

**Looking Forward, Looking Back:
Canada's Royal Commission on Aboriginal Peoples**

**A Seminar Presentation held at the Stout Research Centre,
Treaty of Waitangi Research Unit,
Victoria University of Wellington**

July 2000

Vincent O'Malley

On 11 July 1990 a 78-day armed siege began at the township of Oka, near Montreal, when Quebec provincial police exchanged gunfire with local Mohawks protesting at plans to extend a golf course over tribal burial grounds that had been part of a broader land dispute dating back to the early 1700s. One police officer was killed in this conflict and more than 2500 Canadian troops were soon involved in the standoff and a related move by residents of the nearby Mohawk reserve of Kahnawake to block all roads and railroad lines into the area. By the time that the last of the Mohawk warriors and their supporters walked out from behind the barricades in September, few Euro-Canadians were left under any illusions as to the feelings of Aboriginal peoples throughout Canada.¹

Combined with the actions that same year of the sole Aboriginal member of the Manitoba Legislature, Elijah Harper, in effectively scuttling the Meech Lake constitutional accord (which, though designed to reconcile francophone Quebec with the English-speaking provinces, continued to ignore First Nation aspirations for equal constitutional recognition), Oka brought home graphically to many Canadians the fact that all was not well when it came to relations with

¹ The historical background to the Oka crisis is discussed in J.R. Miller, 'The Oka Controversy and the Federal Land-Claims Process', in Ken Coates (ed.), *Aboriginal Land Claims in Canada: A Regional Perspective*, Toronto: Copp Clark Pitman, 1992. A summary of the crisis, along with video news footage, can be found at CBC Newsworld Flashback, [<http://newsworld.cbc.ca/flashback/1990/index.htm>].

the indigenous peoples.² Canada, consistently named by the United Nations as the best place in the world to live, consigned its on-reserve Indians to about 60th place.³ The Canadian Human Rights Commission had been calling for a thorough inquiry into the plight of the First Nations since 1988.⁴ But as Aboriginal leaders were later to pointedly remark, it was the threat of violence that had finally sharpened the minds of Euro-Canadian politicians in a way that decades of sustained peaceful agitation for action on their grievances had failed to.⁵

The announcement in 1991 of the appointment of a Royal Commission on Aboriginal Peoples with a wide-ranging mandate to consider almost every aspect of Aboriginal affairs was not, however, initially greeted with much enthusiasm

² Wilcomb E. Washburn, 'The Native American Renaissance, 1960-1995', in Bruce G. Trigger and Wilcomb E. Washburn (eds), *The Cambridge History of the Native Peoples of the Americas. Volume I: North America*, pt. 2, New York: Cambridge University Press, 1996, pp.418-419.

³ Canadian Human Rights Commission, Annual Report, 1998, Aboriginal Peoples, [www.chrc-ccdp.ca/ar-ra/ar98-ra98/abor-auto.asp?].

⁴ Canadian Human Rights Commission, Annual Report, 1996, Aboriginal Peoples, [www.chrc-ccdp.ca/ar-ra/ar1996/indian.htm].

⁵ Ovide Mercredi, 'The Future is our Collective Rights as Distinct Peoples', in Donald B. Smith (ed.), 'Forging a New Relationship: Proceedings of the Conference on the Report of the Royal Commission on Aboriginal Peoples', January 31-February 2 1997, [www.arts.mcgill.ca/programs/misc/rcappub.htm]. The Spicer Commission on national unity, established in the wake of the demise of the Meech Lake Accord, reported in 1991 that: 'There is an anger, a rage, building in aboriginal communities that will not tolerate much longer the historic paternalism, the bureaucratic evasion and the widespread lack of respect for their concerns. Failure to deal promptly with the needs and aspirations of aboriginal peoples will breed strife that could polarize opinion and make solutions more difficult to achieve'. Cited in *Report of the Royal Commission on Aboriginal Peoples. Volume 1: Looking Forward, Looking Back* [RCAP], Ottawa: Minister of Supply and Services, 1996, p.215.

on the part of Aboriginal leaders.⁶ To many this was just another toothless inquiry, designed to deflect attention from the government's continuing failure to address their socio-economic, cultural and constitutional concerns.⁷

There were, though, some interesting features of this new Commission. For a start, of the seven-member Commission, four were themselves Aboriginal (three of the commissioners were women). Originally scheduled to run for three years, at a cost of \$8 million, the Commission's five-volume, 4000-page *Report* was eventually tabled in the House of Commons in November 1996. The final cost of the Commission was \$58 million. Altogether the Commission had made 440 recommendations. A summary of these in volume 5 of its *Report* runs to over 100 pages.

