CHAPTER 1

COMPLETING CONFEDERATION: THE NECESSARY FOUNDATION

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The work of the Royal Commission on Aboriginal Peoples (RCAP, 1991–96) was undertaken at a difficult time in Indigenous-Canadian[1] relations. As Indigenous activists of the time saw, the negotiations leading to the patriation of the Canadian Constitution in 1982 provided an opportunity to register significant changes. Their political efforts and the support of allies led to the inclusion of "existing aboriginal and treaty rights" in Section 35, a provision for a process to specify the nature of these rights in Section 37, and, in Section 25 of the Charter of Rights and Freedoms, a guarantee that the Charter would not "abrogate or derogate from any aboriginal, treaty or other rights."[2] Although these provisions marked important gains in entrenching Indigenous peoples' rights in the Constitution Act, they were seen by all parties as incomplete.

After 1982, however, the First Ministers' Conferences mandated in Section 37 and all attempts to reach consensus among Indigenous peoples and Canadian government leaders on the meaning of the phrase "existing aboriginal and treaty rights" faltered. Conflicts over jurisdiction, constitutional wrangling, and legal action on the meaning and effect of Section 35 became bitter battles. A handful of comprehensive land claims (modern treaties) were negotiated between 1984 and 1993, but most remained

mired in protracted negotiations. First Nations communities continued to labour under the administrative strictures of the Indian Act. Many fought the Crown to make good on the promises of historical treaties. Long-standing, dire social and economic disparities in the conditions in Indigenous communities remained. And protests had sprung up in various corners of the land, sometimes leading to violent conflicts. The siege at Kanesatake/Oka in the summer of 1990 over land rights was marked by deteriorating relationships between the provincial and federal governments and Mohawk activists, and ultimately, one death.[3] Reportedly, the siege at Kanesatake was the event that finally convinced the federal cabinet to act on an earlier promise to appoint a Royal Commission to inquire into Indigenous-Crown relations.[4]

If the conflict at Kanesatake was the spark, the failure of the referendum on the Charlottetown Accord in 1992 was the wind that kept the fire burning. The Charlottetown Accord reflected consensus among federal, provincial, territorial, and Indigenous leaders on the inherent right to self-government and other key matters. The consensus was reflected in an agreement among those engaged in the national discussion that included numerous other reform provisions concerning the balance of federal and provincial powers, recognition of Quebec as a distinct society, parliamentary institutions, and other provisions. RCAP weighed in on the national Charlottetown debate with a 1992 commentary, *The Right to Aboriginal Self-Government and the Constitution*. In this document, the commissioners observed that the right to self-government was becoming accepted, and they proposed four possible constitutional clauses that would explicitly identify the right to Aboriginal self-government as a constitutional right.[5] Reportedly, this argument was accepted by the drafters of the Charlottetown Accord. In 1993, the commission released a second commentary, *Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution*, which argued that "there are persuasive grounds for believing that this provision [Section 35] includes an inherent right of self-government";[6] in this case, a constitutional amendment would not be required.

In any event, constitutional amendment was not forthcoming; the Charlottetown Accord was rejected in a national referendum in 1992. Many observers commented that, whatever the merits of its individual parts, there was sufficient variety in the accord to give too many voters a reason to decline the package. It was evident that, though conceptual

progress in renovating Indigenous-Canadian relations had been made, particularly among political leaders and activists, other measures were needed to institutionalize change.

The commissioners found ground for hope in this complex landscape. They set out a new interpretation of Canadian history inclusive of Indigenous history and the history of Indigenous-Canadian relations and an ambitious, detailed agenda for renewing those relations. The underlying theme was the vital importance of self-determination and self-reliance to the achievement of better lives and better relationships within Canada for Indigenous peoples.[7] Fully 54 of the 440 recommendations deal with governance, spanning matters of Constitution and Parliament, legal frameworks, jurisdictional arrangements, machinery of government, citizenship, financing, and professional and institutional capacity, among others.

In this chapter, we review certain features of the analysis put forward by the Royal Commission, consider what has changed in Indigenous-Canadian relations since 1996, and offer some observations on the pathways to self-determination that lie ahead. We are interested in delineating the necessary foundation that will permit the just completion of Confederation.

RCAP'S VISION

The final report of the Royal Commission on Aboriginal Peoples provided important—and still relevant—insights into the meaning of sovereignty and the distinctions between self-determination and self-government. For the commission, Indigenous sovereignty, as heard from witnesses, is an "inherent attribute, flowing from sources within a people or nation rather than from external sources such as international law."[8] The commissioners noted that Indigenous sovereignty in Canada is recognized and given effect by the various formal alliances and treaties that had been made between First Nations and European powers over time.[9] It is a relational rather than an exclusionary concept. The inherent principle of or right to self-determination flows from this sovereignty, with the exercise of the constitutional right to self-government being one of the paths to express self-determination.[10] These came to be known as "Section 35 rights."

As a fundamental starting point, the commission held that Section 35 rights acknowledge the *pre-existence* of the right to self-determination.

It found that, in core areas of jurisdiction, Aboriginal people are free to implement the right through "self-starting initiatives, without the need for agreements with the federal and provincial governments."[11] However, the commission also concluded that, because the rights are acknowledged within the Canadian Constitution, they can operate only within the sphere of sovereignty defined by it (including the application of the Charter of Rights and Freedoms to their citizens). This required that their implementation—at least in part—would result from negotiated agreements with other governments, particularly where rights and interests might overlap (concurrent spheres of jurisdiction) and in the "interest of reciprocal recognition and the avoidance of litigation."[12]

RCAP offered a useful distinction between core jurisdiction and peripheral jurisdiction. The commission defined core jurisdictions as matters that "are vital to 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." These jurisdictions are non-negotiable. There is a need for negotiations with other governments on peripheral jurisdictions—those that significantly affect other jurisdictions or are a matter of concern for provincial or federal governments.[13]

THE EXPRESSION AND EXERCISE OF THE INHERENT RIGHT

The Royal Commission also found that the existence of Section 35 effectively establishes a third order of government within Canada, although implementation of the third order would be dependent on the reconstitution of effective self-governing nations. The commission further recommended that the government of Canada formally recognize and help to bring about the implementation of self-governing rights through legislation, an act that would also provide the mechanism for it to vacate its legislative authority and responsibility under Section 91(24) of the Constitution.[14] In the event of any conflict between Indigenous law and federal law within a concurrent sphere of jurisdiction, "the Aboriginal law will take priority, except where the federal law satisfies the *Sparrow* standard."[15]

