programs that they take for granted. A significant majority of them believe that a new relationship must be created and that

this will have both political and economic implications for their lives. But they want to be assured that the instruments of change are well constructed.

It is now known that for the federal government and for many provincial governments, fiscal resources will become available within two to three years. Many will argue that those should be returned to Canadians via tax cuts or used to pay down the debt. Others argue for an array of worthwhile spending objectives. It is in this time frame that the opportunity arises to access new resources to bring about the change detailed in this report. But initiatives must be clear and instruments well defined.

The Commission's views on priorities

The Commission believes that its mandate required it to set out a strategy for change and to identify priorities. It did this on the basis of a 20 year time frame. It did not consider that the task could be fully completed in 20 years. In fact, it predicted that, at best, the task would only be half accomplished in that time. But it was confident that the changes it proposed for the first 20 years were such that they would create a momentum that would be unstoppable.

The Commission believes that the exercise of setting priorities is critical. Otherwise, energy and resources would be spread too thinly to make for effective change. It proposes that the first priority for action is to address the most difficult issue that emerged from its work - the nature of the relationship between Aboriginal peoples and Canadian

The 20-year goals the Commission sees are, briefly, as follows:

- * Canada remaining a single federation and within it, 60 to 80 Aboriginal nation governments exercising broad governing authority on their own land base, whose people would be citizens of their Aboriginal nation and citizens of Canada.
- * These nations would, for the most part, operate on an extended and Aboriginal-owned land base, sufficient to give their people and governments a good measure of self-reliance, and would share co-jurisdiction and co-management on a further portion of their traditional lands with their respective province or territory. These arrangements would be enshrined in historic treaties reinterpreted for contemporary needs or new treaties.
- * On Aboriginal lands, governing institutions and institutions of justice, education, health and social services would be structured to reflect the values of the nation and would be supported by a wide range of agreements with the federal and provincial government to provide for effective coordination of authority and programs,
- * Aboriginal governments, over time, would be largely self-financing from taxation of their residents and of activity that takes place on their territory, from royalties on resources and from the sharing of revenues from resources on co-managed land. Fiscal arrangements would be in place with the federal government, linked to tax effort, to transfer resources so that their residents enjoyed the same level of public service as other Canadians.
- * In cities or towns with significant Aboriginal populations, voluntary community of interest governments would have authority for the direction and operation of institutions that provide education, justice and social services to Aboriginal residents.
- * Isolated Aboriginal communities would be sustainable through the continuing practice of traditional hunting and gathering supplemented by a limited wage economy and income supplements tied to community work or a substantial commitment to living on the land.
- * The percentage of Aboriginal people working productively with their nation's land and resources or in the wider economy beyond their lands would come much closer to the Canadian average for full-time work.
- * A network of adequately funded Aboriginal post-secondary institutions would operate across the country, some affiliated with mainstream universities, providing a steady stream of professionally trained people.
- * Closing half of the gap between Aboriginal people and other Canadians with respect to employment, earned income, education, completion, wellness and social stability would have been closed.

governments.

It proposes that Aboriginal peoples and Canadian governments jointly embrace the vision of reconstructed Aboriginal nations. Those nations would exercise broad powers of governance and build their institutions of government and their laws to reflect the values they hold important. This would fundamentally alter the dynamic of the relationship replacing client status with autonomy, authority and responsibility. It would result in a rebalancing of power and authority between Aboriginal governments and other Canadian governments.

The Commission understood that the process of achieving this goal would take a good many years. But if the clear commitment was made to that objective in terms that all could understand, this could liberate peoples' energies and begin to empower hundreds of communities to structure their own solutions.

The Commission believes that this fundamental change could be achieved through a new Royal Proclamation and the companion legislation it recommends being passed by federal and provincial legislatures. This would give tremendous impetus to healing and developmental initiatives in communities and nations. All the other recommendations the Commission makes would be significantly more effective with this base of empowerment in place.

The Commission also believes that Aboriginal peoples need not wait for other governments to concur with this approach. Aboriginal peoples can proceed immediately with the essential work of rebuilding their nations out of communities that have been divided by the *Indian Act* for over a century.

This intensive work of raising awareness and coming to one mind on structures, authorities and the fundamental laws of the nation is likely to take many months' and perhaps years' work. However, some peoples are already well advanced in this direction and will be able to inform Canadian governments soon how they wish their relationship to develop. The Nishg'aa people have already incorporated most of these ideas in their agreement in principle.

Other communities will not wish to proceed in the near future in these directions. They will choose a more incremental path to change, choosing fewer responsibilities until their capacity is in place. This, too, is an appropriate approach.

