

Appendix A: Summary of Recommendations in Volume 2, Parts One and Two

Conclusions and recommendations are grouped by theme and do not necessarily appear here in the same order as in the text. The original numbering of recommendations has been retained, however (with the first number representing the volume, the second the chapter, and the third the recommendation number), to facilitate placing them in their original context.

Chapter 2 Treaties

With respect to the historical treaties, the Commission recommends that

2.2.2

The parties implement the historical treaties from the perspective of both justice and reconciliation:

(a) Justice requires the fulfilment of the agreed terms of the treaties, as recorded in the treaty text and supplemented by oral evidence.

(b) Reconciliation requires the establishment of proper principles to govern the continuing treaty relationship and to complete treaties that are incomplete because of the absence of consensus.

2.2.3

The federal government establish a continuing bilateral process to implement and renew the Crown's relationship with and obligations to the treaty nations under the historical treaties, in accordance with the treaties' spirit and intent.

2.2.4

The spirit and intent of the historical treaties be implemented in accordance with the following fundamental principles:

(a) The specific content of the rights and obligations of the parties to the

treaties is determined for all purposes in a just and liberal way, by reference to oral as well as written sources.

(b) The Crown is in a trust-like and non-adversarial fiduciary relationship with the treaty nations.

(c) The Crown's conflicting duties to the treaty nations and to Canadians generally is reconciled in the spirit of the treaty partnership.

(d) There is a presumption in respect of the historical treaties that

- treaty nations did not intend to consent to the blanket extinguishment of their Aboriginal rights and title by entering into the treaty relationship;
- treaty nations intended to share the territory and jurisdiction and management over it, as opposed to ceding the territory, even where the text of an historical treaty makes reference to a blanket extinguishment of land rights; and
- treaty nations did not intend to give up their inherent right of governance by entering into a treaty relationship, and the act of treaty making is regarded as an affirmation rather than a denial of that right.

With regard to new treaties and agreements, the Commission recommends that

2.2.6

The federal government establish a process for making new treaties to replace the existing comprehensive claims policy, based on the following principles:

(a) The blanket extinguishment of Aboriginal land rights is not an option.

(b) Recognition of rights of governance is an integral component of new treaty relationships.

(c) The treaty-making process is available to all Aboriginal nations, including

Indian, Inuit and Métis nations.

(d) Treaty nations that are parties to peace and friendship treaties that did not purport to address land and resource issues have access to the treaty-making process to complete their treaty relationships with the Crown.

In relation to all treaties, the Commission recommends that

2.2.11

The following matters be open for discussion in treaty implementation and renewal and treaty-making processes:

- governance, including justice systems, long term financial arrangements including fiscal transfers and other intergovernmental arrangements;
- lands and resources;
- economic rights, including treaty annuities and hunting, fishing and trapping rights;
- issues included in specific treaties (for example, education, health and taxation); and
- other issues relevant to treaty relationships identified by either treaty party.

2.2.5

Once the spirit and intent of specific treaties have been recognized and incorporated into the agreed understanding of the treaty, all laws, policies and practices that have a bearing on the terms of the treaty be made to reflect this understanding.

With respect to establishing a new treaty process, the Commission recommends that

2.2.7

The federal government prepare a royal proclamation for the consideration of Her Majesty the Queen that would

(a) supplement the *Royal Proclamation of 1763*; and

(b) set out, for the consideration of all Aboriginal and treaty nations in Canada, the fundamental principles of

(i) the bilateral nation-to-nation relationship;

(ii) the treaty implementation and renewal processes; and

(iii) the treaty-making processes.

2.2.8

The federal government introduce companion treaty legislation in Parliament that

(a) provides for the implementation of existing treaty rights, including the treaty rights to hunt, fish and trap;

(b) affirms liberal rules of interpretation for historical treaties, having regard to

(i) the context of treaty negotiations;

(ii) the spirit and intent of each treaty; and

(iii) the special relationship between the treaty parties;

(c) makes oral and secondary evidence admissible in the courts when they are making determinations with respect to historical treaty rights;

(d) recognizes and affirms the land rights and jurisdiction of Aboriginal nations as essential components of treaty processes;

(e) declares the commitment of the Parliament and government of Canada

to the implementation and renewal of each treaty in accordance with the spirit and intent of the treaty and the relationship embodied in it;

(f) commits the government of Canada to treaty processes that clarify, implement and, where the parties agree, amend the terms of treaties to give effect to the spirit and intent of each treaty and the relationship embodied in it;

(g) commits the government of Canada to a process of treaty making with

(i) Aboriginal nations that do not yet have a treaty with the Crown; and

(ii) treaty nations whose treaty does not purport to address issues of lands and resources;

(h) commits the government of Canada to treaty processes based on and guided by the nation-to-nation structure of the new relationship, implying

(i) all parties demonstrating a spirit of openness, a clear political will and a commitment to fair, balanced and equitable negotiations; and

(ii) no party controlling the access to, the scope of, or the funding for the negotiating processes; and

(i) authorizes the establishment, in consultation with treaty nations, of the institutions this Commission recommends as necessary to fulfil the treaty processes.

2.2.10

The royal proclamation and companion legislation in relation to treaties accomplish the following:

(a) declare that entry into treaty-making and treaty implementation and renewal processes by Aboriginal and treaty nations is voluntary;

(b) use clear, non-derogation language to ensure that the royal proclamation and legislation do not derogate from existing Aboriginal and

treaty rights;

(c) provide for short- and medium-term initiatives to support treaty implementation and renewal and treaty making, since those processes will take time to complete; and

(d) provide adequate long-term resources so that treaty-making and treaty implementation and renewal processes can achieve their objectives.

2.2.12

The royal proclamation and companion legislation in relation to treaties provide for one or more of the following outcomes:

(a) protocol agreements between treaty nations and the Crown that provide for the implementation and renewal of existing treaties, but do not themselves have the status of a treaty;

(b) supplementary treaties that coexist with existing treaties;

(c) replacement treaties;

(d) new treaties; and

(e) other instruments to implement treaties, including legislation and regulations of the treaty parties.

2.2.13

The royal proclamation and companion legislation in relation to treaties:

(a) establish a Crown Treaty Office within a new Department of Aboriginal Relations; and

(b) direct that Office to be the lead Crown agency participating in nation-to-nation treaty processes.

With regard to provincial and territorial responsibilities, the Commission

recommends that

2.2.9

The governments of the provinces and territories introduce legislation, parallel to the federal companion legislation, that

- (a) enables them to meet their treaty obligations;
- (b) enables them to participate in treaty implementation and renewal processes and treaty-making processes; and
- (c) establishes the institutions required to participate in those treaty processes, to the extent of their jurisdiction.

2.2.14

Each province establish a Crown Treaty Office to enable it to participate in treaty processes.

Regarding the creation of treaty institutions, the Commission recommends that

2.2.15

The governments of Canada, relevant provinces and territories, and Aboriginal and treaty nations establish treaty commissions as permanent, independent and neutral bodies to facilitate and oversee negotiations in treaty processes.

2.2.16

The following be the essential features of treaty commissions:

- Commissioners to be appointed in equal numbers from lists prepared by the parties, with an independent chair being selected by those appointees.
- Commissions to have permanent administrative and research staff, with

full independence from government and from Aboriginal and treaty nations.

- Staff of the commissions to act as a secretariat for treaty processes.
- Services of the commissions to go beyond simple facilitation. Where the parties require specialized fact finding of a technical nature, commissions to have the power to hire the necessary experts.
- Commissions to monitor and guide the conduct of the parties in the treaty process to ensure that fair and proper standards of conduct and negotiation are maintained.
- Commissions to conduct inquiries and provide research, analysis and recommendations on issues in dispute in relation to historical and future treaties, as requested jointly by the parties.
- Commissions to supervise and facilitate cost sharing by the parties.
- Commissions to provide mediation services to the parties as jointly requested.
- Commissions to provide remedies for abuses of process.
- Commissions to provide binding or non-binding arbitration of particular matters and other dispute resolution services, at the request of the parties, consistent with the political nature of the treaty process.

2.2.17

The Aboriginal Lands and Treaties Tribunal recommended by this Commission (see Volume 2, Chapter 4) play a supporting role in treaty processes, particularly in relation to

- (a) issues of process (for example, ensuring good-faith negotiations);
- (b) the ordering of interim relief; and
- (c) appeals from the treaty commissions regarding funding of treaty

processes.

With regard to fostering public education and awareness, the Commission recommends that

2.2.1

Federal, provincial and territorial governments provide programs of public education about the treaties to promote public understanding of the following concepts:

(a) Treaties were made, and continue to be made, by Aboriginal nations on a nation-to-nation basis, and those nations continue to exist and deserve respect as nations.

(b) Historical treaties were meant by all parties to be sacred and enduring and to be spiritual as well as legal undertakings.

(c) Treaties with Aboriginal nations are fundamental components of the constitution of Canada, analogous to the terms of union whereby provinces joined Confederation.

(d) Fulfilment of the treaties, including the spirit and intent of the historical treaties, is a test of Canada's honour and of its place of respect in the family of nations.

(e) Treaties embody the principles of the relationship between the Crown and the Aboriginal nations that made them or that will make them in the future.

Chapter 3 Governance

With regard to the establishment of Aboriginal governance, the Commission concludes that

1. The right of self-determination is vested in all the Aboriginal peoples of Canada, including First Nations, 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 relationship with Canada and to establish governmental structures that they consider appropriate for their needs.

2. When exercised by Aboriginal peoples within the context of the Canadian federation, 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.

3. Aboriginal peoples are not racial groups; rather 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 ancestry. As organic political entities, they have the capacity to evolve over time and change in their internal composition.

4. The right of self-determination is vested in Aboriginal nations rather than small local communities. By Aboriginal nation we mean 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. Currently, there are between 60 and 80 historically based nations in Canada, compared with a thousand or so local Aboriginal communities.

5. The more specific attributes of an Aboriginal nation are that

- the nation has a collective sense of national identity that is evinced in a common history, language, culture, traditions, political consciousness, laws, governmental structures, spirituality, ancestry and homeland;
- it is of sufficient size and capacity to enable it to assume and exercise powers and responsibilities flowing from the right of self-determination in an effective manner; and
- it constitutes a majority of the permanent population of a certain territory or collection of territories and, in the future, will operate from a defined territorial base.

The Commission therefore recommends that

2.3.2

All governments in Canada recognize that Aboriginal peoples are nations vested with the right of self-determination.