Short of the vision of fully reconstituted nations exercising self-government from defined land bases, RCAP anticipated that a variety of arrangements might be necessary to give *expression* to the right to self-determination given the diversity of peoples and cultures, historical experiences of colonialism, where they made their homes, and their

visions of governance. In the diversity of presentations received from Inuit, Métis, and First Nations representatives across the land, RCAP saw that the visions of Indigenous peoples embraced two main goals: greater authority over lands and peoples and greater control over matters affecting a particular nation—especially its culture, identity, and collective well-being "wherever they happen to be located."[16] RCAP saw these ideas as complementary rather than contradictory and thus built into its models of self-determination the potential for a range of approaches, including service delivery by a nation to those living outside its boundaries or self-determination by a nation's citizens living dispersed throughout a region or within an urban centre. The commission suggested that this latter situation be dealt with by "community of interest governments" to which people living dispersed throughout other jurisdictions may voluntarily associate for a limited set of governing purposes.[17]

ONLY NATIONS CAN EXERCISE THE INHERENT RIGHT

In regard to an Aboriginal order of government *exercising* the right to self-determination, the Royal Commission found that the right was vested in Indigenous nations, not small communities or individuals living in urban centres. Even if a measure of power was ultimately exercised at the local level, only the people of the nation as a whole could negotiate and conclude treaties relating to the inherent right.[18]

This was as much a matter of practical implementation as a philosophical or legal view. The commission said that in order for governments to be effective they require three basic things: legitimacy, power, and resources.[19] It defined a nation as "a sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a certain territory or collection of territories." Within this definition, three important concepts were at play: "collective sense of identity, size as a matter of capacity, and territorial predominance."[20]

While recognizing that the imposition of the Indian Act and other colonial policies over more than a century had led many Indigenous peoples—First Nations in particular—to identify strongly with local communities and community administrations, the commission stated that band administration is little more than self-administration (being within the aegis of federal control over decision making); it is not self-government.[21] Furthermore, "community level governments will generally continue to be poor, weak and isolated unless they form part of larger governmen-

tal structures."[22] The commission understood the factor of territorial predominance to be fundamental: "To hold a right of self-determination an Aboriginal group must constitute a majority of the permanent population in a certain territory or collection of territories."[23] This was seen as an important element for determining geographical boundaries of power and appropriate structures of government.

Accordingly, a number of the Royal Commission's recommendations were directed at Indigenous peoples themselves, urging them to begin the process of rebuilding nations, including establishing citizenship and new governing structures. Interestingly, despite declaring that Indigenous peoples are entitled to identify their own national units, the commission also recommended that the federal government put in place a process for "identifying Aboriginal groups entitled to exercise the right of self-determination as nations" (Recommendation 2.3.3).[24] Not so surprisingly, given that colonial administration has undermined the capacity of peoples to be self-determining, the commission also recommended that the Canadian government put in place various institutional and other supports needed to build and maintain modern Indigenous governments, including division of the Department of Indian Affairs and Northern Development. The commission also foresaw the need to foster education and crucial skills in government and economic self-reliance.

NEW NATION-TO-NATION RELATIONSHIPS

In regard to economic self-reliance, the Royal Commission called for "a fundamentally new fiscal arrangement" for Indigenous governments, one not based on the current practices under the Indian Act whereby the Canadian government determines priority spending and amounts, how funds may be spent, and where accountability for spending is primarily to the minister of Indian affairs rather than to the citizens of Indigenous governments.[25]

Recommendations 2.3.17 to 2.3.26 lay out a comprehensive framework for financing Indigenous governments, not unlike the type of fiscal arrangements that currently exist between the federal and provincial levels of government. Here the commission provided important details about taxation, land use and development, economic investments, financial settlements arising out of land claims, and what should or should not be included as a direct source of funding for Aboriginal governments. Furthermore, negotiated fiscal agreements among the three orders of

government were envisioned. They should meet five key objectives: self-reliance, equity, efficiency, accountability, and harmonization.[26]

To effect the creation of a new nation-to-nation relationship and the implementation of the inherent right to self-determination in particular, the commission recommended a variety of legislative and other actions: a new Royal Proclamation, framework legislation on the inherent right as well as recognition of nations, a Canada-wide framework to guide a new fiscal relationship, and the creation of guiding and supporting institutions. Twenty years later, almost none of these things had happened. But much has happened to give some effect to the RCAP vision in some parts of the country. Perhaps its reflection on the following presaged the events to come: "Self-government is not a machine to be turned on or off. It is an organic process, growing out of the people as a tree grows from the earth, shaped by their circumstances and responsive to their needs. Like a tree growing, it cannot be rushed or twisted to fit a particular mould."[27]

TWENTY YEARS SINCE RCAP'S REPORT: WHAT HAS CHANGED?

In a chapter of this length, it is impossible to trace fully the Royal Commission's influence on constitutional jurisprudence, federal policy, or estimation of Indigenous peoples of the terrain of negotiation that lies before them. Nor is it possible, when considering these matters, to separate the influence of the commission's analysis from other, interacting forces for change. We point to four significant factors for change, with some reflections on what they might mean for the future.

SECTION 35: FROM AN EMPTY BOX TO A FULL BOX OF RIGHTS

When Section 35 was included in the Constitution Act, 1982, many viewed the phrase "existing aboriginal and treaty rights" metaphorically as an "empty box" of rights, a placeholder clause awaiting the negotiations and federal and provincial "concessions" that would determine its contents. The empty box view was disputed by the Indigenous leadership of the time, and indeed, three constitutional conferences and several Supreme Court decisions later, the box has been found to be nearly full. The long march through the courts has transformed the constitutional and legal landscape of Indigenous-Crown relations in Canada.[28]

Without aiming to explain or explore all of the developments in jurisprudence over the past twenty years, we would like to highlight a few signal

decisions that have strengthened the foundations for new relationships between Indigenous nations and the Crown. These changes provide a framework for reconciliation through Section 35 based on recognition and protection.[29]

As a result of its timing, *R. v. Sparrow* (1990) dominated the legal context for commissioners and staff during the commission's deliberations. For the first time in Canadian jurisprudence, this decision asserted that there was a burden of proof on the Crown to justify negative infringements on Section 35 rights, outlining what came to be known as the Sparrow Test.[30] A year after the release of the Royal Commission's final report, *Delgamuukw and Gisdayway v. British Columbia* (1997) provided clarity concerning the definition and content of Aboriginal title in relation to self-government, describing Aboriginal title as a right to the land itself that includes a right to decide how that land is to be used.[31]