Aboriginal people should set the priorities

Aboriginal people through their communities and nations will be the ones to determine which of the Commission's findings and recommendations are valid and where they wish to start the process of implementation. The federal government and the provinces will, of course, be significant players. They have to determine, against their other responsibilities as governments, how far they are prepared to change policy and commit taxpayers' resources to these objectives. But an effective and coherent response from governments will be much less likely without a clear indication of how Aboriginal peoples wish to act with respect to implementing the findings of the

report.

It would be naive to expect, and indeed be cynical to demand, that these views be the same across the country. The circumstances of peoples' lives and their perspectives on what is wrong with the status quo will differ. But governments are unlikely to act without responsible Aboriginal leadership indicating how they wish to implement change and the degree of effort they are prepared to bring to the table to achieve it.

There are likely to be a number of appropriate paths to change. But they appear to fall into two broad categories: the path that leads to nation or public government, and the path that seeks change but from the existing structures of government at the band/community level with some coordination being provided by tribal councils or provincial and national organizations.

The Commission makes the case that a broad range of authority is implicit in the inherent right of self-government. It argues, however, that significantly larger units than band/community governments are needed to exercise that authority. It appears that a specific trade-off is implied here - larger units of government lead to broad authority; small units are limited essentially to municipal-type activity.

The first choice Aboriginal peoples may need to make is which path they are prepared to move down. Or their choice may be a mix of the two - some areas where they create nation-wide authorities such as education and justice, with the balance of authority remaining, for the moment at the community level. However, they may find that progress towards new treaty arrangements, an expanded land base and revenue generating capacity for their new responsibilities will require them to consider further integrative steps.

Once this choice is made, they may wish to consider which of those areas where the Commission has proposed change corresponds to their sense of what the most important actions are. If they choose the nation route to broad self-government, considerable resources will be required to make that a reality. Other resources could then be channelled to educational reform or expansion of their economic development capacity or another area. They may wish to engage their best talents in focussing on these agreed objectives so that strong progress can be demonstrated to their people and to other governments.

Immediate steps to build capacity

The Commission sees that even for those communities which embrace broad-based self-government, immediate work must get underway to build the capacity to make political autonomy and economic self-reliance a reality. It therefore suggests that preparations to implement a wide array of initiatives begin immediately. These range from new approaches to education to restructured health and social services through community health and healing centres to an increased effort to build economic and commercial capability through individually or community-owned enterprises, to new processes for the justice system.

Nations and their communities will have to decide the order in which these initiatives are

addressed, as they clearly cannot all proceed at the same time. In the period while Aboriginal nation governments are coming into place when authority for policy and much of the financial resources required still reside with other Canadian governments, it will be vitally important that these governments consult and respect the directions established by nations and communities. It will also be important that these new initiatives be implemented in such a way as to be aligned with the new directions and structures the nation's institutions are taking.

Educating communities and the broader public about the Commission's report

Whatever directions Aboriginal people set, all communities should consider how to assist their people to understand many parts of the Commission's findings and recommendations. This summary document could be used in schools, community centres and band councils to help people understand what the Commission discovered. Next to the final report itself, it is the most comprehensive coverage of the report's principal findings and recommendations.

But communities should also access the full final report. This can be had in printed form and be obtained by computer on the Internet at the addresses noted on page two of this document. From these Internet sites, people can print off sections of the report that they are particularly interested in to distribute to others. In the report, people can learn a great deal from reading what hundreds of others across the country said in the hearings about vitally important issues. The report quotes extensively from these hearings.

The report also provides a view of history that is largely from the Aboriginal perspective. It recounts in detail the origins and implementation of the *Indian Act*. Its researchers were the first to have full access to all the files on the residential school system. It provides detailed accounts of many of the scores of relocations of communities. It describes the contributions Aboriginal people made to Canada's war efforts and how these veterans were treated when they were returned.

As is outlined in this document, each chapter of the report focusses in detail on a major area of importance to Aboriginal people's lives. These chapters go into much more detail than has been possible in this summary. They suggest blueprints for change across a wide variety of subjects and can be printed off the computer and used as the basis for policy and institutional development.

Communities might also want to consider using this document or sections of the final report as a basis for discussions with neighbouring non-Aboriginal communities. The Commission was made up of distinguished Canadians from diverse backgrounds. These individuals addressed all these issues from their different perspectives and their work therefore provides an authoritative view of the issues. Building a consensus about what needs to be done with other groups in Canadian society is an important part of achieving change.