More than 270 staff were employed by the Commission, with the four to three ratio of Aboriginal over non-Aboriginal members 'echoed' in the Commission's staffing, consultation and research activities, and in the general conduct of its business.⁸ In all, the Commission visited 96 communities, held 178 days of hearings (visiting prisons, schools, traditional long houses, community halls, and

⁶ Terri Kelly, 'Royal Commission on Aboriginal Affairs', 10 May 1991, NATIVE-L, May-June 1991, [www.nativenet.uthscsa.edu/archive/n1/91a/0142.htm].

⁷ Scott Clark and John J. Cove, 'Canadian Commissions of Inquiry into Aboriginal Peoples and Criminal Justice', in Paul Havemann (ed.), *Indigenous Peoples' Rights in Australia, Canada, and New Zealand*, Auckland: Oxford University Press, 1999, p.309.

⁸ See Appendix C, 'How we Fulfilled our Mandate', and Appendix H, 'Commission Staff and Advisers', RCAP, vol.5, pp.296, 333-337.

other venues).⁹ Some 75,000 pages of transcribed testimony had been generated by the time that the public consultation rounds were completed in December 1993.¹⁰

At the outset of the Commission's activities in 1991, a number of meetings were held with Aboriginal and government leaders to assist in further defining the issues to be pursued and the approach to be adopted in proceedings. A similar method was adopted with respect to the Commission's mammoth research effort. Commissioners and their staff 'met with some 150 of Canada's most distinguished scholars in two brainstorming sessions that identified major issue areas'.¹¹ Four major research themes were selected – 'governance, lands and economy, social and cultural matters, and the North – cross-cut by the particular perspectives of history, women, youth and Aboriginal people living in urban areas'.¹² A Research Advisory Committee composed of eminent Canadian academics, and supported by a substantial research staff, oversaw the production of some 330 research reports.¹³ Notable contributions from outsiders included studies by Tipene O'Regan and Henry Reynolds of indigenous governance in New Zealand and Australia respectively.

⁹ The Commission also visited both the United States and Greenland to learn first-hand of the experiences of indigenous peoples in other countries.

¹⁰ RCAP, vol.5, p.298.

¹¹ *ibid.*, p.300.

¹² *ibid.*

¹³ See Appendix D, Research Studies Prepared for the Commission, *ibid.*, pp.306-324.

With substantial research and other resources behind it, the Commission was able to traverse and make recommendations on most aspects of the Aboriginal situation in Canada in the five volumes of its *Report*. Volume 1, *Looking Forward, Looking Back* traverses the history of Aboriginal relationships with Euro-Canadians. The second volume, *Restructuring the Relationship*, puts the case for a transformed nation-to-nation relationship with properly resourced and empowered Aboriginal communities through the various mechanisms of a Royal Proclamation, treaties and tribunals. *Gathering Strength*, volume 3 of the *Report*, addresses the pressing health, housing, education, family violence, and heritage issues confronting Aboriginal people in Canada. Volume 4, *Perspectives and Realities*, highlights the diversity of Aboriginal society and gives voice to the particular perspectives of women, elders, youth, Aboriginal people living in the North, and the Métis people (a distinctive ethnic grouping that evolved out of early intermarriage between the races), as well as the 45% of Aboriginal people who live in urban areas. In the final volume, *Renewal: A Twenty Year Commitment*, the Commission lays out a bold plan for implementation of its recommendations, including a public education campaign and additional spending of some \$2 billion per annum over a twenty-year period.