Subsequent cases provided guidance and strengthened what was established through *Delgamuukw and Gisdayway*. Notably, the British Columbia Supreme Court decision in *Campbell* (2000) marked the first explicit constitutional recognition of the inherent right to self-government and clarified that negotiations are not necessary to implement self-governance. Then, in the mid-2000s, the Supreme Court of Canada's *Haida* (2004) and *Mikisew Cree* (2005) decisions clarified, developed, and expanded the new relationship and process of reconciliation introduced in *Delgamuukw and Gisdayway*. These decisions include a procedural component (the duty to consult) and a substantive component (the duty to accommodate), applicable in areas without treaty but where Indigenous title has been proven or is asserted.[32] More recently, the *Tsilhqot'in* (2014) decision declared approximately 1,700 square kilometres in central British Columbia to be Tsilhqot'in title lands. The court also took an unprecedented step by requiring consent with respect to potential infringements on title lands and consideration of the dual perspectives at play: that is, "the dual perspectives of the common law and of the Aboriginal group bear equal weight in evaluating a claim for Aboriginal title."[33] The court also strongly recommended that the Crown seek consent even before title is proven.[34] Where *Sparrow* provided a procedure for justifying infringement on Section 35 rights, the *Tsilhqot'in* decision clarified that Section 35 *recognizes, affirms,* and *protects* rights and that consultation and accommodation should drive negotiations toward reconciliation. Accordingly, the threshold for

infringing on Section 35 rights is now remarkably high, and, in the *Tsilhqot'in* case, the BC Forest Act failed to apply on Tsilhqot'in title lands.[35] The burden has thus shifted to the Crown to bring its laws, regulations, and policies into line with Aboriginal title.

Métis peoples have also turned to the court system to establish and define their rights under Section 35. Three key decisions since 2003 (two within the past few years) are laying the groundwork for the exercise of Métis rights across the country. In addition to establishing traditional harvesting rights, *R. v. Powley* (2003) laid out the legal test for determining who is Métis (for the purposes of Section 35).[36] *Manitoba Metis Federation v. Canada* (2013), in which the majority held that a promised land grant to Métis children of the Red River Settlement in the late 1800s had been improperly implemented, set the stage for new Metis land settlements in Manitoba at least. And finally—but most significantly for Métis peoples—the 2016 decision of the Supreme Court in *Daniels* closed the jurisdictional responsibility gap in which Métis peoples have been trapped for the past 150 years. The court determined Métis and Non-Status Indians to be "Indians" under Section 91(24) of the Constitution.[37] This was not, as some worried, a case of creating a new "Indian" identity for the Métis. Instead, it put policy and legislative responsibility for them squarely in the lap of the federal government (as with Inuit in 1939), finally making it clear which order of government Métis peoples can turn to for policy redress.[38]

ADVANCES IN LAND CLAIMS AND SELF-GOVERNMENT AGREEMENTS

In 1991, when the Royal Commission began its work, just three comprehensive land claims agreements had been negotiated, and only one "self-government" agreement had been concluded.[39] Four more comprehensive land claims agreements were reached while the commission deliberated, including the umbrella Yukon Comprehensive Claims Agreement, which led over time to the completion of self-government agreements for almost all of the signatory First Nations, and the Nunavut Agreement. Following the Nunavut Agreement, the Northwest Territories was divided to create Nunavut and a new Northwest Territories. Inuit in Nunavut chose to create a public government (one not ethnically exclusive) to complement the powers affirmed in their land claim agreement. There are now thirty-two agreements being implemented for land settlements, self-government, or both (see Tables 1.1–1.3).

The year before the Royal Commission tabled its final report, the federal cabinet adopted the Inherent Right Policy (1995), recognizing self-government as a constitutionally protected right under Section 35. This had an immediate impact on the Nisga'a negotiations, leading to a land agreement in 2000 that included self-government provisions, and it had a similar effect on all subsequent negotiations.

In different ways, all of the comprehensive land claim and self-government agreements provide constitutionally protected space under Section 35 from which to exercise self-government and frame new relationships with other governments.[40] Land claim agreements remove settlement lands from exclusive federal jurisdiction. They are lands owned exclusively by the Indigenous signatories, thus subject to the concurrent jurisdictions of all three orders of government (federal, provincial/territorial, and Indigenous) as set out in the land claim agreement. With the exception of specified transitional measures, the Indian Act no longer applies to individuals who are part of the collectivities who have signed land claim agreements. The status of Indigenous peoples as "Indians" under Section 91(24) is not altered. In addition, because land claim agreements are protected as treaties under Section 35, federal powers under Section 91(24) are constrained. New Aboriginal governments derive their authorities from the modern treaties and not the Indian Act.[41]

Importantly, land claim agreements also include the cession of most traditional lands, certainty of ownership over those lands selected by Indigenous signatories, large cash settlements providing capital for future building, co-management boards, and a variety of other governance provisions. Although the basic principle is similar, there are important differences, even among the four agreements of Inuit Nunangat, the Inuit homelands (discussed further in the next section).

TABLE 1.1. COMPLETED COMPREHENSIVE LAND CLAIM AGREEMENTS

AGREEMENT	EFFECTIVE DATE
James Bay and Northern Quebec Agreement	1977
Northeastern Quebec Agreement	1978
Inuvialuit Final Agreement	1984
Gwich'in Comprehensive Land Claim Agreement	1992
Sahtu Dene and Metis Comprehensive Land Claim Agreement	1994
Nunavik Inuit Land Claims Agreement	2008
Eeyou Marine Region Land Claims Agreement	2012

TABLE 1.2. COMPLETED COMPREHENSIVE LAND CLAIM WITH SELF-GOVERNMENT AGREEMENTS

AGREEMENT	EFFECTIVE DATE
Council for Yukon Indians Umbrella Final and Self-Government	1977
Agreements (Eleven Total) *Vuntut Gwitch'in First Nation (1993)*	
First Nation of Nacho Nyak Dun (1993)	
Champagne and Aishihik First Nations (1993)	
Teslin Tlingit Council (1993)	
Little Salmon/Carmacks (1997)	
Selkirk First Nations (1997)	
Tr'ondëk Hwëch'in (1998)	1993–2006

AGREEMENT	EFFECTIVE DATE
Ta'an Kwach'an Council (2002)	
Kluane First Nation (2004)	
Kwanlin Dun First Nation (2005)	
Carcross/Tagish First Nation (2006)	
Nunavut Land Claims Agreement	1993
Nisga'a Final Agreement	2000
Labrador Inuit Land Claims Agreement	2005
Tłı̨ ch Land Claims Agreement and Self-Government Agreement	2005
Tsawwassen Final Agreement	2009
Maa-nulth Final Agreement	2011
Tla'amin Final Agreement	2016
Sahtu Dene and Metis Comprehensive Land Claim Agreement (1994)	
Déline Self-Government Agreement (2016)	2016