With regard to government recognition of Aboriginal nations, the Commission concludes that

6. Aboriginal peoples are entitled to identify their own national units for purposes of exercising the right of self-determination. For an Aboriginal nation to hold the right of self-determination, it does not have to be recognized as such by the federal government or by provincial governments. Nevertheless, as a practical matter, unless other Canadian governments are prepared to acknowledge the existence of Aboriginal nations and to negotiate with them, such nations may find it difficult to exercise their rights effectively. Therefore, in practice there is a need for the federal and provincial governments actively to acknowledge the existence of the various Aboriginal nations in Canada and to engage in serious negotiations designed to implement their rights of self-determination.

The Commission therefore recommends that

2.3.3

The federal government put in place a neutral and transparent process for identifying Aboriginal groups entitled to exercise the right of self-determination as nations, a process that uses the following specific attributes of nationhood:

(a) The nation has a collective sense of national identity that is evinced in a common history, language, culture, traditions, political consciousness, laws, governmental structures, spirituality, ancestry and homeland.

(b) The nation is of sufficient size and capacity to enable it to assume and exercise powers and responsibilities flowing from the right of self-determination in an effective manner.

(c) The nation constitutes a majority of the permanent population of a certain territory or collection of territories and, in the future, operates from a

defined territorial base.

With regard to the jurisdiction of Aboriginal governments, the Commission concludes that

7. The right of self-determination is the fundamental starting point for Aboriginal initiatives in the area of governance. However, it is not the only possible basis for such initiatives. In addition, Aboriginal peoples possess the inherent right of self-government within Canada as a matter of Canadian constitutional law. This right is inherent in the sense that it finds its ultimate origins in the collective lives and traditions of Aboriginal peoples themselves rather than the Crown or Parliament. More specifically, it stems from the original status of Aboriginal peoples as independent and sovereign nations in the territories they occupied, as this status was recognized and given effect in the numerous treaties, alliances and other relations maintained with the incoming French and British Crowns. This extensive practice gave rise to a body of inter-societal customary law that was common to the parties and eventually became part of the law of Canada.

8. The inherent right of Aboriginal self-government is recognized and affirmed in section 35(1) of the *Constitution Act, 1982* as an Aboriginal and treaty-protected right. The inherent right is thus entrenched in the Canadian constitution, providing a basis for Aboriginal governments to function as one of three distinct orders of government in Canada.

9. The constitutional right of self-government does not supersede the right of self-determination or take precedence over it. Rather, it is available to Aboriginal peoples who wish to take advantage of it, in addition to their right of self-determination, treaty rights and any other rights that they enjoy now or negotiate in the future. In other words, the constitutional right of self-government is one of a range of voluntary options available to Aboriginal peoples.

10. Generally speaking, the sphere of inherent Aboriginal jurisdiction under section 35(1) comprises all matters relating to the good government and welfare of Aboriginal peoples and their territories. This sphere of inherent jurisdiction is divided into two sectors: a core and a periphery.

11. The core of Aboriginal jurisdiction includes all matters that are of vital

concern to the life and welfare of a particular Aboriginal people, its culture and identity; that do not have a major impact on adjacent jurisdictions; and that otherwise are not 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.

12. The periphery comprises the remainder of the sphere of inherent Aboriginal jurisdiction. It includes, among other things, subject-matters that have a major impact on adjacent jurisdictions or attract transcendent federal or provincial concern. Such matters require a substantial degree of co-ordination among Aboriginal, federal and provincial governments. In our view, an Aboriginal group cannot legislate at its own initiative in this area until agreements have been concluded with federal and provincial governments.

13. When an Aboriginal government passes legislation dealing with a subject-matter falling within the core, any inconsistent federal or provincial legislation is automatically displaced. An Aboriginal government can thus expand, contract or vary its exclusive range of operations in an organic manner, in keeping with its needs and circumstances. Where there is no inconsistent Aboriginal legislation occupying the field in a core area of jurisdiction, federal and provincial laws continue to apply in accordance with standard constitutional rules.

14. By way of exception, in certain cases a federal law may take precedence over an Aboriginal law where they conflict. However, for this to happen, the federal law has to meet the strict standard laid down by the Supreme Court of Canada in the *Sparrow* decision. Under this standard, the federal law has to serve a compelling and substantial need and be consistent with the Crown's basic fiduciary responsibilities to Aboriginal peoples.

15. In relation to matters in the periphery, a self-government treaty or agreement is needed to settle the jurisdictional overlap between an Aboriginal government and the federal and provincial governments. Among other things, a treaty will need to specify which areas of jurisdiction are exclusive and which are concurrent and, in the latter case, which legislation will prevail in case of conflict. Until such a treaty is concluded, Aboriginal

jurisdiction in the periphery remains in abeyance, and federal and provincial laws continue to apply within their respective areas of legislative jurisdiction.

16. A treaty dealing with the inherent right of self-government gives rise to treaty rights under section 35(1) of the *Constitution Act, 1982* and thus becomes constitutionally entrenched. Even when a self-government agreement does not itself constitute a treaty, rights articulated in it may nevertheless become constitutionally entrenched.

The Commission therefore recommends that

2.3.4

All governments in Canada recognize that the inherent right of Aboriginal self-government has the following characteristics:

- (a) It is an existing Aboriginal and treaty right that is recognized and affirmed in section 35(1) of the *Constitution Act, 1982*.
- (b) Its origins lie within Aboriginal peoples and nations as political and cultural entities.
- (c) It arises from the sovereign and independent status of Aboriginal peoples and nations before and at the time of European contact and from the fact that Aboriginal peoples were in possession of their own territories, political systems and customary laws at that time.
- (d) The inherent right of self-government has a substantial degree of immunity from federal and provincial legislative acts, except where, in the case of federal legislation, it can be justified under a strict constitutional standard.

2.3.5

All governments in Canada recognize that the sphere of the inherent right of Aboriginal self-government

- (a) encompasses all matters relating to the good government and welfare of

Aboriginal peoples and their territories; and

(b) is divided into two areas:

- core areas of jurisdiction, which include all matters that are of vital concern for the life and welfare of a particular Aboriginal people, its culture and identity, do not have a major impact on adjacent jurisdictions, and are not otherwise the object of transcendent federal or provincial concern; and
- peripheral areas of jurisdiction, which make up the remainder.

2.3.6

All governments in Canada recognize that

(a) in the core areas of jurisdiction, as a matter of principle, Aboriginal peoples have the capacity to implement their inherent right of self-government by self-starting initiatives without the need for agreements with the federal and provincial governments, although it would be highly advisable that they negotiate agreements with other governments in the interests of reciprocal recognition and avoiding litigation; and

(b) in peripheral areas of jurisdiction, agreements should be negotiated with other governments to implement and particularize the inherent right as appropriate to the context and subject matter being negotiated.

With regard to the right of self-government, which is vested in Aboriginal nations, the Commission concludes that

18. 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.

The Commission therefore recommends that

2.3.7

All governments in Canada recognize that the right of self-government is vested in Aboriginal nations rather than small local communities.

2.3.13

All governments in Canada support Aboriginal peoples' desire to exercise both territorial and communal forms of jurisdiction, and co-operate with and assist them in achieving these objectives through negotiated self-government agreements.

2.3.14

In establishing and structuring their governments, Aboriginal peoples give consideration to three models of Aboriginal government — nation government, public government and community of interest government — while recognizing that changes to these models can be made to reflect particular aspirations, customs, culture, traditions and values.

2.3.15

When Aboriginal people establish governments that reflect either a nation or a public government approach, the laws of these governments be recognized as applicable to all residents within the territorial jurisdictions of the government unless otherwise provided by that government.

2.3.16

When Aboriginal people choose to establish nation governments,

(a) The rights and interests of residents on the nation's territory who are not citizens or members of the nation be protected.

(b) That such protection take the form of representation in the decision-making structures and processes of the nation.

Regarding Aboriginal peoples and citizenship, the Commission concludes that

19. Under section 35 of the *Constitution Act, 1982*, an Aboriginal nation has the right to determine which individuals belong to the nation as members and citizens. However, this right is subject to two basic limitations. First, it cannot be exercised in a manner that discriminates between men and women. Second, it cannot specify a minimum blood quantum as a general prerequisite for citizenship. Modern Aboriginal nations, like other nations in the world today, represent a mixture of genetic heritages. Their identity lies in their collective life, their history, ancestry, culture, values, traditions and ties to the land, rather than in their race as such.

The Commission therefore recommends that

2.3.8

The government of Canada recognize Aboriginal people in Canada as enjoying a unique form of dual citizenship, that is, as citizens of an Aboriginal nation and citizens of Canada.

2.3.9

The government of Canada take steps to ensure that the Canadian passports of Aboriginal citizens

- (a) explicitly recognize this dual citizenship; and
- (b) identify the Aboriginal nation citizenship of individual Aboriginal persons.

2.3.10

Aboriginal nations, in exercising the right to determine citizenship, and in establishing rules and processes for this purpose, adopt citizenship criteria that

- (a) are consistent with section 35(4) of the *Constitution Act, 1982*;

(b) reflect Aboriginal nations as political and cultural entities rather than as racial groups, and therefore do not make blood quantum a general prerequisite for citizenship determination; and

(c) may include elements such as self-identification, community or nation acceptance, cultural and linguistic knowledge, marriage, adoption, residency, birthplace, descent and ancestry among the different ways to establish citizenship.

2.3.11

As part of their citizenship rules, Aboriginal nations establish mechanisms for resolving disputes concerning the nation's citizenship rules generally, or individual applications specifically. These mechanisms are to be

(a) characterized by fairness, openness and impartiality;

(b) structured at arm's length from the central decision-making bodies of the Aboriginal government; and

(c) operated in accordance with the *Canadian Charter of Rights and Freedoms* and with international norms and standards concerning human rights.

With regard to Aboriginal governments as one of three distinct orders of government in Canada, the Commission concludes that

20. The enactment of section 35 of the *Constitution Act, 1982* has had far-reaching significance. It serves to confirm 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 status rather than by delegation. They share the sovereign powers of Canada as a whole, powers that represent a pooling of existing sovereignties.

21. Aboriginal peoples also have a special relationship with the Canadian

Crown, which the courts have described as *sui generis* or one of a kind. This relationship traces its origins to the treaties and other links formed over the centuries and to the inter-societal law and custom that underpinned them. By virtue of this relationship, the Crown acts as the protector of the sovereignty of Aboriginal peoples within Canada and as guarantor of their Aboriginal and treaty rights. This fiduciary relationship is a fundamental feature of the constitution of Canada.