The Commission's vision of the future of Aboriginal relations with Euro-Canadians is heavily premised on its conception of the history of those relationships. Looking forward, from the Commission's perspective, involves

looking back to a time when 'mutual tolerance and respect' governed interactions between the Aboriginal and settler populations of Canada. To renew the relationship thus means restoring the spirit of the treaties and other agreements entered into during this earlier period, whilst wiping away forever the spirit of paternalism which governed later attitudes with respect to the indigenous peoples.

Looking Forward, Looking Back identifies four stages in the history of the relationship between Aboriginal and non-Aboriginal peoples in Canada. The first stage, separate worlds, lasted until the beginning of the sixteenth century. Prior to contact, according to the Commission, Aboriginal nations lived in organised but diverse societies, all of which held in common a close spiritual relationship to the natural world.¹⁴ Meanwhile, in Europe, the gradual breakdown of the old feudal order provided the impetus for expansion into the Americas.

The next stage, that of contact and co-operation, lasted in the eastern seaboard area and Quebec until about 1780, in Ontario to about 1830, and on the Pacific Coast to about 1870. Aboriginal peoples and the newcomers worked out the terms by which they would live together.

¹⁴ RCAP, vol.1, pp.86-7.

It was a period when Aboriginal people provided assistance to the newcomers to help them survive in the unfamiliar environment; this stage also saw the establishment of trading and military alliances, as well as intermarriage and mutual cultural adaptation. ...

Although there were exceptions, there were many instances of mutual tolerance and respect during this long period. In these cases, social distance was maintained – that is, the social, cultural and political differences between the two societies were respected by and large. Each was regarded as distinct and autonomous, left to govern its own internal affairs but co-operating in areas of mutual interest and, occasionally and increasingly, linked in various trading relationships and other forms of nation-to-nation alliances.

Whilst careful to note the negative aspects of European contact with the Aboriginal peoples of Canada, the Commission's *Report* highlights these nation-to-nation alliances, governed by 'co-operation, recognition and mutual benefit', as the basis of a renewed relationship built on similar principles.¹⁵

The Commission acknowledges that the relationship that developed in this period was 'prompted less by philosophy than by pragmatism' and mutual self-

¹⁵ *ibid.*, p.102.

interest.¹⁶ Through the fur trade, the most important economic interaction of this era, Aboriginal societies were able to gain access to European goods and technologies in a manner which did not fundamentally undermine their traditional ways of life, or place great pressure on their landholdings. At a political level:

the existence of relatively strong, organized and politically active and astute Aboriginal nations caused the Europeans to recognize in practice, and later in law, the capacity of Aboriginal nations not only to govern their own affairs and to possess their own lands, but also to conclude treaties with them of a type similar to those the European nations were accustomed to making with each other. In the many ensuing struggles between France and Britain, as well as in the later ones between the American colonists and British, Aboriginal nations were also greatly valued as military allies. Since victory or defeat in any particular military contest might hang in the balance, strenuous efforts were often made by the warring colonial powers either to enlist the support of Aboriginal nations or, at least, to assure their neutrality. Neither support nor neutrality could be demanded at this stage in the relationship, however; it could be achieved only by persuasion and diplomacy.¹⁷

¹⁶ *ibid.*, p.130.

¹⁷ *ibid.*, p.102.

Even in this stage of contact and co-operation, there were a number of paradoxes, reflecting the disjunction of British and French imperial pretensions (underlain by racial stereotypes of the indigenous peoples of North America) on the one hand, and on the other the reality of their economic and military dependence on these same people. The Royal Proclamation of 1763, described as the 'Indian Magna Carta', reflected these tensions. Whilst marking the end of French imperial ambitions in Canada, the Proclamation, according to the Commission's analysis, served to advance Crown claims to North America through the doctrine of discovery, even while imposing pre-emption with respect to the acquisition of Indian lands.¹⁸

These same paradoxes were reflected in the treaties made in this period. To the Aboriginal parties, these were oral agreements, sealed and periodically renewed through sacred songs and ceremonies and sometimes recorded on wampum (such as with the famous Covenant Chain between the Iroquois nations and their English allies). The Commission concludes with respect to traditional treaty-making that:

¹⁸ *ibid.*, pp.115-17. The pertinent section of the Proclamation stated that: 'And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds...'