TABLE 1.3. STAND-ALONE SELF-GOVERNMENT AGREEMENTS

AGREEMENT	EFFECTIVE DATE
Sechelt Indian Band Self-Government Act	1986
Mi'kmaq Education Agreement (sectoral agreement— education)	1997
Westbank First Nation Self-Government Agreement	2005
Sioux Valley Dakota Nation Governance Agreement	2015

Of the ninety-nine open self-government and comprehensive land claim negotiation tables across the country, over half are in British Columbia.[42] The independent BC Treaty Commission (BCTC) reports that 105 current or former Indian Act bands in the province have completed or are participating in treaty negotiations and that nearly half (95 of 200) have chosen not to engage with the BCTC process.[43] Although many Indian Act bands are negotiating independently, some have chosen to negotiate together with the Crown, with the result that the 105 Indian Act bands involved in the BCTC process are represented by sixty-five First Nations at the treaty tables. A structure unique to this province, the British Columbia Treaty Commission was established in 1992 to facilitate treaty negotiations among Canada, British Columbia, and First Nations in the province. It allocates funding to support First Nations with negotiation costs and works to educate the public regarding treaty negotiations.[44] Only four agreements have been completed under this process.[45] Seven First Nations are in the process of negotiating toward final agreements. The remaining fifty First Nations are still at much earlier stages of negotiation. The treaty process itself has not been updated to reflect jurisprudence since its inception twenty-five years ago.

Neither British Columbia's mandate nor Canada's key frameworks for its negotiating positions—the Comprehensive Land Claims Policy and the Approach to the Implementation of the Inherent Right—have been formally updated to reflect changes in jurisprudence or precedents set in other agreements in the past twenty years. In 2014, Canada released an interim Comprehensive Land Claims Policy,[46] intended as a starting point for dialogue, and appointed Ministerial Special Representative Douglas Eyford to lead engagement on renewing the policy.[47] However, this process has yet to produce a final policy update.[48]

POLICY INSTRUMENTS

Some First Nations still under the Indian Act are choosing a step-wise path to becoming more self-determining. Two pieces of opt-in legislation demonstrate this approach. First, the First Nations Land Management Act (FNLMA), introduced in 1999, delegates certain land management responsibilities under the Indian Act to band councils. As of 2017, there are currently thirty-six First Nations operating under the FNLMA and fifty-eight more that are working toward it.[49] The FNLMA eliminates the need to seek ministerial approval under the Indian Act on decisions

related to lands, thereby freeing up time and money for other self-governance activities.[50]

Second, the First Nations Fiscal Management Act (FNFMA), introduced in 2006, is intended to enhance the ability of First Nations to promote economic development and collect property tax. Since it came into force, eighty-seven First Nations have opted in and are currently collecting tax through the FNFMA.[51] A further 197 are in the process of opting in.[52] The First Nations Tax Commission, established through the FNFMA, provides assistance in drafting taxation laws and bylaws and provides training for First Nations tax administrators.

Of the other policy instruments introduced after the Royal Commission on Aboriginal Peoples reported, the First Nations Governance Act (FNGA), introduced in 2002, has been a notable failure. Intended to recognize the inherent right to self-government and transform the relationship with the Crown, it was met with widespread suspicion and criticism. Critics focused on both the efficacy of the consultation process and the content of the FNGA, largely concluding that it was yet another iteration of federal colonial policy—of reform from above without regard for the necessity of democratic process to lead transformation.[53]

It is also worth noting the Kelowna Accord (2005), a ten-year plan developed to implement and evaluate strategies to equalize the standard of living of Indigenous peoples with other Canadians. Although it was never implemented, the inclusive process used to reach the accord is still largely regarded as setting a high standard for consultative policy making. The substance of the accord itself, abandoned by the newly elected Harper Conservative government in 2006, marks a missed opportunity to reset Indigenous-Crown relations in Canada.[54]

DEMOGRAPHIC CHANGE

In the twenty years since the Royal Commission reported, a new generation has grown to adulthood, and a generation of Elders has passed on. The following table provides a snapshot of the significant demographic changes that have taken place in the past twenty years, without reference to the numerous statistical indicators of progress or lack thereof in education, income, employment, health, or myriad other issues that complicate the landscape for governments—Indigenous and non-Indigenous alike. The number of Canadians who report identifying as Aboriginal has grown from 2.6 percent of the general population to 4.2 percent. It is a

young population. Aboriginal children aged fourteen and under made up 28 percent of the total Aboriginal population and 7 percent of all children in Canada. It is also a mobile and increasingly urban population. In 1996, 49 percent of people who identified as First Nations, Métis, or Inuit lived in urban centres. In the 2011 National Household Survey, that number had grown to 56 percent.[55]

TABLE 1.4. ABORIGINAL IDENTITY IN CANADA FROM 1996 TO 2016

POPULATION

CHARACTERISTIC	1996	2001	2006	2011*	2016
Canadian population	28,528,125	29,639,035	31,241,030	32,852,320	35,151,728
Aboriginal identity*	799,010	976,305	1,172,790	1,400,685	1,673,785
Métis single identity	210,190	292,305	389,780	451,795	587,545
Inuk (Inuit) single identity	41,080	45,075	50,480	59,440	65,025
On-reserve Aboriginal identity	–	286,080	308,490	324,780	326,786
Non-reserve Aboriginal identity	–	690,225	864,295	1,075,910	–
Urban Aboriginal identity	–	494,095	623,470	–	–
Rural Aboriginal identity	–	196,130	240,825	–	–

* All subgroups that comprise this figure are not included in the table. We report Aboriginal identity—that is, how individuals who responded to the census identified themselves—rather than Aboriginal descent.

THE NEXT TWENTY YEARS: DIVERGING PATHS TO SELF-DETERMINATION

A SHIFT IN THE BALANCE OF POWER

The Royal Commission's vision of a nation-to-nation relationship founded on Indigenous self-determination has not been realized. Many of the 440 specific recommendations have not been acted on or have seen only partial implementation. What the commission did achieve was to give authoritative voice to a new interpretation of Canadian history, with Indigenous-Crown relations at its centre, and lay the base for a new national consensus on the fundamental way forward. This new vision, which has received rhetorical endorsement from the current federal government, includes truth telling and mutual responsibility for reforming Confederation on the basis of consent and cooperation.

