

Royal Commission on Aboriginal Peoples: An Exercise in Policy Education

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The Royal Commission on Aboriginal Peoples was established in 1991 in the wake of the Oka crisis of 1990. That crisis which tied up the Montreal area for a summer and made the confrontation of Canadian soldiers with Mohawk warriors a front-page story around the world convinced the Mulroney government that the time had come for a thorough review of relations with Aboriginal peoples in Canada. Prime Minister Mulroney commissioned Brian Dickson, the recently retired Chief Justice of Canada to draw up the mandate and identify the commissioners following consultations with Aboriginal leaders across the country. The result was a broad commission mandate to examine all issues relevant to any or all of the Aboriginal peoples of Canada and a seven person commission that included representatives of the four principal sections of Canada's Aboriginal peoples. The commission issued its final five-volume report in 1996. If RCAP is assessed on the basis of the implementation of the hundreds of recommendations in its reports it is considered to be a failure. But if it is understood as the first time in any settler country that indigenous and non-indigenous people reflected together, carefully and thoroughly, on their past and present relations and the direction their future relationship should take, it may be considered a success. My analysis of RCAP will look at it as one of those exceptional commissions of inquiry which aim at establishing a fresh and consensual understanding of a relationship fundamental to the integrity of the country.

Framework

Introduction/Background/Context

- RCAP was triggered by the Oka crisis that went through the summer of 1990.
- The crisis was an international embarrassment for Canada
- Underlying the refusal of the Mohawks of Kanestake to accede to the town of Oka's desire to expand its golf course on sacred and disputed lands was a growing determination of Aboriginal peoples in Canada to refuse to accept further injustices
- Non-Aboriginal Canadians saw the Oka crisis as mainly a law-and-order issue.
- The Mulroney government had a vague sense of underlying issues that pointed to the need for a broad, in-depth review of relations with Aboriginal peoples

Ideas

What were the dominant ideas in the policy area prior to the COI?

- Since the Aboriginal leaders' rejection of the Trudeau/Chretien 1969 White Paper, federal governments had been struggling to find a policy alternative to assimilation.
- A process for settling land claims was introduced in the 1970s and a vague recognition of Aboriginal rights and treaty rights was added to the constitution in 1982. But the land claims process was unacceptable to most First Nations and the recognition of constitutional rights left fundamental questions unsettled.
- There was also a growing realization that Aboriginal peoples constituted the youngest, fastest growing - but poorest - sector of the Canadian population.
- By the 1990s Aboriginal had come to define their main constitutional aspiration as "decolonization" – ie overcoming the colonial status of their societies and developing relationships based on treaties and agreements with Canada.
- Federal, provincial and territorial governments and Aboriginal peoples all wanted to close the large gap between the living standards of Aboriginal peoples and the rest of Canada

What were the driving ideas which resulted in the setting up of the commission?

- Aboriginal peoples relationship with Canada should be structured along the lines of a respectful partnership between peoples
- The gap in living standards and formal education between Aboriginal peoples and non-Aboriginal Canada should be closed.
- The development of Aboriginal communities should be facilitated by giving them more secure access to traditional lands and resources
- The knowledge gap between Aboriginal and non-Aboriginal Canadians about past injustices should be reduced

Did your COI contribute to policy or process learning regarding the utilization of knowledge or expertise in the field?

- RCAP established ethical guidelines for doing research related to Aboriginal communities
- This is the first time that Aboriginal knowledge was extensively used in a Canadian COI report
- RCAP commissioned many studies, including case studies of Aboriginal self-government and the history of Aboriginal relations in each of Canada's ten provinces. All of these studies are available on the internet.

Institutions

What were the institutional features of the policy area prior to the COI?

- Federal Department of Indian Affairs and Northern Development (DIAND) was the key institution for generating and implementing policy. Provincial and territorial governments had very little involvement
- The courts, especially the Supreme Court of Canada, were playing a key role in amplifying Aboriginal rights
- The Assembly of First Nations, the Congress of First Nations (status Indians), the Native Council of Canada (non-status Indians), Inuit Tapirisat of Canada (Inuit)

and the Metis Nation accepted as interest groups representing the interests of their respective memberships.

- Over 500 First Nations governments, most of them small reserve-based bands, exercising policy responsibilities devolved to them by DIAND

What sort of internal features were significant in the COI?

- Terms of reference developed by retired Chief Justice Dickson were very wide, covered all aspects of Aboriginal peoples' experience, including their history going back to before Europeans arrived
- Seven commissioners, hand-picked by CJ Dickson through consultation with Aboriginal organizations – four Aboriginal commissioners representing status, non-status, Metis and Inuit peoples, three non-Aboriginal included two judges and a former provincial premier
- Commission also had regional representation: 2 from the west, 2 from the north, 1 each from Ont, Que. and Atlantic Canada
- Co-chairs: an Aboriginal from NWT and a Quebec francophone judge
- Large research program approved by Commissioners and used intensively by Commissioners to gain knowledge and develop recommendations, led by Aboriginal and non-Aboriginal co-directors and advised by committee of leading Aboriginal and non-Aboriginal scholars.
- RCAP held nearly 100 hearings many of them in Aboriginal communities all over the country as well as in major urban centres.
- Commission held conferences on special topics, eg economic development, health, justice, published issue papers and conference proceedings in advance of its final report.
- RCAP published volumes on commissioned research on a number of topics relevant to events occurring while it was sitting, such as the implications of Quebec Secession for Aboriginal peoples, legal and constitutional issues relating to Aboriginal self-government, a new approach to land claims agreements, and the high rate of suicides in Aboriginal communities.
- The Commissioners issued an interim report, *Partners in Confederation*, in 1993 during the Charlottetown Accord constitutional process.