While European treaties borrowed the form of business contracts, Aboriginal treaties were modelled on the forms of marriage, adoption and kinship. They were aimed at creating living relationships and, like a marriage, they required periodic celebration, renewal, and reconciliation. Also like a marriage, they evolved over time; the agreed interpretation of the relationship developed and changed with each renewal and generation of children, as people grew to know each other better, traded, and helped defend each other. This natural historical process did not render old treaties obsolete, since treaties were not a series of specific promises in contracts; rather they were intended to grow and flourish as broad, dynamic relationships, changing and growing with the parties in a context of mutual respect and shared responsibility.¹⁹

Increasingly written documents, drawn up by the European powers in their own language, asserted claims to sovereignty and land through the instrument of these treaties. According to the Commission:

These incongruities could co-exist without creating conflict because, for the most part, the parties were unaware of the significant differences in interpretation. Indeed the deep differences in world view may have gone unexpressed simply because they were so fundamental and so different.

¹⁹ *ibid.*, p.129.

Europeans may have been literally unable to conceive of the possibility that they were not discoverers who brought light into a dark place, faith into a heathen place, law into a lawless place. Indigenous nations equally could not conceive that their nationhood or their rights to territory could be called into question. They naturally had no concept that their land had been “undiscovered” before Europeans found their way to it.²⁰

These paradoxes could not remain hidden for long, however, and as European power on the North American continent increased, it was the European interpretations and understandings that came to be asserted. This was the third stage of the relationship, displacement and assimilation.

In the period following the American War of Independence, thousands of ‘loyalist’ settlers retreated to the eastern provinces of what remained of British North America, placing huge pressure on the Aboriginal land and resource base. The collapse of the Montreal-based fur trade saw the end of the era of co-operative economic engagement – replaced on the European side by activities such as agriculture which were premised on the extensive acquisition and clearing of Aboriginal lands. The normalisation of relations between the United States and Britain following the War of 1812 did not help the Aboriginal situation either as they were no longer courted as military allies. By 1830 ‘responsibility for

²⁰ *ibid.*, p.126.

“Indian policy” – formerly a quasi-diplomatic vocation – had been transferred from military to civil authorities’.²¹

Aboriginal people were now viewed as an impediment to progress. Treaties continued to be signed in the hitherto largely uncolonised lands to the west and north, most notably in the Robinson treaties of 1850 and the 11 numbered treaties signed between 1871-1921, but from the Crown perspective these remained:

little more than real estate transactions designed to free Aboriginal lands for settlement and resource development. From the Aboriginal perspective, however, the process was broader, more akin to the establishment of enduring nation-to-nation links, whereby both nations agreed to share the land and work together to maintain peaceful and respectful relations.²²

‘[L]egislated dispossession’ went hand-in-hand with this policy of extinguishment.²³ From 1857 steps were taken in an (unsuccessful) effort to persuade Aboriginal people to ‘free’ themselves of their Indian status and instead acquire the rights common to ordinary, non-Aboriginal settlers. Canada’s first prime minister, Sir John A. Macdonald, declared soon after Confederation in

²¹ *ibid.*, p.138.

²² *ibid.*, p.140.

²³ *ibid.*

1867 that the new nation's goal was 'to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion'.²⁴ For the overwhelming majority of Aboriginal people who refused to accept assimilation, nearly every aspect of life on their reserves was controlled by federal bureaucrats under the Indian Acts. Aboriginal women who married non-Indians were, along with their children, stripped of their status as Indians.

The failure of these assimilationist measures led to even harsher steps being taken. Potlatch and sundance ceremonies were outlawed, and in 1927 it was made an offence to solicit funds to advance Indian claims of any nature without official permission. A pass system was introduced on the reserves to control all contact with the outside world and, in what the Commission describes as the 'most ambitious and tragic initiative', Aboriginal children were taken from their homes and sent to residential schools, where many were subjected to physical, sexual and emotional abuse.²⁵ The substantial involvement of Aboriginal people in the two world wars helped to raise the profile of their grievances but achieved only moderate success in tangible terms, as attested by the many difficulties confronted by Aboriginal veterans on their return to Canada.²⁶

²⁴ cited in *ibid.*, p.179.