The commission envisioned renewed relationships based on "mutual recognition, mutual respect, sharing and mutual responsibility."[56] Most significant to our time was its assertion—now borne out by and further detailed in numerous court decisions—that Section 35 is a rather full box of rights indeed: rights that Indigenous peoples can assert and define for themselves how best to exercise and that other governments must recognize and find ways to accommodate. The political balance of power has shifted dramatically, although the ramifications are only starting to be realized. The Indigenous-Crown relationship has gained further "mutuality" through the growing number of significant modern treaties and land settlements. Collectively, modern treaties affect nearly half of Canada's lands, waters, and resources.[57]

Inuit have concluded modern treaties with the Crown that encompass multiple communities and land titles within four different provincial or territorial jurisdictions, each treaty creating somewhat different governance arrangements. In Nunatsiavut, the modern treaty included the usual comprehensive land claim provisions (a cash and land settlement), but it also established the Nunatsiavut government, responsible to and serving Inuit beneficiaries in Labrador and elsewhere in Canada. In Nunavik, the Makivik Corporation has represented the interests for forty years of the Inuit of northern Quebec, who are also served by the public institutions of the Kativik Regional Government and the Kativik Regional School Board. Nunavut is the new territory created by the Nunavut Agreement,

with a public government serving all residents of Nunavut, coexisting in Nunavut with the treaty-holding organization, Nunavut Tunngavik Incorporated, and a number of co-management boards. In the Northwest Territories, Inuvialuit have managed their lands and capital through the Inuvialuit Regional Corporation and co-management boards.

All of these new governments are coping with growing pains—a high demand for skilled employees; huge demands on leaders and resources to respond to social, demographic, and corporate pressures; and strong desires of citizens for governments that operate in their own languages and according to their own ways. In all parts of Inuit Nunangat, these are still distant goals. There is an acute shortage of Inuit who can staff the new governments, compounding the difficulty of the task of redesigning these governance forms so that they have a reasonable degree of continuity with Inuit traditions while maintaining their effectiveness in contemporary politics and administration. This remains an enormous challenge.

For First Nations, the evolution of self-determination is as divergent as the many different cultures and languages that exist within their territories. A handful of First Nations are well on the way to being fully self-governing, having achieved agreements with other orders of government; dozens more are at some stage of negotiation. Those with modern treaties, in common with Inuit, share the challenges of nation building and development of effective and culturally appropriate forms of administration. The modern treaty-holding organizations have formed the Land Claims Agreement Coalition to address common problems and development issues. It is evident that relations among Canadian governments and Inuit, Métis, and First Nations party to modern treaties are defined by those treaties—and by Section 35 rights. The treaty-holding organizations require of Canadian governments that those governments ensure that the treaties form the bases for all bureaucratic and political initiatives toward them and their lands, something unevenly achieved at the moment.

SELF-GOVERNMENT AGREEMENTS ARE ONLY A BEGINNING, NOT AN END

Even assuming the successful conclusion of modern treaties, the path of implementation is not always smooth. The hard work of building and resourcing internal capacity to deliver on new roles and responsibilities is in addition to the effort needed to hold the Crown to its commitments. The minister's special representative on the renewal of comprehensive

land claims provides only the latest in a line of assessments criticizing the government's record on treaty implementation.[58] As more than one wag has quipped, treaties are like marriages—signalling only the start of a relationship that requires tending, continued negotiation, and compromise over the long haul. As Eyford notes, "successful treaty implementation is part of an ongoing and collaborative relationship."[59]

Recent research indicates that a self-government and/or comprehensive land claims agreement increases community well-being.[60] However, these are early studies. Examining the James Bay and Northern Quebec Agreement (JBNQA), a full thirty-five years after its signing, Papillon explains the difficulties in determining whether reported improvements in quality of life and well-being are causally linked to such agreements. Accordingly, Papillon concludes that key lessons from the JBNQA lie neither in its content, though still very important, nor in the marginal socio-economic improvements experienced in Cree and Inuit communities that might have still occurred in the absence of the treaty. Instead, key lessons are to be found in how the Cree of Eeyou Istchee and Inuit of Nunavik leveraged legal and institutional foundations provided by treaty implementation to consolidate their cultural and political identities; increase political autonomy, expertise, and capacity at multiple scales of governance; and formalize intergovernmental agreements and relations with Quebec and Canada, among other things.[61] Tracking the outcomes of modern treaties is an area of study that deserves much more time and attention and could provide useful insights important to all of the parties concerned—including those at the early stages of choosing their future paths.

CLEARING NEW PATHS: MÉTIS PEOPLES AND URBAN INDIGENOUS POPULATIONS

For Métis, the path to a renewed relationship based on self-determination is only starting to clear. *The Manitoba Metis Federation* and *Daniels* decisions open a new world of possibilities for negotiation with the Crown, yet it remains to be seen whether they will result in the set of circumstances that RCAP thought was necessary for exercising full self-determination, with "territorial predominance" being a key factor. Most Métis now live dispersed throughout the general population of Canada. They have well-established networks of associations, however, that form the basis of "community of interest governments," as RCAP envisioned. Whether

Métis can achieve more will be largely influenced by their success in negotiations and by Métis themselves: through creative negotiation proposals, by managing the difficult internal dialogue to define citizenship and confirm representative governments, as well as by developing capable governing institutions.[62]

In this chapter, we have not looked at the urban Indigenous population, composed of Inuit, Métis, and First Nation peoples, who may be Status (Registered with the DIA) or non-Status. The *Daniels* decision provided some clarity about federal responsibility for Non-Status Indians, too, but again this is only the beginning of a new path for all of the parties, the end point of which is still uncertain. In regard to the exercise of self-determination for urban Indigenous populations in general, the continued rapid growth in these populations and the concomitant opportunities and pressures make this a significant and complex topic worth further study and discussion by all orders of government.

We now turn our attention to First Nations still governed under the Indian Act, where we find the clearest potential and perhaps the greatest need for new nation-to-nation relationships.

A NEW PATH: OPPORTUNITIES FOR TRANSITIONAL GOVERNANCE

Twenty years after RCAP, the majority of First Nations continue as administrative subjects to that "ill-fitting boot," the Indian Act.[63] Perhaps the most need, and the most opportunity for renewed relationships, lie here. The eighth generation has been born under the brutal reality of this oppressive law. In earlier times, the Indian Act was an instrument of direct assimilation and very successful in achieving what it was designed to do: First Nations were removed from traditional lands, settlements expanded, and the resulting developments supported European political and economic progress. Today, although its most egregiously oppressive features have been moderated, the act still draws time and initiative from community leaders who cannot be their own agents of change but must rely on the attention, approval, and resources of others.