22. Nevertheless, there is a profound need for a process that will afford Aboriginal peoples the opportunity to restructure existing governmental institutions and participate as partners in the Canadian federation on terms they freely accept. The existing right of self-government under section 35 of the *Constitution Act, 1982* is no substitute for a just process that implements the basic right of self-determination by means of freely negotiated treaties between Aboriginal nations and the Crown.

The Commission therefore recommends that

2.3.12

All governments in Canada recognize that

(a) section 35 of the *Constitution Act* provides the basis for an Aboriginal order of government that coexists within the framework of Canada along with the federal and provincial orders of government; and that

(b) each order of government operates within its own distinct sovereign sphere, as defined by the Canadian constitution, and exercises authority within spheres of jurisdiction having both overlapping and exclusive components.

With respect to Aboriginal governments and the Canadian Charter of Rights and Freedoms, the Commission concludes that

17. The *Canadian Charter of Rights and Freedoms* applies to Aboriginal governments and regulates relations with individuals falling within their jurisdiction. However, under section 25, the Charter must be given a flexible interpretation that takes account of the distinctive philosophies, traditions and cultural practices of Aboriginal peoples. Moreover, under section 33,

Aboriginal nations can pass notwithstanding clauses that suspend the operation of certain Charter sections for a period. Nevertheless, by virtue of sections 28 and 35(4) of the *Constitution Act, 1982*, Aboriginal women and men are in all cases guaranteed equal access to the inherent right of self-government and are entitled to equal treatment by their governments.

With regard to financing Aboriginal governments, the Commission recommends that

2.3.17

Aboriginal governments established under a renewed relationship have fundamentally new fiscal arrangements, not adaptation or modification of existing fiscal arrangements for *Indian Act* band governments.

2.3.18

The financing mechanism used for equalization purposes be based not only on revenue-raising capacity, but also take into account differences in the *expenditure needs* of the Aboriginal governments they are designed to support, as is done with the fiscal arrangements for the territorial governments, and that the tax effort that Aboriginal governments make be taken into consideration in the design of these fiscal arrangements.

2.3.19

Financial arrangements provide greater fiscal autonomy for Aboriginal governments by increasing access to independent own-source revenues through a fair and just redistribution of lands and resources for Aboriginal peoples, and through the recognition of the right of Aboriginal governments to develop their own systems of taxation.

2.3.20

Aboriginal citizens living on their territory pay personal income tax to their Aboriginal governments; for Aboriginal citizens living off the territory, taxes continue to be paid to the federal and relevant provincial government; for non-Aboriginal residents on Aboriginal lands, several options exist:

(a) all personal income taxes could be paid to the Aboriginal government, provided that the level of taxation applied does not create a tax haven for non-Aboriginal people;

(b) all personal income taxes could be paid to the Aboriginal government, with any difference between the Aboriginal personal income tax and the combined federal and provincial personal income tax going to the federal government (in effect, providing tax abatements for taxes paid to Aboriginal governments); or

(c) provincial personal income tax could go to the Aboriginal government and the federal personal income tax to the federal government in circumstances where the Aboriginal government decides to adopt the existing federal/provincial tax rate.

2.3.21

Aboriginal governments reimburse provincial governments for services the latter continue to provide, thereby forgoing the requirement for provincial taxes to be paid by their residents.

2.3.22

Non-Aboriginal residents be represented effectively in the decision-making processes of Aboriginal nation governments.

2.3.23

Revenues arising from specific claims settlements not be considered a direct source of funding for Aboriginal governments and therefore not be included as own-source funding for purposes of calculating fiscal transfers.

2.3.24

Financial settlements arising from comprehensive land claims and treaty land entitlements not be considered a direct source of funding for Aboriginal governments.

2.3.25

Investment income arising from Aboriginal government decisions to invest monies associated with a financial settlement — either directly or through a corporation established for this purpose — be treated as own-source revenue for purposes of calculating intergovernmental fiscal transfers unless it is used to repay loans advanced to finance the negotiations, to offset the effect of inflation on the original financial settlements, thereby preserving the value of the principal, or to finance charitable activities or community works.

2.3.26

Federal and provincial governments and national Aboriginal organizations negotiate

(a) a Canada-wide framework to guide the fiscal relationship among the three orders of government; and

(b) interim fiscal arrangements for those Aboriginal nations that achieve recognition and begin to govern in their core areas of jurisdiction on existing Aboriginal lands.

With regard to a legal framework for recognizing Aboriginal governments, the Commission recommends that

2.3.27

The Parliament of Canada enact an Aboriginal Nations Recognition and Government Act to

(a) establish the process whereby the government of Canada can recognize the accession of an Aboriginal group or groups to nation status and its assumption of authority as an Aboriginal government to exercise its inherent self-governing jurisdiction;

(b) establish criteria for the recognition of Aboriginal nations, including

(i) evidence among the communities concerned of common ties of language, history, culture and of willingness to associate, coupled with sufficient size to support the exercise of a broad, self-governing mandate;

(ii) evidence of a fair and open process for obtaining the agreement of its citizens and member communities to embark on a nation recognition process;

(iii) completion of a citizenship code that is consistent with international norms of human rights and with the *Canadian Charter of Rights and Freedoms*;

(iv) evidence that an impartial appeal process had been established by the nation to hear disputes about individuals' eligibility for citizenship;

(v) evidence that a fundamental law or constitution has been drawn up through wide consultation with its citizens; and

(vi) evidence that all citizens of the nation were permitted, through a fair means of expressing their opinion, to ratify the proposed constitution;

(c) authorize the creation of recognition panels under the aegis of the proposed Aboriginal Lands and Treaties Tribunal to advise the government of Canada on whether a group meets recognition criteria;

(d) enable the federal government to vacate its legislative authority under section 91(24) of the *Constitution Act, 1867* with respect to core powers deemed needed by Aboriginal nations and to specify which additional areas of federal jurisdiction the Parliament of Canada is prepared to acknowledge as being core powers to be exercised by Aboriginal governments; and

(e) provide enhanced financial resources to enable recognized Aboriginal nations to exercise expanded governing powers for an increased population base in the period between recognition and the conclusion or reaffirmation of comprehensive treaties.

With regard to creating a Canada-wide framework agreement to guide treaty negotiations, the Commission recommends that

2.3.28

The government of Canada convene a meeting of premiers, territorial leaders and national Aboriginal leaders to create a forum charged with drawing up a Canada-wide framework agreement. The purpose of this agreement would be to establish common principles and directions to guide the negotiation of treaties with recognized Aboriginal nations. This forum should have a mandate to conclude agreements on

- (a) the areas of jurisdiction to be exercisable by Aboriginal nations and the application of the doctrine of paramountcy in the case of concurrent jurisdiction;
- (b) fiscal arrangements to finance the operations of Aboriginal governments and the provision of services to their citizens;
- (c) principles to govern the allocation of lands and resources to Aboriginal nations and for the exercise of co-jurisdiction on lands shared with other governments;
- (d) principles to guide the negotiation of agreements for interim relief to govern the development of territories subject to claims, before the conclusion of treaties; and
- (e) an interim agreement to set out the core powers that Canadian governments are prepared to acknowledge Aboriginal nations can exercise once they are recognized but before treaties are renegotiated.

With respect to rebuilding Aboriginal nations and reclaiming nationhood, the Commission recommends that

2.3.29

Aboriginal peoples develop and implement their own strategies for rebuilding Aboriginal nations and reclaiming Aboriginal nationhood. These strategies may

- (a) include cultural revitalization and healing processes;

(b) include political processes for building consensus on the basic composition of the Aboriginal nation and its political structures; and

(c) be undertaken by individual communities and by groups of communities that may share Aboriginal nationhood.

2.3.30

The federal government, in co-operation with national Aboriginal organizations, establish an Aboriginal government transition centre with a mandate to

(a) research, develop and co-ordinate, with other institutions, initiatives and studies to assist Aboriginal peoples throughout the transition to Aboriginal self-government on topics such as citizenship codes, constitutions and institutions of government, as well as processes for nation rebuilding and citizen participation;

(b) develop and deliver, through appropriate means, training and skills development programs for community leaders, community facilitators and field workers, as well as community groups that have assumed responsibility for animating processes to rebuild Aboriginal nations; and

(c) facilitate information sharing and exchange among community facilitators, leaders and others involved in nation rebuilding processes.

2.3.31

The federal government provide the centre with operational funding as well as financial resources to undertake research and design and implement programs to assist transition to self-government, with a financial commitment for five years, renewable for a further five years.

2.3.32

The centre be governed by a predominantly Aboriginal board, with seats assigned to organizations representing Aboriginal peoples and governments, the federal government, and associated institutions and

organizations.

2.3.33

In all regions of Canada, universities and other post-secondary education facilities, research institutes, and other organizations, in association with the proposed centre, initiate programs, projects and other activities to assist Aboriginal peoples throughout the transition to Aboriginal self-government.

2.3.34

The Aboriginal government transition centre support Aboriginal nations in creating their constitutions by promoting, co-ordinating and funding, as appropriate, associated institutions and organizations for initiatives that

(a) provide professional, technical and advisory support services in key areas of Aboriginal constitutional development, such as

- citizenship and membership;
- political institutions and leadership;
- decision-making processes; and
- identification of territory;

(b) provide training programs to the leaders and staff of Aboriginal nation political structures who are centrally involved in organizing, co-ordinating, managing and facilitating constitution-building processes;

(c) provide assistance to Aboriginal nations in designing and implementing community education and consultation strategies;

(d) assist Aboriginal nations in preparing for, organizing and carrying out nation-wide referenda on Aboriginal nation constitutions; and

(e) facilitate information sharing among Aboriginal nations on constitutional development processes and experiences.

2.3.35

The Aboriginal government transition centre promote, co-ordinate and fund, as appropriate, in collaboration with associated institutions and organizations, the following types of initiatives:

(a) special training programs for Aboriginal negotiators to increase their negotiating skills and their knowledge of issues that will be addressed through negotiations; and

(b) training programs of short duration for Aboriginal government leaders

- to enhance Aboriginal leadership capacities in negotiation; and
- to increase the capacity of Aboriginal leaders to support and mandate negotiators and negotiation activities, as well as nation-level education, consultation and communication strategies.