²⁵ *ibid.*, p.186.

²⁶ *ibid.*, p.547.

According to the Commission, it was only in the wake of the Trudeau government's controversial 1969 white paper on Federal Indian policy that stage four in the relationship, negotiation and renewal, was reached. Jean Chrétien, the Indian Affairs minister, proposed abolishing existing treaty and aboriginal rights – offering instead a nominal equality based on individual rights. Opposition to the white paper became a rallying cry for Aboriginal leaders – who, though despising the paternalism of the Indian Act and its associated bureaucracy – saw the proposals as a coffin for their collective identities.²⁷

The establishment of pan-Aboriginal organisations such as the National Indian Brotherhood (now the Assembly of First Nations), increasing contacts with indigenous peoples' movements elsewhere through forums such as the United Nations, and the landmark Supreme Court decision in the *Calder* case in 1973 (which effectively overturned the doctrine of terra nullius) all contributed to a renewed and intensive campaign for recognition of Aboriginal rights in Canada. In 1982 Aboriginal leaders achieved a partial victory when 'existing aboriginal and treaty rights' were recognised under section 35 of the Constitution Act. But the dichotomy between subsequent federal efforts to appease Quebec's constitutional concerns whilst at the same time turning a blind eye to Aboriginal efforts to have the inherent right of self-government recognised could not last

²⁷ Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples*, Ottawa: Minister of Supply and Services, 1996, [www.inac.gc.ca/rcap/report/look.htm].

without incident for long. In the summer of 1990 the powder keg of Aboriginal affairs exploded with the Oka crisis.

The way forward, according to the Commission, involves a renewed relationship based on four principles: mutual recognition, mutual respect, sharing, and mutual responsibility. In volume 2 of its *Report* the Commission recommends that these principles be outlined in a new Royal Proclamation, to be issued by the monarch, which would also affirm an inherent right of self-government for Aboriginal nations and acknowledge and express regret for past policies and actions.²⁸ Proposed companion legislation would affirm liberal rules of interpretation of the historical treaties (the Commission cites as an example the promise of a medicine chest in Treaty 6 as being a commitment to provide the best health care available at the time), and establish processes for the negotiation of new treaties which would form the cornerstone of a renewed relationship between Aboriginal and non-Aboriginal peoples in Canada.²⁹ These new treaties would encompass a wide range of governance issues, including justice systems, long term funding arrangements through fiscal transfers, land and resource matters and other issues relevant to the renewed bilateral nation-to-nation relationship to be established. The Department of Indian Affairs and Northern Development would be eliminated and replaced by a new Department of

²⁸ RCAP, vol.2, pp.65-66.

²⁹ *ibid.*, pp.66-68.

Aboriginal Relations, which would include within it a Crown Treaty Office (which would also be established within each province). Treaty Commissions would also be established at a federal and provincial level to independently facilitate and oversee negotiations, while an Aboriginal Lands and Treaties Tribunal with the power to issue final and binding recommendations would replace the existing Indian Claims Commission and deal with any grievances arising from alleged breaches of the historical treaties or from the process of negotiating new ones.³⁰ An Aboriginal parliament would advise the House of Commons and Senate on all legislative and constitutional matters bearing on Aboriginal peoples.

Central to these proposals is the recognition of the right of self-determination. According to the Commission, this right 'does not ordinarily give rise to a right of secession, except in the case of grave oppression or disintegration of the Canadian state'.³¹ The right is not racially based, but vests in organic political and cultural entities with the capacity to evolve over time and change in their internal composition. Nor is the right of self-determination vested in small local communities, in the Commission's view, but instead belongs to Aboriginal nations – defined as 'a sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a certain

³⁰ *ibid.*, vol.5, pp.152-53; vol.2, pp.591-613.

³¹ *ibid.* vol.5, p.154.

territory or group of territories'. By the Commission's reckoning, there are somewhere between 60 to 80 Aboriginal nations based in Canada today, compared with a thousand or more local Aboriginal communities.³² The Commission recommends that these Aboriginal nations have a core area of jurisdiction, involving most matters of vital interest to the nation, and a peripheral jurisdiction with respect to matters that also impact on the lands, resources or other interests of neighbouring communities. These peripheral matters (such as transport and some environmental issues) require shared or co-operative management arrangements. The Commission is silent on matters completely outside the jurisdiction of Aboriginal nations. However, reading between the lines, these would include those relating to defence and external relations, and some aspects of the management and regulation of the Canadian economy (such as regulating the currency).

