

Appendix A The Commission's Terms of Reference

P.C. 1991-1597

Schedule I*

The Commission of Inquiry should investigate the evolution of the relationship among aboriginal peoples (Indian, Inuit and Métis), the Canadian government, and Canadian society as a whole. It should propose specific solutions, rooted in domestic and international experience, to the problems which have plagued those relationships and which confront aboriginal peoples today. The Commission should examine all issues which it deems to be relevant to any or all of the aboriginal peoples of Canada, and in particular, should investigate and make concrete recommendations concerning:

1. The history of relations between aboriginal peoples, the Canadian government and Canadian society as a whole.

This investigation may include studies of historical patterns of aboriginal settlement and governance, the Royal Proclamation of 1763, the development and interpretation of pre- and post-confederation aboriginal treaties, the evolution of political arrangements in the North, and social tensions which have characterized the relationship between aboriginal and other Canadian communities. Building upon this historical analysis, the Commission may make recommendations promoting reconciliation between aboriginal peoples and Canadian society as a whole, and may suggest means by which aboriginal spirituality, history and ceremony can be better integrated into the public and ceremonial life of the country.

2. The recognition and affirmation of aboriginal self-government; its origins, content and a strategy for progressive implementation.

The Commission's investigation of self-government may focus upon the political relationship between aboriginal peoples and the Canadian state. Although self-government is a complex concept, with many variations, the essential task is to break the pattern of paternalism which has characterized the relationship between aboriginal peoples and the Canadian government. The Commission should review models of self-government which have been developed in Canada and around the world, and should make recommendations concerning fiscal arrangements and economic development initiatives necessary for successful transitions to self-government. The scope, effect and future elaboration of ss. 25 and 35 of the *Constitution Act, 1982* may be evaluated.

3. The land base for aboriginal peoples, including the process for resolving comprehensive and specific claims, whether rooted in Canadian constitutional instruments, treaties or in aboriginal title.

The Commission may investigate and explain the deep spiritual and cultural ties which bind aboriginal peoples to the land, the relationship between an adequate land base and economic development, and the importance of environmental protection. It may also outline appropriate processes for the settlement of outstanding comprehensive and specific claims. The scope, effect and future elaboration of ss. 25 and 35 of the *Constitution Act, 1982* may be evaluated in relation to the land base as well as to self-government.

4. The historical interpretation and application, and potential future scope, of s. 91(24) of the *Constitution Act, 1867* and the responsibilities of the Canadian Crown.

An investigation of s. 91(24) may include examination of the internal political organization of aboriginal communities, the obligations of the federal Crown towards aboriginal people, the representation of aboriginal people in Canadian political institutions, and the relationship and potential for conflict between s. 91(24) and aboriginal notions of law and the legal process.

5. The legal status, implementation and future evolution of aboriginal treaties, including modern-day agreements.

An investigation of the historic practices of treaty-making may be undertaken by the Commission, as well as an analysis of treaty implementation and interpretation. The Commission may also want to consider mechanisms to ensure that all treaties are honoured in the future.

6. The constitutional and legal position of the Métis and off-reserve Indians.

The Commission may examine legislative jurisdiction concerning the Métis and Non-status Indians, and investigate the economic base of, and the provision of government services to, these people and to off-reserve and urban Indians.

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

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

8. The *Indian Act* and the role, responsibilities and policies of the Department of Indian Affairs and Northern Development (DIAND).

The Commission may investigate in particular the legislative scheme of the *Indian Act*, the relationship between that scheme and the evolving policies of DIAND, the theory of aboriginal-government relations implicit in the *Indian Act*, and the future of the Act and of DIAND. All of these could be examined to determine whether existing federal legislation and administrative practices are consistent with evolving theories of Canadian law, including aboriginal and treaty rights.

9. Special issues of concern to aboriginal peoples.

In particular, the Commission may study and make concrete recommendations to improve the quality of life for aboriginal peoples living on reserve, in native settlements and communities, and in rural areas and cities. Issues of concern include, but are not limited to: poverty, unemployment and underemployment, access to health care and health concerns generally, alcohol and substance abuse, sub-standard housing, high suicide rates, child care, child welfare, and family violence.

10. Economic issues of concern to aboriginal peoples.

The Commission may investigate the problems of developing a viable economic base for aboriginal peoples, unemployment, access to labour markets, discrimination in employment, taxation and custom duties.

11. Cultural issues of concern to aboriginal peoples.

In particular, the Commission may investigate the protection and promotion of aboriginal languages, recognition by Canadian society and institutions of the intrinsic value of aboriginal spirituality, recognition by Canadian society and institutions of the intrinsic value of aboriginal family structures and child care patterns, and the protection of traditional hunting, fishing and trapping ways of life.

12. The position and role of aboriginal elders.

The Commission may examine the social and economic conditions of elders as a group, their traditional role in aboriginal societies and whether existing laws and governmental practices respect and accommodate that role, and the continuing role for elders in aboriginal societies.

13. The position and role of aboriginal women under existing social conditions and legal arrangements, and in the future.

The Commission may examine, in particular, issues related to financial and property provisions upon divorce, access to the labour market, definitions of membership in aboriginal groups, and the role of native women in political institutions in their own communities and in non-native society.

14. The situation of aboriginal youth.

The Commission may investigate access to education, access to community leisure and sports facilities, alcohol and substance abuse, suicide amongst youth, and funding for youth programmes. The Commission may also focus upon means of enhancing and promoting a positive self-image in aboriginal youth, especially in the way they view the relationship between their historical and cultural roots and contemporary educational institutions.

15. Educational issues of concern to aboriginal peoples.

In particular, the Commission may investigate aboriginal control over primary and secondary education on reserves and in native communities (including issues of funding), the promotion and protection of aboriginal cultural identity in educational institutions (including institutions where aboriginal students are a minority group), the encouragement of aboriginal children to complete secondary education, and access to and funding for post-secondary education (including college, university and technical training).

16. Justice issues of concern to aboriginal peoples.

In particular, the Commission may investigate and make concrete recommendations concerning the relationship between aboriginal people and the police (with the policing function broadly conceived to include dispute resolution and community service), the promotion of respect for aboriginal people and culture within the justice system, techniques to aid aboriginal people in comprehending court processes especially through the provision of interpretation services, means to decrease the rate of incarceration of aboriginal offenders, methods to improve conditions of incarceration for aboriginal offenders, and the potential to elaborate aboriginal justice systems and to incorporate principles of aboriginal legal culture into the Canadian justice system.