2.3.36

Early in the process of planning for self-government agreements, whether in treaties or other agreements, provisions be drafted to

(a) recognize education and training as a vital component in the transition to Aboriginal government and implement these activities well before self-government takes effect; and

(b) include provisions for the transfer of resources to support the design, development and implementation of education and training strategies.

2.3.37

To assist Aboriginal nations in developing their governance capacities, the Aboriginal government transition centre promote, co-ordinate and fund, as appropriate, in collaboration with associated education institutions initiatives that

- promote and support excellence in Aboriginal management;

- reflect Aboriginal traditions; and
- enhance management skills in areas central to Aboriginal government activities and responsibilities.

2.3.38

A partnership program be established to twin Aboriginal governments with Canadian governments of similar size and scope of operations.

In regard to establishing and maintaining accountability in governments, the Commission recommends that

2.3.39

Aboriginal governments develop and institute strategies for accountability and responsibility in government to maintain integrity in government and public confidence in Aboriginal government leaders, officials and administrations.

2.3.40

Aboriginal governments take the following steps to address accountability:

- (a) Formalize codes of conduct for public officials.
- (b) Establish conflict of interest laws, policies or guidelines.
- (c) Establish independent structures or agencies responsible for upholding and promoting the public interest and the integrity of Aboriginal governments.
- (d) Establish informal accountability mechanisms to ensure widespread and continuing understanding of Aboriginal government goals, priorities, procedures and activities, administrative decision making and reporting systems.

2.3.41

To the extent deemed appropriate by the Aboriginal people concerned, strategies for accountability and responsibility in Aboriginal government reflect and build upon Aboriginal peoples' own customs, traditions and values.

Regarding the acquisition of information and information management systems, the Commission recommends that

2.3.42

Statistics Canada take the following steps to improve its data collection:

(a) continue its efforts to consult Aboriginal governments and organizations to improve understanding of their data requirements;

(b) establish an external Aboriginal advisory committee, with adequate representation from national Aboriginal organizations and other relevant Aboriginal experts, to discuss

- Aboriginal statistical data requirements; and

- the design and implementation of surveys to gather data on Aboriginal people;

(c) continue the post-census survey on Aboriginal people and ensure that it becomes a regular data-collection vehicle maintained by Statistics Canada;

(d) include appropriate questions in all future censuses to enable a post-census survey of Aboriginal people to be conducted;

(e) in view of the large numbers of Aboriginal people living in non-reserve urban and rural areas, extend sampling sizes off-reserve to permit the statistical profiling of a larger number of communities than was possible in 1991;

(f) test questions that are acceptable to Aboriginal people and are more appropriate to obtaining information relevant to the needs of emerging forms of Aboriginal government;

(g) test a representative sample of Aboriginal people in post-census surveys;

(h) include the Metis Settlements of Alberta in standard geographic coding and give each community the status of a census subdivision;

(i) review other communities in the mid-north, which are not Indian reserves or Crown land settlements, to see whether they should have a special area flag on the census database; and

(j) consider applying a specific nation identifier to Indian reserves and settlements on the geographic files to allow data for these communities to be aggregated by nation affiliation as well as allowing individuals to identify with their nation affiliation.

2.3.43

The federal government take the following action with respect to future censuses:

(a) continue its policy of establishing bilateral agreements with representative Aboriginal governments and their communities, as appropriate, for future census and post-census survey operations;

(b) in light of the issues raised in this report and the need for detailed and accurate information on Aboriginal peoples, the decision not to engage in a post-census survey, in conjunction with the 1996 census, be reversed; and

(c) make special efforts to establish such agreements in those regions of Canada where participation was low in the 1991 census.

2.3.44

Governments provide for the implementation of information management

systems in support of self-government, which include

(a) financial support of technologies and equipment proportional to the scope of an Aboriginal government's operations; and

(b) training and skills development, including apprenticeships and executive exchanges with Statistics Canada, to facilitate compatibility between Aboriginal government systems and Statistics Canada.

With regard to restructuring federal institutions, the Commission recommends that

2.3.45

The government of Canada present legislation to abolish the Department of Indian Affairs and Northern Development and to replace it by two new departments: a Department of Aboriginal Relations and a Department of Indian and Inuit Services.

2.3.46

The prime minister appoint in a new senior cabinet position a minister of Aboriginal relations, to be responsible for

- guiding all federal actions associated with fully developing and implementing the new federal/Aboriginal relationship, which forms the core of this Commission's recommendations;
- allocating funds from the federal government's total Aboriginal expenditures across the government; and
- the activity of the chief Crown negotiator responsible for the negotiation of treaties, claims and self-government accords.

2.3.47

The prime minister appoint a new minister of Indian and Inuit services to

- act under the fiscal and policy guidance of the minister of Aboriginal relations; and
- be responsible for delivery of the government's remaining obligations to status Indians and reserve communities under the *Indian Act* as well as to Inuit.

2.3.48

The prime minister establish a new permanent cabinet committee on Aboriginal relations that

- is chaired by the minister of Aboriginal relations;
- is cabinet's working forum to deliberate on its collective responsibilities for Aboriginal matters; and
- takes the lead for cabinet in joint planning initiatives with Aboriginal nations and their governments.

2.3.49

The government of Canada make a major effort to hire qualified Aboriginal staff to play central roles in

- the two new departments;
- other federal departments with specific policy or program responsibilities affecting Aboriginal people; and
- the central agencies of government.

2.3.50

The government of Canada implement these changes within a year of the publication of this report. Complying with this deadline sends a clear signal that the government of Canada not only intends to reform its fundamental relationship with Aboriginal peoples but is taking the first practical steps to

do so.

2.3.51

The federal government, following extensive consultations with Aboriginal peoples, establish an Aboriginal parliament whose main function is to provide advice to the House of Commons and the Senate on legislation and constitutional matters relating to Aboriginal peoples.

2.3.52

The Aboriginal parliament be developed in the following manner:

(a) the federal government, in partnership with representatives of national Aboriginal peoples' organizations, first establish a consultation process to develop an Aboriginal parliament; major decisions respecting the design, structure and functions of the Aboriginal parliament would rest with the Aboriginal peoples' representatives; and

(b) following agreement among the parties, legislation be introduced in the Parliament of Canada before the next federal election, pursuant to section 91(24) of the *Constitution Act, 1867*, to create an Aboriginal parliament.

2.3.53

(a) Aboriginal parliamentarians be elected by their nations or peoples; and

(b) elections for the Aboriginal parliament take place at the same time as federal government elections to encourage Aboriginal people to participate and to add legitimacy to the process.

2.3.54

The enumeration of Aboriginal voters take place during the general enumeration for the next federal election.

Regarding the fulfilment of Canada's international responsibilities with respect to Aboriginal peoples, the Commission recommends that

2.3.1

The government of Canada take the following actions:

(a) enact legislation affirming the obligations it has assumed under international human rights instruments to which it is a signatory in so far as these obligations pertain to the Aboriginal peoples of Canada;

(b) recognize that its fiduciary relationship with Aboriginal peoples requires it to enact legislation to give Aboriginal peoples access to a remedy in Canadian courts for breach of Canada's international commitments to them;

(c) expressly provide in such legislation that resort may be had in Canada's courts to international human rights instruments as an aid to the interpretation of the *Canadian Charter of Rights and Freedoms* and other Canadian law affecting Aboriginal peoples;

(d) commence consultations with provincial governments with the objective of ratifying and implementing International Labour Organisation Convention No. 169 on Indigenous Peoples, which came into force in 1991;

(e) support the Draft Declaration of the Rights of Indigenous Peoples of 1993, as it is being considered by the United Nations;

(f) immediately initiate planning, with Aboriginal peoples, to celebrate the International Decade of Indigenous Peoples and, as part of the events, initiate a program for international exchanges between Indigenous peoples in Canada and elsewhere.

Chapter 4 Lands and Resources

With respect to principles and policies governing the negotiation of a land base for each Aboriginal nation, the Commission recommends that

2.4.1

Federal policy and all treaty-related processes (treaty making,

implementation and renewal) conform to these general principles:

(a) Aboriginal title is a real interest in land that contemplates a range of rights with respect to lands and resources.

(b) Aboriginal title is recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

(c) The Crown has a special fiduciary obligation to protect the interests of Aboriginal people, including Aboriginal title.

(d) The Crown has an obligation to protect rights concerning lands and resources that underlie Aboriginal economies and the cultural and spiritual life of Aboriginal peoples.

(e) The Crown has an obligation to reconcile the interests of the public with Aboriginal title.

(f) Lands and resources issues will be included in negotiations for self-government.

(g) Aboriginal rights, including rights of self-government, recognized by an agreement are 'treaty rights' within the meaning of section 35(1) of the *Constitution Act, 1982*.

(h) Negotiations between the parties are premised on reaching agreements that recognize an inherent right of self-government.

(i) Blanket extinguishment of Aboriginal land rights will not be sought in exchange for other rights or benefits contained in an agreement.

(j) Partial extinguishment of Aboriginal land rights will not be a precondition for negotiations and will be agreed to by the parties only after a careful and exhaustive analysis of other options and the existence of clear, unpressured consent by the Aboriginal party.

(k) Agreements will be subject to periodic review and renewal.

(l) Agreements will contain dispute resolution mechanisms tailored to the circumstances of the parties.

(m) Agreements will provide for intergovernmental agreements to harmonize the powers of federal, provincial, territorial and Aboriginal governments without unduly limiting any.

2.4.2

Federal, provincial and territorial governments, through negotiation, provide Aboriginal nations with lands that are sufficient in size and quality to foster Aboriginal economic self-reliance and cultural and political autonomy.

2.4.3

The goal of negotiations be to ensure that Aboriginal nations, within their traditional territories, have

(a) exclusive or preferential access to certain renewable and non-renewable resources, including water, or to a guaranteed share of them;

(b) a guaranteed share of the revenues flowing from resources development; and

(c) specified preferential guarantees or priorities to the economic benefits and opportunities flowing from development projects (for example, negotiated community benefits packages and rights of first refusal).

2.4.4

Aboriginal nations, through negotiation, receive, in addition to land, financial transfers, calculated on the basis of two criteria:

(a) *developmental needs* (capital to help the nation meet its future needs, especially relating to community and economic development); and

(b) *compensation* (partial restitution for past and present exploitation of the nation's traditional territory, including removal of resources as well as

disruption of Aboriginal livelihood).