Yet although the Commission opts for this nation model of self-government, with Aboriginal nations exercising various powers within an exclusive territorial base, in some circumstances such a framework may not be the most useful, and two further models are advanced. Particularly applicable to northern Canada, where Aboriginal people often form the majority of residents in their area, is the public government model, in which all residents participate equally in the functions of government, regardless of their ethnicity. Structures and processes

³² *ibid.*, p.155.

of government are likely to be similar to those of other Canadian governments under this model, though with some adaptations to reflect Aboriginal traditions.³³ This is the model adopted in Nunavut, the home of the Inuit people, which became a self-governing territory on 1 April 1999.

The other model advanced is that of the community of interest, or extra-territorial, government. This is particularly applicable to urban Aboriginal communities. The Commission concludes that 'Urban Aboriginal governments could operate effectively within municipal boundaries, with voluntary membership and powers delegated from Aboriginal nation governments and/or provincial governments'.³⁴ These community of interest governments do not, in the Commission's judgement, have the right of self-determination, unless they are constituent parts of an Aboriginal nation government. However, membership of an urban Aboriginal government should not, the Commission adds, preclude membership of an Aboriginal nation government.³⁵ A substantial redistribution of lands and resources, as well as fiscal revenue and contracted programme and service delivery, along with interim additional spending of some \$2 billion over the next twenty years, would help to fund all forms of Aboriginal government.

³³ *ibid.*, vol.2, pp.265-72.

³⁴ Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation*, [www.inac.gc.ca/rcap/report/relat.htm]

³⁵ RCAP, vol.2, p.274.

What has been the response to the *Report of the Royal Commission on Aboriginal Peoples*? It would be fair to say that, in general terms, the *Report* appears to have had little impact on the Euro-Canadian public, perhaps partly because of the minimal coverage the media gave to the Commission's activities. An opinion poll conducted shortly before the *Report* was released at the end of 1996 revealed that nearly 50% of Euro-Canadians considered that the standard of living for Aboriginal residents of Canada is the same as, if not better than, that of other Canadians (whereas it is actually worse than that of Mexico or Thailand).³⁶ A further poll conducted in 1998 showed that half of all Canadians considered Aboriginal people incapable of managing their own affairs. By contrast, in the wake of the Oka crisis more than 80% had supported the concept of Aboriginal self-government.³⁷

One of the most commonly levelled criticisms of the Commission's *Report* from all parties has been that its very size and cost (\$249 within Canada) militates against all but a few gaining access to it. (A criticism also often made with reference to Waitangi Tribunal reports). This has been partly addressed through the publication of a summary of the *Report*, along with various video, audio, and CD-Rom productions. In addition, the entire *Report* can now be downloaded

³⁶ Canadian Human Rights Commission, Annual Report 1996, Aboriginal Peoples, [www.chrc-ccdp.ca/ar-ra/ar1996/indian.htm]; 'Whose Home and Native Land?', *Time Magazine International*, 15 February 1999, vol.153, no.6, [www.time.com/time/magazine/articles/intl].

³⁷ *Time*, 15 February 1999.

from the Internet (www.indigenous.bc.ca or – until it was removed on 21 June 2000 - www.inac.gc.ca).

Academics had their own axes to grind. Some historians took exception to the Commission's failure to fully acknowledge that its version of the history of Aboriginal relations with Euro-Canadians was not something constructed out of thin air but in fact built on a generation of works challenging the established Whiggish view of the past.³⁸ However, although the Commission's interpretation of the past was not new, it was written in the sort of 'sharp, frank, fresh' and authoritative tone that only an official inquiry would be bold enough to employ in a post-modernist world, lending extra weight to the new history of Aboriginal relations in Canada.³⁹

There were, of course, many other minor criticisms levelled by academics at the Commission's *Report*. Bruce Trigger was critical of the fact that, despite having travelled to the United States as part of its inquiry, the Commission failed to provide any systematic comparisons between the two countries. As he notes, 'Canada and the United States do not exist on separate planets. The Canada-U.S. frontier was arbitrarily imposed on native peoples and many Indian groups live

³⁸ Bruce G. Trigger, 'Charter for a New Elite?', in Smith (ed.), 'Forging a New Relationship', [www.arts.mcgill.ca/programs/misc/rcappub.htm].