The Crown still determines policy priorities, program criteria, funding levels, and operational requirements of each band administration.[64] Still too much of this is designed and delivered in bureaucratic silos, resulting in overlap, duplication, gaps, and stretched capacity across myriad issues with which band councils must deal. The Indian Act and its bureaucratic implementation were designed to oppress, and

they continue to suppress, First Nations. This is evident in the ongoing yawning gap between the quality of life that First Nations "enjoy" versus other Canadians.[65]

It is a mistake, however, to label all Indian Act First Nations communities as unsuccessful or problematic. Examples of economic, social, cultural, or other success exist across the country. If one accepts the Community Well-Being Index[66] as an indicator of progress, then First Nations communities experience a range of well-being—from very high to the notably tragic and dire situations of extreme poverty and poor physical and mental health. This raises a question: why are some communities successful and others not? For successful communities, extensive personal experience tells us that their success has been achieved partly because of local histories and partly because of dogged persistence, ingenuity, business savvy, and occasional policy or economic opportunities. Having the option to allay some of the more problematic features of the Indian Act, through instruments such as the FNLMA and FNFMA, has undoubtedly helped too. But the fact is that Canada lacks the longitudinal research on and evidence of "what works" in developing First Nations, and it has yet to apply a supportive and integrated approach to development in its administration of First Nations communities.[67]

CUTTING THEIR OWN PATH

At the current pace of self-government negotiations, it is not practical to expect that this is the only path to lasting change. Nor does it need to be. As RCAP asserted and is now established in jurisprudence, First Nations have a full box of rights that they can use to begin to set themselves on the path to self-determination.

Exercising this full box of constitutional and legally enforceable Section 35 rights requires understanding them as the basis for what we call "transformational governance." They must first be defined by Indigenous peoples who have a major challenge ahead to determine how they will choose to exercise those rights and bring clarity and detail to what must be recognized, accommodated, or otherwise dealt with by other governments and other Canadians.

Transformational governance encompasses not only understanding, defining, and asserting Section 35 rights but also all of the work that needs to go into responsibly exercising governing powers: from engaging and involving community members in setting a new direction, determining

priorities, and agreeing on political structures to making a transitional plan, drafting laws, and building the capacities of institutions to implement those laws. Transformational governance requires a new government-to-government relationship. This is what we need to do.

It is not an all-or-nothing proposition. As with the step-wise development currently under way in some communities, First Nations can choose to begin by exercising their rights in a core jurisdiction of prime importance to them—whether lands and resources, culture and language, or education. The important thing is that they begin to do so.

In our view, it begins with band councils—elected members and staff—that learn to master the Indian Act, in the sense of putting it in its place. The energies of community leadership must be liberated from "serving the machine"—the endless round of reporting and record keeping and proposal writing required by funders, particularly but not exclusively the Department of Indigenous Affairs, in order to have time and energy for meaningful discussion, developing policy, planning, and implementing a different future. Moving from Indian Act administration toward self-government entails a change of focus away from small-scale or protracted negotiations with the Crown in right of the provincial or federal government and toward exercising the jurisdictional rights and title to traditional lands that exist now. Some of the best experience and governing capacity will be gained on the job in the actual exercise of jurisdiction.[68]

The process of mastery must begin with community dialogue and education. From *Delgamuukw and Gisdayway* through to *Tsilhqot'in*, the Supreme Court has consistently stated that Aboriginal rights and title are communally and collectively held by the people and that their consent is required to take action.[69] Similarly, Indigenous thinkers have consistently advanced this understanding.[70] As a first step, First Nations must overcome the widespread lack of understanding regarding the inherent right to self-government and of the relationship implied by the duty to consult and accommodate. They can become drivers of reconciliation and movement toward transitional governance. Education and dialogue are also required among First Nations about the realities of the Indian Act: the multi-generational impact that it has had and continues to have on their ability to be masters in their own houses. The need to heal and reconcile is as important for communities and nations as it is for individuals. Leaders will face many challenges in re-engaging their people, who

have been robbed of a sense of agency by the colonial experience, but this must be where change starts. Part of this process will be served by further research on why the Indian Act is not the right form of governance going forward and, more importantly, on the strategies that will help First Nations to get out from under it.

A note is needed here to acknowledge RCAP's strong view that the inherent right is vested only at the level of nations and can only be exercised by nations. Unfortunately, Canada's willingness in the past twenty years to enter into self-government agreements with so many small communities has waylaid that vision, at least insofar as it would be impossible to change course suddenly. Of the ten comprehensive claims and self-government agreements and stand-alone self-government agreements completed by First Nations, seven were signed by individual communities, of which only two had a population of over 1,000 people (Sioux Valley Dakota Nation and Sliammon First Nation).[71] Of the ninety-nine open negotiations, nearly half are being negotiated with groups representing 1,000 people or fewer.[72]

From a practical governance perspective, nation building is still to be wished for—not least because of the strength that comes with numbers and shared resources. We expect that, as communities work to gain mastery over their own destinies, they will also build the confidence to delegate and share powers and responsibilities with others, for the greater good.

GOVERNMENTS AND OTHERS AS SUPPORTIVE ENABLERS

Although we see the shift to self-determination being driven primarily by the people themselves, federal and provincial governments should play a key supporting role. For example, the *Tsilhqot'in* decision clarifies that Aboriginal title can arise either through declaration by the courts or through *agreement with the Crown*.[73] If the history of Indigenous-Crown relations teaches us anything, then it is this: as much as the Crown must honour its promises, it cannot have more than an enabling and accommodating role in Indigenous social, political, and economic development. This is not a call for benign neglect. Rather, we urge federal, provincial, and territorial governments—at the political and bureaucratic levels—to embark on their own critical self-examinations of where their policies and actions continue to maintain the colonial mindset and hinder progress for Indigenous peoples and the creation of better long-term relationships between Indigenous and other Canadians.

At the political level, this means setting a new tone—as many are now doing—and consistently aligning actions with avowals of reconciliation and new relationships. It means reframing the relationship from one that must be constricted, limited, and "managed" in the short term to one that is accommodating and acknowledges the ongoing nature of the relationship as well as the equal importance and value of the lives of Indigenous peoples to other Canadians within their jurisdiction. It means developing and maintaining the kinds of collaborative policy-making and agenda-setting relationships that the Kelowna Accord showed us are possible. Although RCAP's recommendations for a new Royal Proclamation, framework legislation, and other legal instruments might ultimately be useful for cementing agreements, they are not essential to getting on with renewed relationships characterized by RCAP's four principles: recognition, respect, sharing, and responsibility.