2.4.5

Negotiations on the amount and quality of additional lands, and access to resources, be guided by the

(a) size of the territory that the Aboriginal nation traditionally occupied, controlled, enjoyed, and used;

(b) nature and type of renewable and non-renewable resources, including water, that the Aboriginal nation traditionally had access to and used;

(c) current and projected Aboriginal population;

(d) current and projected economic needs of that population;

(e) current and projected cultural needs of that population;

(f) amount of reserve or settlement land now held by the Aboriginal nation;

(g) productivity and value of the lands and resources and the likely level of return from exploitation for a given purpose;

(h) amount of Crown land available in the treaty area; and

(i) nature and extent of third-party interests.

2.4.6

In land selection negotiations, federal, provincial and territorial governments follow these principles:

(a) No unnecessary or arbitrary limits should be placed on lands for selection, such as

(i) the exclusion of coastlines, shorelines, beds of water (including marine areas), potential hydroelectric power sites, or resource-rich areas;

(ii) arbitrary limits on size, shape or contiguity of lands; or

(iii) arbitrary limits on the ability of the Aboriginal nation to purchase land in order to expand its territory.

(b) Additional lands to be provided from existing Crown lands within the territory in question.

(c) Where parties are seeking to renew an historical treaty, land selection not be limited by existing treaty boundaries (for example, the metes and bounds descriptions contained in the post-Confederation numbered treaties).

(d) Provincial or territorial borders not constrain selection negotiations unduly.

(e) Where Crown lands are not available in sufficient quantity, financial resources be provided to enable land to be purchased from willing third parties.

2.4.7

The government of Canada adopt the principles outlined in recommendations 2.4.1 to 2.4.6 as policy to guide its interaction with Aboriginal peoples on matters of lands and resources allocation with respect to current and future negotiations and litigation.

2.4.8

The government of Canada propose these principles for adoption by provincial and territorial governments as well as national Aboriginal organizations during the development of the Canada-wide framework agreement.

2.4.9

Following such consultations, the government of Canada propose to

Parliament that these principles, appropriately revised as a result of the consultations, be incorporated in an amendment to the legislation establishing the treaty processes.

Regarding categories of land ownership that result from negotiations and the determination of jurisdiction over them, the Commission recommends that

2.4.10

Negotiations aim to describe the territory in question in terms of three categories of land. Using these three categories will help to identify, as thoroughly and precisely as possible, the rights of each of the parties with respect to lands, resources and governance.

2.4.11

With respect to Category I lands,

(a) The Aboriginal nation has full rights of ownership and primary jurisdiction in relation to lands and renewable and non-renewable resources, including water, in accordance with the traditions of land tenure and governance of the nation in question.

(b) Category I lands comprise any existing reserve and settlement lands currently held by the Aboriginal nation, as well as additional lands necessary to foster economic and cultural self-reliance and political autonomy selected in accordance with the factors listed in recommendation 2.4.5.

2.4.12

With respect to Category II lands,

(a) Category II lands would form a portion of the traditional territory of the Aboriginal nation, that portion being determined by the degree to which Category I lands foster Aboriginal self-reliance.

(b) A number of Aboriginal and Crown rights with respect to lands and resources would be recognized by the agreement, and rights of governance and jurisdiction could be shared among the parties.

2.4.13

With respect to Category III lands, a complete set of Crown rights with respect to lands and governance would be recognized by the agreement, subject to residual Aboriginal rights of access to historical and sacred sites and hunting, fishing and trapping grounds, participation in national and civic ceremonies and events, and symbolic representation in certain institutions.

2.4.14

Aboriginal nations exercise legislative authority as follows:

- (a) primary and paramount legislative authority on Category I lands;
- (b) shared legislative authority on Category II lands; and
- (c) limited, negotiated authority exercisable in respect of citizens of the nation living on Category III lands and elsewhere and in respect of access to historical and sacred sites, participation in national and civic ceremonies and events, and symbolic representation in certain institutions.

2.4.15

As a general principle, lands currently held at common law in fee simple or, in Quebec, that are owned not be converted into Category I lands, unless purchased from willing sellers.

2.4.16

In exceptional cases where the Aboriginal nation's interests clearly outweigh the third party's rights and interests in a specific parcel, the Crown expropriate the land at fair market value on behalf of the Aboriginal party to convert it into Category I lands. This would be justified, for example, where

(a) a successful claim for the land might have been made under the existing specific claims policy based on the fact that reserve lands were unlawfully or fraudulently surrendered in the past; or

(b) the land is of outstanding traditional significance to the Aboriginal party (such as an Aboriginal cemetery or spiritual site or a place of substantial cultural significance).

2.4.17

Lands that at common law are held in fee simple or that in Quebec are owned can be included within Category II lands.

2.4.18

Lands affected at common law by third-party interests less than fee simple or under the civil law by third-party rights of enjoyment other than ownership may be selected as Category I lands. If such lands are selected, the Aboriginal nation is to respect the original terms of all common law tenures and all civil law dismemberments of ownership and personal rights of enjoyment.

2.4.19

In exceptional circumstances, where Aboriginal interests significantly outweigh third-party rights and interests, the Crown revoke the common law tenure or the civil law dismemberment of ownership or personal right of enjoyment at fair market value on behalf of the Aboriginal party to convert it into Category I lands. Examples of when this would be justified are where

(a) a successful claim for the land might have been made under the existing specific claims policy (such as reserve lands unlawfully or fraudulently surrendered in the past); or

(b) the land is of outstanding traditional significance to the Aboriginal party (such as an Aboriginal cemetery or spiritual site or a place of substantial cultural significance).

2.4.20

Lands affected at common law by interests less than fee simple or under the civil law by rights of enjoyment other than ownership can be selected as Category II lands.

2.4.21

Existing parks and protected areas not be selected as Category I lands, except in exceptional cases where the Aboriginal nation's interests clearly outweigh the Crown's interests in a specific parcel. Examples of when this would be justified are where

(a) a successful claim for all or part of the park or protected area might have been made under the existing specific claims policy (such as reserve lands unlawfully or fraudulently surrendered in the past);

(b) all or part of the park or protected area is of outstanding traditional significance to the Aboriginal party (such as an Aboriginal cemetery or spiritual site); or

(c) a park occupies a substantial portion of a nation's territory.

2.4.22

Existing parks and protected areas, as well as lands being considered for protected area or park status, may be selected as Category II lands.

2.4.23

Crown lands to which the public has access be available for selection as Category I or II lands.

2.4.26

Provincial governments establish policies parallel to the processes and reforms proposed in recommendations 2.4.1 to 2.4.22.

2.4.27

Provincial governments participate fully in the treaty-making and treaty implementation and renewal processes and in negotiations on interim relief agreements.

2.4.28

In addition to provisions made available under recommendations 2.4.2 to 2.4.5, provincial governments make Crown land available to an Aboriginal nation where traditional Aboriginal territory became provincial Crown land as the result of a breach of Crown duty.

With respect to measures to provide interim relief pending the resolution of land negotiations, the Commission recommends that

2.4.24

Federal and provincial governments recognize, in the Canada-wide framework agreement, the critical role of interim relief agreements and agree on principles and procedures to govern these agreements, providing for

- (a) the partial withdrawal of lands that are the subject of claims in a specific claims treaty process;
- (b) Aboriginal participation and consent in the use or development of withdrawn lands; and
- (c) revenues from royalties or taxation of resource developments on the withdrawn lands to be held in trust pending the outcome of the negotiation.

2.4.25

In relation to treaties, the companion legislation to the proposed royal proclamation state that the parties have a duty to make reasonable efforts to reach an interim relief agreement.

Regarding the jurisdiction and operation of the Aboriginal Lands and Treaties Tribunal, the Commission recommends that

2.4.29

Federal companion legislation to the royal proclamation provide for the establishment of an independent administrative tribunal, to be called the Aboriginal Lands and Treaties Tribunal.

2.4.30

Parliament, and provincial legislatures when they are ready, confer on the tribunal the necessary authority to enable it to discharge its statutory mandate pertaining to both federal and provincial spheres of jurisdiction.

2.4.31

Even without provincial delegation of powers to the tribunal, Parliament confer on the tribunal jurisdiction to the full extent of federal constitutional competence in respect of "Indians, and Lands reserved for the Indians", including the power to issue orders binding provincial governments and others, when they relate essentially to this head of federal competence.

2.4.32

The tribunal be established by federal statute operative in two areas:

(a) settlement of specific claims, including those removed by the Aboriginal party from the broader treaty-making, implementation and renewal processes; and

(b) treaty-making, implementation and renewal processes.

2.4.33

In respect of specific claims, the tribunal's jurisdiction include

(a) reviewing the adequacy of federal funding provided to claimants;

(b) monitoring the good faith of the bargaining process and making binding

orders on those in breach; and

(c) adjudicating claims, or parts of claims, referred to it by Aboriginal claimants and providing an appropriate remedy where called for.

2.4.34

In respect of the longer-term treaty-making, implementation and renewal processes, the tribunal's jurisdiction include

(a) reviewing the adequacy of federal funding to Aboriginal parties;

(b) supervising the negotiation, implementation, and conclusion of interim relief agreements, imposing interim relief agreements in the event of a breach of the duty to bargain in good faith, and granting interim relief pending successful negotiations of a new or renewed treaty, with respect to federal lands and on provincial lands where provincial powers have been so delegated;

(c) arbitrating any issues referred to it by the parties by mutual consent;

(d) monitoring the good faith of the bargaining process;

(e) adjudicating, on request of an Aboriginal party, questions of any Aboriginal or treaty rights that are related to the negotiations and justiciable in a court of law;

(f) investigating a complaint of non-compliance with a treaty undertaking, adjudicating the dispute and awarding an appropriate remedy when so empowered by the treaty parties; and

(g) recommending to the federal government, through panels established for the purpose, whether a group asserting the right of self-governance should be recognized as an Aboriginal nation.

2.4.35

The enabling legislation direct the tribunal to adopt a broad and progressive

interpretation of the treaties, not limiting itself to technical rules of evidence, and to take into account the fiduciary obligations of the Crown, Aboriginal customary and property law, and the relevant history of the parties' relations.

2.4.36

The Aboriginal Lands and Treaties Tribunal replace the Indian Claims Commission.

2.4.37

The tribunal's jurisdiction to determine specific claims be concurrent with the jurisdiction of the superior courts of the provinces.

2.4.38

The membership and staff of the tribunal

(a) reflect parity between Aboriginal and non-Aboriginal nominees and staff at every level, including the co-chairs of the tribunal; and

(b) be representative of the provinces and regions.