³⁹ Craig Brown, 'History in the Royal Commission Report', *ibid.*

on both sides of the border'.⁴⁰ He offers the intriguing proposition that, 'On the whole, if it was better to be an aboriginal person in British North America than it was in the United States before 1880, the opposite has been true since that time'.

Others thought that the Commission's *Report* had paid only lip service to Aboriginal versions of history.⁴¹ Interestingly, this does not appear to have been a criticism widely levelled by Aboriginal people themselves, however. On the whole it would appear that most Aboriginal leaders were far happier with the concept of the Commission in 1996, after its *Report* had been released, than they were back in 1991 when its appointment was announced, though this remained tinged by underlying scepticism from some quarters as to the prospects of the government ever agreeing to implement the recommendations made.

Five years on, it seems, this doubt as to the government's willingness to implement the Commission's recommendations is even stronger.⁴² In January 1998, nearly fourteen months after the Commission's *Report* had been tabled in the House of Commons, the government's official response was finally issued. *Gathering Strength – Canada's Aboriginal Action Plan* was, according to the Human Rights Commission, 'strong on good intentions if somewhat modest in terms of

⁴⁰ Brice Trigger, 'Charter for a New Elite?', *ibid.*

⁴¹ Sylvie Vincent, 'Does the Commission's Version of History Foster Better Understanding between Aboriginal and Non-Aboriginal Peoples', *ibid.*

⁴² Robin Fisher, personal communication, 16 June 2000.

specific commitments'. It has also been criticised for ignoring the plight of off-reserve, and especially urban, Aboriginal people.⁴³

There were some significant initiatives contained in the *Gathering Strength* document, however. The most important of these was the statement of reconciliation issued by the government of Canada. In this, the government accepted the need to address the legacies of past actions and formally acknowledged the contributions made by Aboriginal peoples to Canada's development. The statement added that:

Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self-sustaining nations that were disaggregated, disrupted, limited, or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the result of these actions

⁴³ Canadian Human Rights Commission, Annual Report 1997, Aboriginal Peoples, [www.chrc-ccdp.ca/ar-ra/ar1997/a_aborig_e.htm].

was the erosion of the political, economic and social systems of Aboriginal people and nations.

Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the federal government which have contributed to these difficult pages in the history of our relationship together.⁴⁴

In addition, the government stated that it was 'deeply sorry' for the role it had played in the development of the residential schools system. '[T]o those individuals who experienced the tragedy of sexual and physical abuse at residential schools', the statement added, 'and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened'.

A \$350 million healing fund was also established to support community-based healing initiatives for the victims of the residential schools system. There were

⁴⁴ Minister of Indian Affairs and Northern Development, *Gathering Strength – Canada's Aboriginal Action Plan*, Ottawa: Minister of Public Works and Government Services, 1997, [www.inac.gc/strength/change.htm]. This was released on 7 January 1998.

few other specific initiatives contained in the government's response, which did not systematically address each of the 440 recommendations made in the Commission's *Report*, but instead included a number of generalised statements under different headings. On the issue of Aboriginal self-government, for example, the government agreed with the Commission's conclusion that the 1982 Constitution Act already implicitly recognized this right and that self-government should be exercised by Aboriginal nations 'or other large groupings of Aboriginal people'. However, there was no indication as to whether the government was prepared to strengthen the constitutional recognition of this right, as recommended by the Commission, and little indication as to how the government planned to give practical effect to it, other than that this 'would be undertaken only in close consultation with Aboriginal and other partners'.