Did the COI result in any post-commission institutional change?

- A number of institutional changes took place during and after RCAP – but while RCAP influenced these changes, none of them can be attributed solely to RCAP. Key institutional changes were as follows:
 - establishment of tripartite BC Treaty Commission
 - creation of Nunavut as self-governing northern territory based on majority Inuit population
 - development of tribal councils in several provinces
 - establishment of ministries of Aboriginal Affairs in most provinces
- But DIAND remained key federal government policy-maker despite RCAP recommendations

Actors

Who were the key actors (individual and group; state and societal) in the sector or field prior to the COI?

- State: DIAND and the courts – especially the Supreme Court of Canada were lead policy-makers; Liberals, PCs, NDP gave political support to Aboriginal rights, Reform Party was strongly assimilationist and opposed Aboriginal rights
- Societal: 4 pan-Canadian Aboriginal organizations lobbied for improvement in support of Aboriginal peoples; considerable academic support for Aboriginal peoples' aspirations, but little public or mainstream media support

Who were the key actors involved in or given sanction by the COI?

- DIAND (later renamed Indigenous, Northern Affairs Canada) remains key federal actor
- Provincial and territorial governments accepted as having an important role in relations with Aboriginal peoples
- Larger Aboriginal governments such as the Nisga'a, Mi'kmaq, Anishianbek, James Bay Cree, Haudensaunee seen as being a third kind (not a third level) of government in Canada
- Five pan-Canadian Aboriginal organizations (Indigenous Womens Association of Canada added as a fifth) have a role in lobbying and being consulted.
- Courts, especially trial courts, encouraged to accommodate Aboriginal practices
- Universities, colleges and schools encouraged to play key role in improving Aboriginal education and incorporating Aboriginal knowledge
- Hospitals and medical organizations encouraged to address Aboriginal concerns
- Banks, business organization encouraged to become partners in Aboriginal economic development.

Did the COI result in (or appear to play a role in) any post-commission realignment or forums for interaction of the key actors, and/or the non-key (often excluded) actors?

- while the COI was in process provincial governments engaged in discussions with the commissioners and First Nations became somewhat more open to acknowledging a provincial role in Aboriginal policy
- many provinces established ministries of Aboriginal affairs
- the AFN gained access to first ministers meetings
- the Indigenous Bar Association was formed and has played a lead role in supporting RCAP positions

Relations

What were the key formal and informal relations/relationships of importance to your commission?

Formal

- much interaction with DIAND officials on Indian Act issues
- interaction with Minister of Constitutional Affairs (during Charlottetown Accord process) on Aboriginal right to self-government
- Commissioners met with federal and provincial governmental representatives to discuss Aboriginal rights

- Commissioners met with many First Nations, Metis and Inuit leaders and governments of treaty nations
- Commission interacted with four pan-Canadian Aboriginal organizations
- Commissioners met with executives of banking and business organizations

Informal

- much interaction between research staff, contract researchers and commissioners
- meetings of commissioners were often like seminars with visiting Aboriginal and non-Aboriginal scholars and commission staff
- all meetings – in-house and in public – began with participation in Aboriginal spiritual ceremony
- seven commissioners struggled to achieve consensus on contentious points
- half way through, commissioner Alan Blakeney resigned mainly because of disagreement about Aboriginal peoples retaining some sovereignty, and was replaced by non-Aboriginal political scientist Peter Meekison from western Canada
- government changed from Mulroney Conservatives to Chretien Liberals in 1993, first Liberal minister, Robert Nault, not very supportive of commission, second Liberal Minister (Ron Irwin) more supportive.

Did the COI result in any post-commission re-alignment here?

- provinces are playing a larger role in Aboriginal policy
- Conservative Party does not adopt Reform Party's openly antagonistic position on Aboriginal rights and treaty rights
- increasingly new initiatives are taken by First Nations' governments.

Conclusion

Was there, in your judgment, any significant change in policy which might be attributed to your COI?

- RCAP was a key factor in making the federal, provincial and territorial governments supportive of Aboriginal self-government and inducing them to abandon assimilation as their primary goal in relations with Aboriginal peoples
- RCAP was an important factor in maintaining growth in federal funding of services to Aboriginal communities during a period of cutbacks on social expenditures – though it failed to get the level of funding anywhere close to what it recommended.
- Though RCAP's blueprint for negotiating self-government agreements was not followed, the federal government did change its comprehensive land claims policy to include self-government
- RCAP established bench-mark knowledge of how Aboriginal peoples and non-Aboriginal peoples could share citizenship and land on a basis of mutual consent
- Government of Canada's apology to Aboriginal peoples and establishment of the Truth and Reconciliation Commission in large measure based on RCAP findings.

Was there, in your judgment, any significant change in policy related processes which might be attributed to your COI?

- more policy relating to Aboriginal people based on agreements between Aboriginal governments and federal, provincial and territorial governments
- specific claims process being reformed through consultation with AFN

If so, why? If not, why not?

- failure to abolish *Indian Act* and move to a nation-to-nation model, partly due to First Nations unwillingness to re-organize themselves into a smaller number of larger nations
- failure to close living standards gap due to federal government's fiscal unwillingness (eg killing of Kelowna Accord) and popular view - backed by mainstream media - that improvements in Aboriginal peoples' well-being should be pursued only if Aboriginal peoples give up on their rights and self-government agenda.