2.4.39

The process for appointing full-time and part-time members to the tribunal be as follows:

(a) the appointment process be open;

(b) nomination be by Aboriginal people, nations, or organizations, the federal government, and provinces that delegate powers to the tribunal;

(c) nominees approved by a screening committee be qualified and fit to serve on the tribunal;

(d) members be appointed by the federal government on the joint

recommendation of the minister of justice and the proposed minister of Aboriginal relations; and

(e) the terms of appointment of the co-chairs and members provide that, during their period of office, they be dismissable only for cause.

2.4.40

The tribunal operate as follows:

(a) emphasize informal procedures, respect the oral and cultural traditions of Aboriginal nations, and encourage direct participation by the parties;

(b) take an active role in ensuring the just and prompt resolution of disputes;

(c) maintain a small central research and legal staff and provide a registry for disputes; and

(d) hold hearings as close as is convenient to the site of the dispute, with panels comprising members from the region or province in question.

2.4.41

Decisions of the tribunal be final and binding and not subject to review by the courts, except on constitutional grounds and for jurisdictional error or breach of the duty of fairness under paragraphs 18.1(4)(a) and (b) of the *Federal Court Act*.

Concerning interim steps to expand First Nations' land base, the Commission recommends that

2.4.43

The federal government enter into an interim specific claims protocol with the Assembly of First Nations embodying, at a minimum, the following changes to current policy:

(a) the scope of the specific claims policy be expanded to include treaty-based claims;

(b) the definition of 'lawful obligation' and the compensation guidelines contained in the policy embody fiduciary principles, in keeping with Supreme Court decisions on government's obligations to Aboriginal peoples;

(c) where a claim involves the loss of land, the government of Canada use all efforts to provide equivalent land in compensation; only if restitution is impossible, or not desired by the First Nation, should claims be settled in cash;

(d) to expedite claims, the government of Canada provide significant additional resources for funding, negotiation and resolution of claims;

(e) the government of Canada improve access to the Indian Claims Commission and other dispute resolution mechanisms as a means of addressing interpretations of the specific claims policy, including submission to mediation and arbitration if requested by claimants; and

(f) the government of Canada respond to recommendations of the Indian Claims Commission within 90 days of receipt, and where it disagrees with such a recommendation, give specific written reasons.

2.4.44

The treaty land entitlement process be conducted as follows:

(a) the amount of land owing under treaty be calculated on the basis of population figures as of the date new negotiations begin;

(b) those population figures include urban residents, Bill C-31 beneficiaries and non-status Indians; and

(c) the federal government negotiate agreements with the provinces stipulating that a full range of land (including lands of value) be available for treaty land entitlement selection.

2.4.45

Land purchases be conducted as follows:

- (a) the federal government set up a land acquisition fund to enable all Aboriginal peoples (First Nations, Inuit and Métis) to purchase land on the open market;
- (b) the basic principles of 'willing seller, willing buyer' apply to all land purchases;
- (c) joint committees, with representatives from municipalities and neighbouring Aboriginal governments, be formed to deal with issues of common concern;
- (d) the federal government do its utmost to encourage the creation of such committees;
- (e) the federal government clarify the 1991 additions to reserves policy to ensure that the process of consultation with municipalities does not give them a veto over whether purchased lands are given reserve status; and
- (f) the federal government compensate municipalities for the loss of tax assessment for a fixed sum or specific term (not an indefinite period), if the municipality can show that such loss would result from the transfer of the purchased lands to reserve status.

2.4.46

Unsold surrendered lands be dealt with as follows:

- (a) the Department of Indian Affairs and Northern Development compile an inventory of all remaining unsold surrendered lands in the departmental land registry;
- (b) unsold surrendered lands be returned to the community that originally surrendered them;

(c) First Nations have the option of accepting alternative lands or financial compensation instead of the lands originally surrendered but not be compelled to accept either; and

(d) governments negotiate protection of third-party interests affected by the return of unsold surrendered lands, such as continued use of waterways and rights of access to private lands.

2.4.47

If reserve or community lands were expropriated by or surrendered to the Crown for a public purpose and the original purpose no longer exists, the lands be dealt with as follows:

(a) the land revert to the First Nations communities in question;

(b) if the expropriation was for the benefit of a third party (for example, a railway), the First Nations communities have the right of first refusal on such lands;

(c) any costs of acquisition of these lands be negotiated between the Crown and the First Nation, depending on the compensation given the First Nation community when the land was first acquired;

(d) if the land was held by the Crown, the costs associated with clean-up and environmental monitoring be borne by the government department or agency that controlled the lands;

(e) if the land was held by a third party, the costs associated with clean-up and environmental monitoring be borne jointly by the Crown and the third party;

(f) if an Aboriginal community does not wish the return of expropriated lands because of environmental damage or other reasons, they receive other lands in compensation or financial compensation equivalent to fair market value; and

(g) the content of such compensation package be determined by negotiation or, failing that, by the Aboriginal Lands and Treaties Tribunal.

Regarding interim measures to improve Aboriginal peoples' access to resource-based economic opportunities, the Commission recommends that

2.4.48

With respect to the general issue of improving Aboriginal access to natural resources on Crown land:

(a) the federal government seek the co-operation of provincial and territorial governments in drafting a national code of principles to recognize and affirm the continued exercise of traditional Aboriginal activities (hunting, fishing, trapping and gathering of medicinal and other plants) on Crown lands; and

(b) the provinces and territories amend relevant legislation to incorporate such a code.

2.4.49

With respect to forest resources on reserves, the federal government take the following steps:

(a) immediately provide adequate funding to complete forest inventories, management plans and reforestation of Indian lands;

(b) ensure that adequate forest management expertise is available to First Nations;

(c) consult with Aboriginal governments to develop a joint policy statement delineating their respective responsibilities in relation to Indian reserve forests;

(d) develop an operating plan to implement its own responsibilities as defined through the joint policy development process;

(e) continue the Indian forest lands program, but modify its objectives to reflect and integrate traditional knowledge and the resource values of First Nations communities with objectives of timber production; and

(f) in keeping with the goal of Aboriginal nation building, provide for the delivery of the Indian forest lands program by First Nations organizations (as has been the case with the Treaty 3 region of northwestern Ontario).

2.4.50

The following steps be taken with respect to Aboriginal access to forest resources on Crown lands:

(a) the federal government work with the provinces, the territories and Aboriginal communities to improve Aboriginal access to forest resources on Crown lands;

(b) the federal government, as part of its obligation to protect traditional Aboriginal activities on provincial Crown lands, actively promote Aboriginal involvement in provincial forest management and planning; as with the model forest program, this would include bearing part of the costs;

(c) the federal government, in keeping with the goal of Aboriginal nation building, give continuing financial and logistical support to Aboriginal peoples' regional and national forest resources associations;

(d) the provinces encourage their large timber licensees to provide for forest management partnerships with Aboriginal firms within the traditional territories of Aboriginal communities;

(e) the provinces encourage partnerships or joint ventures between Aboriginal forest operating companies and other firms that already have wood processing facilities;

(f) the provinces give Aboriginal people the right of first refusal on unallocated Crown timber close to reserves or Aboriginal communities;

(g) the provinces, to promote greater harmony with generally less intensive Aboriginal forest management practices and traditional land-use activities, show greater flexibility in their timber management policies and guidelines; this might include reducing annual allowable cut requirements and experimenting with lower harvesting rates, smaller logging areas and longer

maintenance of areas left unlogged;

(h) provincial and territorial governments make provision for a special role for Aboriginal governments in reviewing forest management and operating plans within their traditional territories; and

(i) provincial and territorial governments make Aboriginal land-use studies a requirement of all forest management plans.

2.4.51

In keeping with its fiduciary obligation to Aboriginal peoples, the federal government renegotiate existing agreements with the provinces (for example, the 1924 agreement with Ontario and the 1930 natural resource transfer agreements in the prairie provinces) to ensure that First Nations obtain the full beneficial interest in minerals, oil and natural gas located on reserves.

2.4.52

The federal government amend the Indian mining regulations to conform to the Indian oil and gas regulations and require companies operating on reserves to employ First Nations residents.

2.4.53

The federal government work with First Nations and the mining industry (and if necessary amend the Indian mining regulations and the Indian oil and gas regulations) to ensure the development of management experience among Aboriginal people and the transfer to them of industry knowledge and expertise.

2.4.54

The provinces require companies, as part of their operating licence, to develop Aboriginal land use plans to

(a) protect traditional harvesting and other areas (for example, sacred sites);

and

(b) compensate those adversely affected by mining or drilling (for example, Aboriginal hunters, trappers and fishers).

2.4.55

Land use plans be developed in consultation with affected Aboriginal communities as follows:

(a) Aboriginal communities receive intervener funding to carry out the consultation process;

(b) intervener funding be delivered through a body at arm's length from the company and the respective provincial ministry responsible for the respective natural resource; and

(c) funding for this body come from licence fees and from provincial or federal government departments responsible for the environment.

2.4.56

The provinces require that a compensation fund be set up and that contributions to it be part of licence fees. Alternatively, governments could consider this an allowable operating expense for corporate tax purposes.

2.4.57

The federal government work with the provinces and with Aboriginal communities to ensure that the steps we recommend are carried out. Federal participation could include cost-sharing arrangements with the provinces.

2.4.62

The principles enunciated by the Supreme Court of Canada in the *Sparrow* decision be implemented as follows:

(a) provincial and territorial governments ensure that their regulatory and management regimes acknowledge the priority of Aboriginal subsistence harvesting;

(b) for the purposes of the *Sparrow* priorities, the definition of 'conservation' not be established by government officials, but be negotiated with Aboriginal governments and incorporate respect for traditional ecological knowledge and Aboriginal principles of resource management; and

(c) the subsistence needs of non-Aboriginal people living in remote regions of Canada (that is, long-standing residents of remote areas, not transients) be ranked next in the *Sparrow* order of priority after those of Aboriginal people and ahead of all commercial or recreational fish and wildlife harvesting.

2.4.63

All provinces follow the example set by Canada and certain provinces (for example, Ontario and British Columbia) in buying up and turning over commercial fishing quotas to Aboriginal people. This would constitute partial restitution for historical inequities in commercial allocations.

2.4.64

The size of Aboriginal commercial fishing allocations be based on measurable criteria that

(a) are developed by negotiation rather than developed and imposed unilaterally by government;

(b) are not based, for example, on a community's aggregate subsistence needs alone; and

(c) recognize the fact that resources are essential for building Aboriginal economies and that Aboriginal people must be able to make a profit from their commercial fisheries.