One year on from the launch of *Gathering Strength*, in January 1999, the government issued a progress report on the implementation of its Aboriginal Action Plan. This listed a seemingly impressive array of achievements on specific issues and in specific areas which masked a lack of progress, or perhaps an unwillingness to address, some of the more radical recommendations made by the Commission.⁴⁵ However, an Agenda for Action with First Nations has been developed jointly with the Assembly of First Nations, and there is no doubt that

⁴⁵ Minister of Indian Affairs and Northern Development, *Gathering Strength – Canada's Aboriginal Action Plan: A Progress Report – Year One*, [1999], [www.inac.gc.ca/news/jan99/98123BK.HTM].

the *Report of the Royal Commission on Aboriginal Peoples* will prove a useful tool for Aboriginal leaders over the next decade or so, as they seek to place pressure on the government to address their concerns.⁴⁶

Certainly, the *Report* has proven a source of some embarrassment for Canada in the United Nations forum. Both the UN Committee on Economic, Social and Cultural Rights and its Human Rights Committee have found Canada to be in breach of its international obligations as a consequence of the government's failure to implement the recommendations of the Royal Commission on Aboriginal Peoples.⁴⁷ This kind of embarrassing scrutiny is likely to continue until such time as Canada is perceived to have made significant progress in implementing these recommendations. In short, the Commission's *Report* may not have had the kind of immediate impact hoped for, but its ghost is liable to linger for some time yet.

Finally, and very briefly, what lessons are there in all of this for New Zealand. Firstly it should be obvious from the Canadian experience that a Royal Commission is not some kind of instant panacea for all manner of perceived race relations ills. However, it does provide an opportunity for input and reflection

⁴⁶ Agenda for Action with First Nations, [1998], [www.inac.gc.ca/strength/agenda.htm].

⁴⁷ 'United Nations finds Canada in breach of key international human rights treaty especially with respect to the rights of Aboriginal peoples', Canada News Wire, 9 April 1999, [www.newswire.ca/releases/April1999/09/c1371.htm]; Assembly of First Nations, 'Canada's Extinguishment Policy', 23 July 1999, resolution 39/99, [www.afn.ca/resolutions/1999/aga%20resolutions%201999/res39.htm].

on future directions. Although the Waitangi Tribunal has reported on a number of contemporary claims relating to specific issues such as the radio spectrum, or funding arrangements for wananga, its primary focus is in reporting and making recommendations on historical claims within regional inquiry districts. It does not have the same wide-ranging mandate that the Royal Commission on Aboriginal Peoples had to link historical patterns of interaction with possible future arrangements on a nationwide basis.

There has certainly been an increasing amount of interest shown in the need to address future constitutional and self-governance issues on the part of both Maori and the Crown (as indicated by suggestions that a new Cabinet portfolio called Minister of Treaty Relationships might be created). Yet events such as the recent Building the Constitution conference hardly provide an ideal forum within which such issues can be debated in an inclusive and thoughtful way. Nor did that conference set out to provide a blueprint or set of recommendations for the path forward. This is one task that might be entrusted to a Royal Commission. Against this, it might be suggested that it is too early to start thinking of such issues, and that we first need to deal with the many remaining historical grievances. Yet what many people fail to appreciate is that settling historical Treaty claims is not an end in itself, but part of a larger process aimed at empowering Maori to enter a genuine and mutually beneficial Treaty partnership in the twenty-first century.

Clearly some Crown officials have much to learn about how such an arrangement might work in practice. In the late 1990s, for example, the Ministry of Justice commissioned a book entitled *Living Relationships/Kokiri Ngatahi: The Treaty of Waitangi in the New Millennium*. Of the two main essays commissioned for this, one was written by a Pakeha New Zealander resident at Cambridge University; the other came from a Euro-Canadian who had spent some time at Waikato University.⁴⁸ This is, thus far, the primary published contribution to the debate on future Treaty relationships. Perhaps it is time to tackle this subject in a more ambitious and inclusive manner. A Royal Commission could be one means of achieving this.

Vincent O'Malley

Treaty of Waitangi Research Unit
Stout Research Centre
Victoria University of Wellington

July 2000

⁴⁸ Ken S. Coates and P.G. McHugh, *Living Relationships/Kokiri Ngatahi: The Treaty of Waitangi in the New Millennium*, Wellington: Victoria University Press, 1998.