

**INDIGENOUS REPRESENTATION
IN CANADA: AN OVERVIEW**

In 1996 the Canadian Royal Commission on Aboriginal People (RCAP) established that:

The rights of self-determination is vested in all the Aboriginal peoples of Canada, including First Nations, Inuit and Metis peoples. ... By virtue of this right, Aboriginal peoples are entitled to negotiate freely the terms of their relationship with Canada and to establish governmental structures that they consider appropriate for their needs.

The Aboriginal population of Canada consists of three groups: Indians (now frequently referred to as First Nations), the Métis and the Inuit. They make up 4.4% of the total population. Although Aboriginal rights negotiated with the provincial and/or federal Governments of Canada may apply to all three groups, agreements are typically negotiated with reference to each of these separately due to the vastly different historical and cultural developments of the groups. For example, the Inuit will receive their own separate land base in 1999 - the *Nunavut* territory - as a result of a land claim, while the Métis, who for the most part have no cultural link to a land base, negotiate the terms of their self-determination with the Canadian Government in non-territorial terms. However, the federal government is at present focused primarily on negotiations with First Nations.

Historically, the inherent right of self-determination is seen to be based on the *Royal Proclamation of 1763* which - unlike the situation in the early years of Australian colonisation - explicitly recognises the existence and land rights of the Aboriginal peoples of Canada:

... 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 ... as their Hunting Grounds.

Treaty negotiations between Indians and the colonisers became the established way of resolving land issues, a form of problem-solving still used today. Although some communities have benefited from negotiations, they have proven extremely problematic for Aboriginal people over the years for a number of reasons. Firstly, Treaties are *sui generis* ("unique in law") and thus a volatile and unprotected process relying heavily on interpretation of the specific treaty. Many conflicts over the method of interpretation have arisen in recent years ('letter' versus 'spirit and intent' models) and has lent itself to abuse of cultural differences and understandings. Secondly, Aboriginal people have

had little or no power to enforce agreements resulting in a number of broken Treaty promises. As a result, Indian reserves were greatly diminished in size in many areas.

Along with the reserves, the concept of 'status' Indians was developed in the middle of the 19th century and finally brought into legislation in the Indian Act. In essence, the Act was developed to distinguish between those who were entitled to reside on reserves (including the rights and responsibilities which it entailed) and those who were not. In short, the Act set out to cement the ideas of the Royal Proclamation. However, as some commentators have pointed out, although the Act evolved to protect the land base of the Aboriginal peoples, it became a two-edged sword. Through a number of amendments to the Act, status Indians were excluded from basic rights such as voting and other civic duties while a number of activities ranging from alcohol consumption to 'uncivilised' cultural activities were banned or heavily penalised. Furthermore, as in Australia, thousands of Indian children were taken from their homes for re-education (see annotated *Indian Act* listed below).

Today the Act remains controversial, although recent amendments (1985) have resulted in marked improvements in Indians' rights. For example, the present Act has eliminated gender and racial discrimination while restoring status to a large number of Indians who had been disenfranchised involuntarily. It has also given First Nations the option of assuming control of their own membership.

The last 15 years have seen dramatic improvements to the rights and recognition of Aboriginal peoples in Canada. Firstly, the *Constitution Act* of 1982 (s. 35) provided legal protection for the otherwise perilous Treaty negotiations. It also confirmed that self-government is an inherent right, thus inviting renewed negotiations with First Nations about concrete self-government arrangements. As stated in a federal policy guide (1995):

... the Aboriginal Peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationships to their land and their resources.

The challenges for Aboriginal people and the various levels of government (federal, provincial/territorial and local) is to work out an arrangement in each area which takes into account all levels of jurisdiction, and which divides the rights and responsibilities in a way acceptable to all parts. This process has already started in some areas but is deemed slow and difficult.

In order to aid this renewal of relationships, the above-cited Royal Commission on Aboriginal People inquired into current and past legal, political and cultural practices involving the Aboriginal people of Canada and produced 440 far-reaching and comprehensive recommendations, including:

- formal apology for past abuses, including a recognition of discrimination on a number of levels;
- inquiry into the forced removal of Aboriginal children and a start to 'remedial action' (healing);
- addition to the Royal Proclamation concerning Treaty negotiations (including the introduction of Treaty legislation in federal and provincial/territorial parliaments);
- establishment of independent Treaty bodies;
- recognition of the "unique form of dual citizenship" of Aboriginal Canadians;
- establishment of the Department of Indian and Northern Affairs (to be replaced by a Department of Aboriginal Relations and a Department of Indian and Inuit Services);
- establishment of an Aboriginal parliament to provide advice to Parliament in relation to legislation on Aboriginal people. (A national assembly of elected First Nation heads - the Assembly of First Nations - has in fact existed since 1982. Their missions statement, among other things, includes parliamentary liaising);
- clear definition of Aboriginal land rights, fishing quotas and access to resources;
- health, housing and education strategy development;
- arts and heritage legislation, including language preservation. Funding made available for a large-scale 20 year research project into Aboriginal cultures and languages; and
- extensive public education campaigns on these issues with particular attention given to new citizens.

The government's response in January 1998 included a \$350 million commitment to support the development of community-based healing and an official apology for the forced removal of Aboriginal children. It nevertheless disregarded the more extensive recommendations and many people were disappointed with this result.

Sources and information of interest:

1. Acts and legal documents:

- The Royal Proclamation (1763): www.bloorstreet.com/200block/rp1763.htm
- The Constitution Act (1982): www.bloorstreet.com/200block/sconst82.htm
- The Canadian Charter of Rights and Freedoms (1982): www.bloorstreet.com/sconst82.htm#4
- The Indian Act (1985 amendment): www.bloorstreet.com/200block/sindact.htm
- The Royal Commission on Aboriginal People (1997): www.inac.gc.ca/rcap/

2. Policy guides and critical debate:

- Aboriginal Law and Legislation Online (Canada, United States, Australia and New Zealand): www.bloorstreet.com/300block/ablawleg.htm
- Assembly of First Nations: www.afn.ca
- Department of Indian and Northern Affairs: www.inac.gc.ca
- The First Perspective Online, (Aboriginal newspaper): www.mbnet.mb.ca/firspers/society