2.4.65

Canada and the provinces apply the priorities set out in the *Sparrow* decision to Aboriginal commercial fisheries so that these fisheries in times of scarcity

(a) have greater priority than non-Aboriginal commercial interests and sport fishing; and

(b) remain ranked below conservation and Aboriginal (and, in remote areas, non-Aboriginal) domestic food fishing.

2.4.66

The federal government ensure effective Aboriginal representation on the Canadian commission set up under the 1985 Pacific Salmon Treaty with the United States.

2.4.67

To establish adequate baseline data for assessing the relative impact of the Aboriginal and non-Aboriginal harvest, and to assist in determining quotas to be allocated in accordance with the principles set out in the *Sparrow* decision, federal and provincial governments improve their data gathering on the non-Aboriginal harvest of fish and wildlife.

2.4.68

Federal and provincial governments carry out joint studies with Aboriginal people to determine the size of the Aboriginal harvest and the respective effects of Aboriginal and non-Aboriginal harvesting methods on stocks.

2.4.69

Public education form a major component of government fisheries policy. This will require joint strategies to inform the public about Aboriginal perspectives on fishing, to resolve differences and to overcome fears that Aboriginal entry into fisheries will mean overfishing, loss of control, or loss of property.

2.4.70

Provincial and territorial governments take the following action with respect to hunting:

(a) acknowledge that treaty harvesting rights apply throughout the entire area covered by treaty, even if that area includes more than one province or territory;

(b) leave it to Aboriginal governments to work out the kinds of reciprocal arrangements necessary for Aboriginal harvesting across treaty boundaries; and

(c) introduce specific big game quotas or seasons for local non-Aboriginal residents in the mid- and far north.

2.4.71

Provincial and territorial governments take the following action with respect to outfitting:

(a) increase their allocation of tourist outfitters' licences or leases to Aboriginal people, for example,

(i) by including exclusive allocations in certain geographical areas, as Ontario now does north of the 50th parallel;

(ii) by giving priority of access for a defined period to all new licences; and

(iii) by giving Aboriginal people the right of first refusal on licences or leases that are being given up.

(b) not impose one particular style of outfitting business (lodge-based fly-in hunting and fishing) as the only model; and

(c) encourage Aboriginal people to develop outfitting businesses based on their own cultural values.

2.4.72

By agreement, and subject to local capacity, provincial and territorial governments devolve trapline management to Aboriginal governments.

2.4.73

In Quebec, where exclusive Aboriginal trapping preserves have existed for many decades, the provincial government devolve trapline management of these territories to Aboriginal governments and share overall management responsibilities with them.

2.4.74

Unless already dealt with in a comprehensive land claims agreement, revenues from commercial water developments (hydroelectric dams and commercial irrigation projects) that already exist and operate within the traditional land use areas of Aboriginal communities be directed to the communities affected as follows:

- (a) they receive a continuous portion of the revenues derived from the development for the life of the project; and
- (b) the amount of revenues be the subject of negotiations between the Aboriginal community(ies) and either the hydroelectric utility or the province.

2.4.75

If potential hydroelectric development sites exist within the traditional territory(ies) of the Aboriginal community(ies), the community have the right of first refusal to acquire the water rights for hydro development.

2.4.76

If a Crown utility or non-utility company already has the right to develop a hydro site within the traditional territory of an Aboriginal community, the provinces require these companies to develop socio-economic agreements (training, employment, business contracts, joint venture, equity

partnerships) with the affected Aboriginal community as part of their operating licence or procedures.

2.4.77

Federal and provincial governments revise their water management policy and legislation to accommodate Aboriginal participation in existing management processes as follows:

(a) the federal government amend the *Canada Water Act* to provide for guaranteed Aboriginal representation on existing interjurisdictional management boards (for example, the Lake of the Woods Control Board) and establish federal/provincial/Aboriginal arrangements where none currently exist; and

(b) provincial governments amend their water resource legislation to provide for Aboriginal participation in water resource planning and for the establishment of co-management boards on their traditional lands.

With regard to measures to implement co-jurisdiction or co-management of lands and resources, the Commission recommends that

2.4.78

The following action be taken with respect to co-management and co-jurisdiction:

(a) the federal government work with provincial and territorial governments and Aboriginal governments in creating co-management or co-jurisdiction arrangements for the traditional territories of Aboriginal nations;

(b) such co-management arrangements serve as interim measures until the conclusion of treaty negotiations with the Aboriginal party concerned;

(c) co-management bodies be based on relative parity of membership between Aboriginal nations and government representatives;

(d) co-management bodies respect and incorporate the traditional

knowledge of Aboriginal people; and

(e) provincial and territorial governments provide secure long-term funding for co-management bodies to ensure stability and enable them to build the necessary management skills and expertise (which would involve cost sharing on the part of the federal government).

Regarding the ownership and management of cultural and historic sites, the Commission recommends that

2.4.58

Federal, provincial and territorial governments enact legislation to establish a process aimed at recognizing

(a) Aboriginal peoples as the owners of cultural sites, archaeological resources, religious and spiritual objects, and sacred and burial sites located within their traditional territories;

(b) Aboriginal people as having sole jurisdiction over sacred, ceremonial, spiritual and burial sites within their traditional territories, whether these sites are located on unoccupied Crown land or on occupied Crown lands (such as on lands under forest tenure or parks);

(c) Aboriginal people as having at least shared jurisdiction over all other sites (such as historical camps or villages, fur trade posts or fishing stations); and

(d) Aboriginal people as being entitled to issue permits and levy (or share in) the fees charged for access to, or use of, such sites.

2.4.59

In the case of heritage sites located on private land, the federal government negotiate with landowners to acknowledge Aboriginal jurisdiction and rights of access or to purchase these sites if there is a willing seller, so that they can be turned over to the appropriate Aboriginal government.

2.4.60

The federal government amend the *National Parks Act* to permit traditional Aboriginal activity in national parks and, where appropriate, Aboriginal ownership of national parks, on the Australian model. Parks could then be leased back to the Crown and managed jointly by federal and Aboriginal governments.

2.4.61

Federal, provincial and territorial governments develop legislation and policies to protect and manage Aboriginal heritage resources in accordance with criteria set by negotiation with Aboriginal governments. These might include

- (a) detailed heritage impact assessment and protection guidelines for operations involving such activities as forestry, mining, aggregate extraction, road building, tourism and recreation;
- (b) funding and undertaking heritage resource inventories, documentation and related research, and archaeological and other scientific survey, in partnership with Aboriginal governments; and
- (c) carrying out salvage excavation or mitigative measures at sites threatened by development, looting, resource extraction or natural causes such as erosion, and providing for Aboriginal monitoring of archaeological excavations.

With respect to public involvement in lands negotiations, the Commission recommends that

2.4.42

Public education be a major part of treaty processes and of the mandates of the treaty commissions and Aboriginal Lands and Treaties Tribunal, in keeping with the following principles:

- (a) federal and provincial governments keep the public fully informed about the nature and scope of negotiations with Aboriginal peoples and not unduly

restrict the release of internal reports and other research material;

(b) Aboriginal parties participate in educating the general public and ensure that their members fully understand the nature and scope of their negotiations with provincial and federal governments;

(c) the federal government ensure that negotiation processes have sufficient funding for public education; and

(d) treaties and similar documents be written in clear and understandable language.

Chapter 5 Economic Development

With respect to co-operative arrangements between Aboriginal and other governments in Canada to promote economic development, the Commission recommends that

2.5.1

Federal, provincial and territorial governments enter into long-term economic development agreements with Aboriginal nations, or institutions representing several nations, to provide multi-year funding to support economic development.

2.5.2

Economic development agreements have the following characteristics:

(a) the goals and principles for Aboriginal economic development be agreed upon by the parties;

(b) resources from all government agencies and departments with an economic development-related mandate be channelled through the agreement;

(c) policies and instruments to achieve the goals be designed by the Aboriginal party;

(d) development activities include, but not necessarily be limited to, training, economic planning, provision of business services, equity funding, and loans and loan guarantees;

(e) performance under the agreement be monitored every two years against agreed criteria; and

(f) funds available for each agreement be determined on the basis of need, capacity to use the resources, and progress of the Aboriginal entity toward self-reliance.

2.5.3

Aboriginal nations that have negotiated modern treaties encompassing full self-government have full jurisdiction over their economic development programs, which should be funded through their treaty settlements, fiscal transfers and their own revenue sources, and that businesses on these territories continue to be eligible for regional, business or trade development programs administered by Canadian governments for businesses generally.

2.5.5

Aboriginal nations receive financial and technical support to establish and develop economic institutions through the federal funding we propose be made available for the reconstruction of Aboriginal nations and their institutions (see recommendations in Chapter 3 of this volume).

With regard to building capacity within Aboriginal nations to pursue economic development, the Commission recommends that

2.5.4

Aboriginal nations give high priority to establishing and developing economic institutions that

- reflect the nation's underlying values;
- are designed to be accountable to the nation; and

- are protected from inappropriate political interference.

2.5.6

Responsibility for economic development be divided between the nation and community governments so that policy capacity, specialist services and major investment responsibility reside with the nation's institutions, which would then interact with community economic development personnel at the community level.

2.5.7

The recommended Aboriginal Peoples' International University establish a Canada-wide research and development capacity in Aboriginal economic development with close links to the developing network of Aboriginally controlled education and training institutions.

2.5.8

Leaders of municipalities, counties and larger regional bodies and their Aboriginal counterparts consider how to reduce the isolation between them and develop a mutually beneficial relationship.

Recognizing the importance of lands and resources to Aboriginal economic development, the Commission recommends that

2.5.12

Federal and provincial governments promote Aboriginal economic development by recognizing that lands and resources are a major factor in enabling Aboriginal nations and their communities to become self-reliant.

2.5.9

Until self-government and co-jurisdiction arrangements are made, federal and provincial governments require third parties that are renewing or obtaining new resource licences on traditional Aboriginal territories to

provide significant benefits to Aboriginal communities, including

- preferential training and employment opportunities in all aspects of the resource operation;
- preferred access to supply contracts;
- respect for traditional uses of the territory; and
- acceptance of Aboriginal environmental standards.

2.5.10

The efforts of resource development companies, Aboriginal nations and communities, and governments be directed to expanding the range of benefits derived from resource development in traditional territories to achieve

- levels of training and employment above the entry level, including managerial;
- an equity position in resource development projects; and
- a share of economic rents derived from the projects.