Public servants can start with developing their professional responsibility to understand the historical and legal realities of the relationship and of the day-to-day challenges of their Indigenous counterparts. They need to adopt a supportive development mindset not unlike the approach that Canadians proudly extend to developing countries. They need to ask themselves some questions. Where can they combine and streamline program and service delivery to make things simpler and more effective for recipients? Where can they support or get out of the way of communities setting their own priorities? Which funding models and approaches can they design to support local priorities and capacity building? And how can they practically restructure accountability relationships to be accountable to local communities rather than to a minister in Ottawa?

Finally, governments, universities, and Indigenous governments and institutions themselves need to invest in training and support for self-governance through consistently funded, Indigenous-led institutions and other mechanisms that support the ongoing development of Indigenous governments no matter what their starting points.

Some of the institutions recommended by RCAP came into being (e.g., the National Centre for First Nations Governance [now the Centre for First Nations Governance] and the First Nations Information Governance Centre), whereas others were never implemented (e.g., the Aboriginal Lands and Treaties Tribunal). The Aboriginal Healing Foundation was established in 1998, providing funding for work to heal the effects of residential schooling, until funding was withdrawn in 2009. The FNFMA

established three institutions that support the fiscal aspects of self-government: the First Nations Tax Commission, the First Nations Financial Management Board, and the First Nations Finance Authority. Associations such as AFOA Canada (formerly the Aboriginal Financial Officers Association, a national association of financial officers and senior administrators who work in First Nations government and band administration) were established to help professionalize band administration. Some universities now offer programs in Indigenous governance and administration. Given the task at hand and the diversity of needs, however, including for Inuit and Métis (whose needs are largely unmet in the above list of institutions), much more needs to be done.

CONCLUSION

> Canada is a test case for a grand notion—the notion that dissimilar peoples can share lands, resources, power and dreams while respecting and sustaining their differences. The story of Canada is the story of many such peoples, trying and failing and trying again, to live together in peace and harmony.
>
> But there cannot be peace or harmony unless there is justice.[74]

We end where RCAP began twenty-five years ago—with a hopeful vision for reconciliation and renewed relationships. Although not all of the recommendations came to pass as the commissioners might have hoped, progress is being made, and there are stronger foundations from which Indigenous peoples and other Canadians can continue the hard work of forging a better future together. The fundamental nation-to-nation framework for reconfiguring Indigenous-Canadian relations offered by RCAP is now widely accepted—explicitly by the current prime minister and at least one other political party and implicitly in many legal and practical respects. Shared understanding of the implications of Section 35 reflects the RCAP arguments and jurisprudence following *Sparrow* rather than the restrictive empty box meaning imputed by some during constitutional negotiations.

Without minimizing the strife and conflict that continue to exist in many quarters of our society, we are encouraged by a generally more positive political climate in many regions and by seeing the burgeoning

awareness of Canadians of the compelling reasons for change and the need for continued progress in Indigenous-Canadian relations. This is thanks in no small part to the tremendously difficult and courageous work of all who participated in the Truth and Reconciliation Commission and who continue to carry the banner for truth and reconciliation. The importance of these efforts to renewing the relationship cannot be underestimated. The path ahead will not always be over easy terrain, and it is still a long one for many, but the direction is clear.

NOTES

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1 The terms "Aboriginal people" and "Aboriginal peoples" were standard twenty years and more ago; in this chapter, recognizing the significance of the United Nations Declaration on the Rights of Indigenous Peoples and increasingly common usage, we refer to "Indigenous people" and "Indigenous peoples," except where doing so would be anachronistic.

2 The full clause reads thus:

> The guarantee in this Charter of certain rights and freedoms shall not be construed as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including
>
> (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
>
> (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

3 Goodleaf, *Entering the War Zone: A Mohawk Perspective on Resisting Invasions*; York and Pindera, *People of the Pines*.

4 The idea of appointing a Royal Commission on Aboriginal issues was floated by Prime Minister Brian Mulroney during the Meech Lake Accord discussions in 1987 as a means of dealing with Aboriginal issues that had been intractable and not resolved in "the Quebec round"—the agreement to constitutional recognition of Quebec as a distinct society. See Delacourt, "PM Hints He Will Create Native Panel"; Peach, "The Power of a Single Feather," 30.

5 Royal Commission on Aboriginal Peoples (RCAP), *The Right of Aboriginal Self-Government and the Constitution.*

6 RCAP, *Partners in Confederation*, vi.

7 RCAP, *Volume 2: Restructuring the Relationship*, 1. "If one theme dominates, it is that Aboriginal peoples must have room to exercise their autonomy and structure their own solutions."

8 RCAP, *Volume 2: Restructuring the Relationship*, 107.

9 RCAP, *Volume 2: Restructuring the Relationship*, 183.

10 RCAP, *Volume 2: Restructuring the Relationship*, 106, 156.

11 RCAP, *Volume 2: Restructuring the Relationship*, 203.

12 RCAP, *Volume 2: Restructuring the Relationship*, 202–03.

13 RCAP, *Volume 2: Restructuring the Relationship*, 202–03.

14 RCAP, V*olume 2: Restructuring the Relationship*, 298.

15 RCAP, *Volume 2: Restructuring the Relationship*, 204. *R. v. Sparrow*, [1990] 1 S.C.R. 1075, established rules to restrict uninhibited infringement of Aboriginal rights. The infringement is acceptable only if it serves a valid legislative objective with as little infringement as possible to affect the desired result, if it provides fair compensation, and if Aboriginal groups have been consulted.

16 RCAP, *Volume 2: Restructuring the Relationship*, 134. In 1996, 49 percent of people who identified as First Nations, Métis, or Inuit lived in urban centres. In the 2011 census, that number had grown to 56 percent.Indigenous and Northern Affairs Canada (INAC), *Urban Indigenous Peoples*.

17 RCAP, *Volume 2: Restructuring the Relationship*, 262. Because of the limited space here, we set aside further discussion of urban governance. The issues are complex and increasingly so.

