

TOWARDS A VISION OF JUSTICE IN CANADA

FOR THE ABORIGINAL PEOPLES:

AN INTRODUCTION TO THE FINAL

REPORT OF THE

ROYAL COMMISSION ON ABORIGINAL PEOPLES

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RCAP: A VISION OF CANADA

I want to begin by thanking the organizers of this information gathering for having invited me to participate.

My task in this initial presentation is to offer you an introductory glimpse of the Royal Commission on Aboriginal Peoples (RCAP), its approach to its mandate and its recommendations, from the perspective of one of the seven Commissioners who spent the better part of four years working on it.

The Final Report of the RCAP was released to the public by the federal government on November 21, 1996, more than five years after the Commission was established by Order in Council in August 1991. It is a visionary document, which offers recommendations for reaching the fundamental goals of justice and democratic participation in Canada by the Aboriginal peoples. It is a framework for action. It is a document that hopes to change the way people in Canada think about Aboriginal peoples. But in the end, the institutional details of this vision of justice must be worked out in the everyday experiences of everyday people who carry within their hearts a desire for justice. In this presentation I would like to introduce you to the vision of RCAP.

It is a pleasure for me to visit the North again, which I do, regrettably, very infrequently. I am not from the North; I am not qualified to speak for those who live in the North, and I know a lot less about the North than the people whom I now have the honour to address. Nevertheless in my experiences and travels elsewhere I have heard what other people think and say about the North.

It is, in the eyes of many people who do not live in Canada, its Northern image that makes Canada what it is. The North is Canada. Canada is the North. Canada is the North American country to the North of the United States, a cold,

vast, quiet place with a scattered population of Aboriginal people. As a matter of fact, thirty-six percent of all the Aboriginal people in Canada live in the North.

If we view our country as a living, dynamic matter of the soul and the heart, then it would be better if Canada were to recognize its Aboriginal foundations in creating a self-image and a vision of its future as a truly North American country. This is a 'between-the-lines' vision of Canada in the RCAP report, and I owe much of my appreciation of its significance to my late friend, Jim Bourque, a Northerner, who helped the Commission develop its work.

If we turn inwards and reflect upon the philosophies, the traditional knowledge, the histories, the languages and the cultures of the historic nations of this northern place, there is hope to build a country that will stand as a model for the world.

We all stand to gain, for example, from the Aboriginal value ascribed to the special relationship between humans and their land and environment, the spirit of place.

And we need to recognize that in a world of uncertainty, cultural diversity, like biological diversity, may be man's best bet for survival. As one commentator put it, 'We never know when we will need a unique insight.'

There are others who view the country differently, perhaps as a series of cold winters and endless constitutional refinements. If that is the case, then the RCAP vision is that the Aboriginal peoples deserve recognition of their special status in Canada the cold, constitutional entity. In this regard, RCAP has argued for constitutionally protected aboriginal rights, including rights of self-government.

If we look at history we find that the Aboriginal peoples were not present and were not consulted, when the terms of the Constitution of Canada were negotiated.

On Canadians' own preferred constitutional values, then, Canada suffers from a fundamental illegitimacy.

Some Aboriginal groups, it must be noted, were asked to give up their free use and control of the land by way of treaties and other means. If these are seen as constitutional compacts which represent the consent of external groups to join the Canadian federation upon certain agreed terms, then principles of Canadian law, politics and morality require that these promises ought to be kept.

The *Manitoba Act, 1870* contained terms upon which the Metis agreed to join Canada, and they agreed to a public form of government in a province in which they were to have special rights to land, language and education. These rights were trampled upon and constitutional promises not kept, when an influx of Eastern immigrants outvoted the locals. This historical lesson has not deterred the folks in the Eastern Arctic to opt for a public form of government. This might go down in history as a typical Canadian reaction: if it is colder, will it work?

WHAT IS RCAP?

The basic role of the RCAP was to make **recommendations to the government of Canada on Aboriginal policies**. These policies of course, have to be policies that are workable in the present legal and constitutional framework of Canada. There are a number of implications, one or two of which I will be able to touch upon.

A policy Commission such as ours has a function in influencing the making of public policy decisions in the long run and this I hope it will do. It can do this, in a democratic country, by influencing the way people think about its subject matter. It is a goal of the RCAP Final Report to change the way people in Canada think about Aboriginal peoples.

Early in 1991 the Prime Minister promised to set up a Royal Commission. He then appointed as his special representative, the Honourable Brian Dickson, the recently retired Chief Justice of the Supreme Court of Canada, to advise him on both the terms of reference and the membership of the Commission. The Chief Justice consulted and traveled widely across Canada, asking for views on his mandate. His recommendations to the Prime Minister for a seven-member Commission and a comprehensive, 16 point mandate, were accepted without change. One of those 16 points was in the following terms:

“7. *The special difficulties of aboriginal people who live in the North.*

The Commission may investigate the difficulties and cost of communications and transport, issues of environmental protection, sustainable economic and social development, access to natural resources, and any differential treatment of northern aboriginal people by the Canadian and Territorial Governments.”

As for the membership, two co-chairs were proposed, Rene Dussault, jca, a judge of the Quebec Court of Appeal, and Georges Erasmus, a Dene from the North who had been National Chief of the Assembly of First Nations. There was appointed Viola Robinson, a Mic Mac and President of the Native Council of Canada (now the Congress of Aboriginal Peoples), Mary Sillett, President of the Labrador Inuit Women’s Association, Allan Blakeney, former Premier of Saskatchewan ,who was replaced, after resigning from the Commission , by Peter Meekison, a University of Alberta Vice-President, Bertha Wilson, retired Justice of the Supreme Court of Canada, and myself, a Metis from Manitoba, professor of Native law and policy in the department of Native Studies at the University of Manitoba.

HOW RCAP DID ITS WORK

An Intervenor Participation Programme was set up to provide funding to groups who wished to research and develop recommendations to the Commission. This \$8 million fund was administered at arm's length by the Honourable David Crombie, former Minister of Indian Affairs. About \$12 million was spent on a research programme, the largest in Canadian history. Several national round tables were hosted, bringing together experts and participants in several broad issues, such as Urban issues, Justice issues, and Economic issues.

Public hearings were held; we travelled to about 100 communities across Canada, including Indian reserves, large cities, prisons and little villages.

All the information gathered was brought together, in a process of difficult deliberations by the Commission, in the form of several earlier reports on Constitutional rights of self-government, Suicide, Extinguishment, and Justice issues, and finally, in the form of the recommendations in the five-volume, four thousand page Final Report of 1996. We actually completed our deliberations and recommendations by the end of August 1995; it took over a year for an army of translators to have the Report issued in both English and French, the required official languages of government publications.

STORIES FROM THE HEARINGS