2.5.11

Unions in these resource sectors participate in and co-operate with implementation of this policy, because of the extraordinary under-representation of Aboriginal people in these industries.

2.5.13

Aboriginal governments, with the financial and technical support of federal, provincial and territorial governments, undertake to strengthen their capacity to manage and develop lands and resources. This requires in particular

(a) establishing or strengthening, as appropriate, Aboriginal institutions for

the management and development of Aboriginal lands and resources;

(b) identifying the knowledge and skills requirements needed to staff such institutions;

(c) undertaking urgent measures in education, training and work experience to prepare Aboriginal personnel in these areas;

(d) enlisting communities in dedicated efforts to support and sustain their people in acquiring the necessary education, training and work experience; and

(e) seconding personnel from other governments and agencies so that these institutions can exercise their mandates.

Regarding the role of agriculture in economic development, the Commission recommends that

2.5.14

The government of Canada remove from Aboriginal economic development strategies such as CAEDS and related programs any limitations that impede equitable access to them by Métis farmers and Aboriginal owners of small farms generally.

2.5.15

The government of Canada restore the funding of Indian agricultural organizations and related programs and support similar organizations and services for Métis farmers.

2.5.16

Band councils, with the support of the federal government, undertake changes in patterns of land tenure and land use so that efficient, viable reserve farms or ranches can be established.

2.5.17

The government of Canada implement the recommendations of the Aboriginal Agriculture Industrial Adjustment Services Committee designed to advance the education and training of Aboriginal people in agriculture.

With respect to measures to promote business development, the Commission recommends that

2.5.18

Governments, as a high priority, improve their economic development programming by

(a) developing business advisory services that combine professional expertise with detailed knowledge of Aboriginal communities; and

(b) placing these advisory services within the emerging economic development institutions of Aboriginal nations.

2.5.19

The capacity for trade promotion be built into the sectoral and other economic development organizations of Aboriginal nations, as appropriate.

2.5.20

The international trade promotion agencies of the federal and provincial governments, in co-operation with Aboriginal producers and economic development institutions, actively seek out markets for Aboriginal goods and services abroad.

2.5.21

Provincial and territorial governments join the federal government in establishing effective set-aside programs to benefit Aboriginal businesses and that municipal governments with large proportions of Aboriginal residents also undertake these programs.

Regarding the financing of Aboriginal economic and business development,

the Commission recommends that

2.5.22

Banks, trust companies and credit union federations (the caisses populaires in Quebec), with the regulatory and financial assistance of federal, provincial and territorial governments, take immediate and effective steps to make banking services available in or readily accessible to all Aboriginal communities in Canada.

2.5.23

Federal, provincial and territorial governments, as well as financial institutions, support the development of micro-lending programs as an important tool to develop very small businesses. Governments and institutions should make capital available to these programs and support the operating costs of the organizations that manage them.

2.5.24

Revolving community loan funds be developed and that federal, provincial and territorial governments review their policies about the establishment and operation of such funds and remove administrative and other barriers.

2.5.25

Federal and Aboriginal governments ensure that programs to provide equity to Aboriginal entrepreneurs

- continue for a least 10 more years;
- have sufficient resources to operate at a level of business formation equivalent to the highest rate experienced in the last decade; and
- allow for a growth rate of a minimum 5 per cent a year from that level.

2.5.26

The contribution of equity capital from government programs always be conditional on the individual entrepreneur providing some of the equity required by the business from the entrepreneur's own funds.

2.5.27

Resources for economic development be an important element in treaty settlements.

2.5.28

Aboriginal nations that have entered into modern treaties, including comprehensive claims, fund their programs to provide equity contributions to entrepreneurs from their own revenue sources, with businesses retaining access to all government programs available to mainstream Canadian businesses.

2.5.29

Equity contribution programs funded by the federal government be administered as follows:

- (a) Programs be administered wherever possible by Aboriginal institutions according to development arrangements set out above.
- (b) Funds for this purpose be allocated to the nation concerned as part of a general economic development agreement.
- (c) Programs be administered by federal officials only where Aboriginal institutions have not developed to serve the client base.

2.5.30

The federal government strengthen the network of Aboriginal capital corporations (ACCs) through measures such as

- providing operating subsidies to well-managed ACCs to acknowledge their developmental role;

- enabling ACCs to administer Canada Mortgage and Housing Corporation and DIAND housing funds; and
- providing interest rate subsidies and loan guarantees on capital ACCs raise from the private sector.

2.5.31

Aboriginal capital corporations take appropriate measures, with the assistance of the federal government, to improve

- their administrative efficiency;
- their degree of collaboration with other ACCs; and
- their responsiveness to segments of the Aboriginal population that have not been well served in the past.

2.5.32

Federal and provincial governments assist in the formation of Aboriginal venture capital corporations by extending tax credits to investors in such corporations. These corporations should have a status similar to labour-sponsored venture capital corporations and should be subject to the same stringent performance requirements. Tax credits should be available to the extent that Aboriginal venture capital corporations invest in projects that benefit Aboriginal people.

2.5.33

A national Aboriginal development bank be established, staffed and controlled by Aboriginal people, with capacity to

- provide equity and loan financing, and technical assistance to large-scale Aboriginal business projects; and
- offer development bonds and similar vehicles to raise capital from private individuals and corporations for Aboriginal economic development, with

such investments being eligible for tax credits.

2.5.34

The process for establishing the bank be as follows:

- The federal government, with the appropriate Aboriginal organizations, undertakes the background studies required to establish a bank.
- Aboriginal governments develop the proposal to establish the bank and, along with private sources, provide the initial capital. The federal government should match that capital in the initial years, retiring its funding as the bank reaches an agreed level of growth. Earnings on the portion of the capital lent by the federal government would be available to increase the rate of return to private investors in the early years of the bank's operations.
- The federal government introduces the necessary legislation in Parliament.
- Highly experienced management is hired by the bank with a clear mandate to recruit and train outstanding Aboriginal individuals for leadership of the bank's future operations.

2.5.35

The board of directors of the bank have an Aboriginal majority and be chosen for their expertise.

With respect to employment development, the Commission recommends that

2.5.36

Federal and provincial governments fund a major 10-year initiative for employment development and training that is

- aimed at preparing Aboriginal people for much greater participation in

emerging employment opportunities;

- sponsored by Aboriginal nations or regionally based Aboriginal institutions;
- developed in collaboration with public and private sector employers and educational and training institutions; and
- mandatory for public sector employers.

2.5.37

This initiative include

- identification of future employment growth by sector;
- classroom and on-the-job training for emerging employment opportunities;
- term employment with participating employers; and
- permanent employment based on merit.

2.5.38

Employment equity programs for Aboriginal people adopt a new long-term approach involving

- the forecasting by employers of labour force needs; and
- the development of strategies, in collaboration with Aboriginal employment services and other organizations, for training and qualifying Aboriginal people to fill positions in fields identified through forecasting.

2.5.39

These employment equity programs be strengthened by

- expanding the range of employers covered by federal, provincial and territorial legislation; and
- making the auditing, monitoring and enforcement mechanisms more effective.

2.5.40

Canadian governments provide the resources to enable Aboriginal employment service agencies to

- (a) locate in all major urban areas;
- (b) have stable, long-term financial support;
- (c) play a lead role in the 10-year employment initiative, contribute to the effectiveness of employment equity, and offer the wide range of services required by a diverse clientele; and
- (d) evolve from being a program of federal, provincial and territorial governments to being one of the services provided by Aboriginal institutions on behalf of Aboriginal governments where appropriate, with appropriate financial transfers to be negotiated.

2.5.41

Aboriginal nations adopt policies whereby

- their members continue to assume positions in the public service within their communities;
- as much as possible, they buy goods and services from Aboriginal companies; and
- they provide opportunities for skills development, business growth and the recycling of spending within their communities.

2.5.42

Aboriginal, federal, provincial and territorial governments enter into agreements to establish roles, policies and funding mechanisms to ensure that child care needs are met in all Aboriginal communities.

2.5.43

The federal government resume funding research and pilot projects, such as those funded under the Child Care Initiatives Fund, until alternative, stable funding arrangements for child care services can be established.

2.5.44

Aboriginal organizations and governments assign a high priority to the provision of child care services in conjunction with major employment and business development initiatives, encouraging an active role for community volunteers as well as using social assistance funding to meet these needs.

2.5.45

Provincial and territorial governments amend their legislation respecting the licensing and monitoring of child care services to provide more flexibility in the standards for certification and for facilities that take into account the special circumstances of Aboriginal peoples.

2.5.46

To rebuild Aboriginal economies, all governments pay particular attention to

- the importance of enrolment in education and training programs and of retention and graduation;
- strengthening the teaching of mathematics and the sciences at the elementary and secondary levels;
- improving access to and completion of mathematics and science-based programs at the post-secondary level; and
- making appropriate programs of study available in fields that are relevant

to the economic development of Aboriginal communities (for example, business management, economic development and the management of lands and resources).

With respect to restructuring social assistance programs to support employment and social development, the Commission recommends that

2.5.47

Social assistance funds be directed toward a more dynamic system of programming that supports employment and social development in Aboriginal communities, whether in rural or urban settings.

2.5.48

Governments providing financial support for social assistance encourage and support proposals from Aboriginal nations and communities to make innovative use of social assistance funds for employment and social development purposes and that Aboriginal nations and communities have the opportunity

(a) to pursue personal development, training and employment under an individual entitlement approach, and

(b) to pursue the improvement of community infrastructure and social and economic development under a community entitlement approach.

2.5.49

In their active use of social assistance and other income support funds, Aboriginal nations and communities not be restricted to promoting participation in the wage economy but also be encouraged to support continued participation in the traditional mixed economy through income support for hunters, trappers and fishers and through other projects aimed at improving community life.

2.5.50

Aboriginal control over the design and administration of social assistance programs be the foundation of any reform of the social assistance system.

2.5.51

All governments support a holistic approach to social assistance programming for Aboriginal peoples that is

- rooted in Aboriginal society, its traditions and values;
- aimed at integrating social and economic development; and
- explicitly included in the design and operation of any new institutions or programs created to implement social assistance reform as it relates to Aboriginal people and communities.

2.5.52

Initiatives to reform the design and administration of social assistance encourage proposals from Aboriginal nations and tribal councils, acting on behalf of and in co-operation with their member communities.