18 RCAP, *Volume 2: Restructuring the Relationship*, 223.

19 RCAP, *Volume 2: Restructuring the Relationship*, 156.

20 RCAP, *Volume 2: Restructuring the Relationship*, 169.

21 RCAP, *Volume 2: Restructuring the Relationship*, 269.

22 RCAP, *Volume 2: Restructuring the Relationship*, 224.

23 RCAP, *Volume 2: Restructuring the Relationship*, 170.

24 RCAP, *Volume 2: Restructuring the Relationship*, 175.

25 RCAP, *Volume 2: Restructuring the Relationship*, 271.

26 RCAP, *Volume 2: Restructuring the Relationship*, 293.

27 RCAP, *Volume 2: Restructuring the Relationship*, 203.

28 See Asch, *Aboriginal and Treaty Rights in Canada*, and Asch, *On Being Here to Stay*; Foster, Raven, and Webber, eds., *Let Right Be Done*; McNeil, "Aboriginal Governments and the Canadian Charter of Rights and Freedoms"; and Newman, *The Duty to Consult: New Relationships with Aboriginal Peoples* for legal overviews.

29 These developments build on the 1973 *Calder* decision, which initiated the resulting decades of case law regarding Aboriginal title and rights in Canada and strengthened political will for reopening treaty negotiations. See Godlewska and Webber, "The *Calder* Decision"; Scholtz, *Negotiating Claims*.

30 Moralleto, *The Crown's Constitutional Duty*.

31 McNeil, "The Jurisdiction of Inherent Right in Aboriginal Governments." In the 1997 decision widely referred to as *Delgamuukw v. British Columbia*, we acknowledge the contributions of the Gitxsan and Wet'suwet'en Nations to the case and therefore use the full title, *Delgamuukw and Gisdayway v. British Columbia*.

32 Newman, *The Duty to Consult*.

33 *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, para. 14.

34 See *Tsilhqot'in Nation v. British Columbia*, para. 97. For a different view of this decision and preceding jurisprudence, see McCrossan, "Contaminating and Collapsing Indigenous Space"; McCrossan and Ladner, "Eliminating Indigenous Jurisdictions."

35 See *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, para. 116.

36 See *R. v. Powley*, 2 S.C.R. 207, 2003 SCC 43, para. 12.

37 See *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, para. 15.

38 Supreme Court of Canada Reference whether "Indians" includes "Eskimos," [1939] S.C.R. 104 1939-04-05. *A Matter of National and Constitutional Import: Report of the Minister's Special Representative on Reconciliation with Metis: Section 35 Metis Rights and the Manitoba Metis Federation Decision* was released in August 2016. Its seventeen recommendations include that Canada should create a framework for negotiating and addressing Métis rights, establish a Métis-specific claims process, review policies affecting Métis, and provide stable funding for some of the country's largest Métis "governments."

39 The Sechelt Indian Band Self-Government Act (1986) was the first in Canada to remove several provisions of the Indian Act. The act was twenty years in the making, during which the band envisioned, and obtained, legislation that enabled certain self-government abilities while maintaining a relationship with the federal government prior to the constitutional protection of self-government. See Etkins, "The Sechelt Indian Band."

40 Section 91(24) of the Constitution Act, 1982, assigns "Indians and the Lands reserved for Indians" to federal jurisdiction.

41 For a broader discussion of jurisprudence on this point and the vesting of democratic governing authority in collectivities, see McNeil, "Aboriginal Title and Indigenous Governance."

42 INAC, "Comprehensive Land Claim and Self-Government Negotiation Tables."

43 BCTC, *Treaty Commission Annual Report* .

44 BCTC, "About us."

45 One of the four, the Yale First Nation Final Agreement, was initialled in 2010. However, Yale First Nation released a letter in early 2016 stating its decision not to proceed with implementation. See its press release at http://media.wix.com/ugd/6896ba_04f788977 3c8491c8b91dba8a060966c.pdf.

46 INAC, "Renewing the Federal Comprehensive Land Claims Policy."

47 Eyford, "A New Direction."

48 See INAC, "Renewing the Federal Comprehensive Land Claims Policy."

49 INAC, "First Nations Land Management."

50 Alcantara, "Reduce Transaction Costs?"; Warkentin, "Study of Land Management and Sustainable Economic Development."

51 FNTC, "First Nations with Property Tax Jurisdiction," and "First Natons Tax Commission."

52 FNTC, "First Nations with Property Tax Jurisdiction," and "First Natons Tax Commission."

53 See, for example, Cassidy, "The First Nations Governance Act: A Legacy of Loss"; Cornell, Jorgensen, and Kalt. "The First Nations Governance Act: Implications of Research Findings"; and Ladner and Orsini, "The Persistence of Paradigm Paralysis."

54 Poelzer and Coates, *From Treaty Peoples to Treaty Nation*.

55 Statistics Canada data from censuses and the 2011 National Household Survey (NHS). Prior to 2011, demographic, socio-economic, and housing data were collected through the national long-form census. In 2011, a switch was made to the voluntary NHS, making year-over-year comparisons difficult. With respect to Indigenous peoples, the NHS lacked breadth and depth compared to a census (especially its lack of metropolitan statistics).

Note that Table 1.4 includes long-form census data prior to 2011 and from 2016 and NHS data in 2011.

56 RCAP, *Volume 1: Looking Forward, Looking Back*, 645.

57 Land Claims Agreements Coalition (LCAC). "Modern Treaties Benefit All Canadians," n.d.

58 Eyford, "A New Direction"; see also Canada 1985.

59 Eyford, "A New Direction," 78.

60 Pendakur and Pendakur, "An Analysis of the Socio-Economic Outcomes," 19.

61 Papillon, "Aboriginal Quality of Life under a Modern Treaty."

62 For further discussion, see Chartrand, "Defining the 'Métis' of Canada," and "Citizenship Rights and Aboriginal Rights in Canada."

63 Abele, "Like an Ill-Fitting Boot."

64 A recent BC Court of Appeal decision, *Louie v. Louie BCCA 247* (2015) affirmed the strict limitations on power and authority vested in band councils through s. 2(3) of the Indian Act, which constrains decision-making powers in the absence of related bylaws or laws often subject to ministerial approval.

65 See, for example, Anaya, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*.

66 Aboriginal Affairs and Northern Development Canada (AANDC), "The Community Well-Being Index."

67 See, for example, in the United States, *The Harvard Project on Indian Economic Development*, http://hpaied.org/.

68 Warkentin, "Study of Land Management and Sustainable Economic Development"

69 See *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, para. 115, and *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, paras. 74, 75.

70 Borrows, *Recovering Canada* and Borrows, *Canada's Indigenous Constitution*; Val Napoleon, "Thinking about Indigenous Legal Orders."

71 INAC, "General Briefing Note on Canada's Self-Government."

72 INAC, "Urban Indigenous Peoples."

73 *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, paras. 89–90.

74 *Highlights from the Final Report of the Royal Commission on Aboriginal Peoples: People to People, Nation to Nation*, https://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637.

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