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FEDERAL-PROVINCIAL MEETING OF MINISTERS ON
ABORIGINAL CONSTITUTIONAL MATTERS

Equity of Access Profile

NCC

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Equity of Access Profile

Introduction

In response to questions from several delegations, and in the light of a lack of understanding reflected in several of the government letters of response to the Equity questions we asked at the Halifax officials meeting, we are submitting two documents on Equity of Access at this meeting.

The first is this "issue summary" which we hope will both simplify and clarify the issue for all delegations.

The second is a larger printed booklet entitled "Access to Survival" which explores in some detail the issue and its ramifications for NCC constituents. For those who require, or are required, to familiarize themselves with the "why and wherefores" of the issue, we hope this booklet will deepen delegate understanding of this critical issue.

Statement of Issue

All of the Aboriginal peoples of Canada must be able to access benefit from Aboriginal Rights, Treaty Rights, and other rights pertaining to Aboriginal peoples on an equitable basis.

What Equity of Access Does NOT Mean

Equity of Access to Aboriginal and Treaty rights does NOT mean every Aboriginal person in Canada is entitled to all and exactly the same specific benefits derived from those rights by specific populations of Aboriginal people.

Obviously, an Aboriginal person who has no relationship to a specific Treaty or claims settlement also has no claim to benefit under that specific Treaty or claims settlement. Only those Aboriginal persons who meet the criteria set out in that Treaty or in that settlement have access to benefit from the rights involved.

What Equity of Access DOES Mean

Equity of Access to Aboriginal and Treaty rights DOES mean that every Aboriginal person in Canada is entitled to equitable access to benefit from those rights to which that person has an ancestral relationship.

Obviously, an Aboriginal person who has such a relationship should not be unilaterally or arbitrarily deprived of access to benefit from the rights involved.

Need for Equity of Access

The entire constituency of the Native Council of Canada is living proof of the need for Equity of Access provisions in relation to Aboriginal and Treaty Rights. Historically and currently they are deprived of acknowledged access to Aboriginal and Treaty Rights by unilateral and often arbitrary application of government policy. Brothers and sisters, parents and children find themselves cut off from benefit of Treaty and Aboriginal rights, and from each other, by the dictates of federal and provincial laws originally and deliberately designed to arbitrarily reduce the size of Aboriginal populations who could claim benefit from right. Historically this might be rationalized as the result of a narrow, racist, and mistaken point of view. But the fact this situation still exists and --unless something specific is done-- will continue to exist is intolerable.

Where Inequity Exists

We might say that the "House of Aboriginal and Treaty Rights" as set out in Section 35, is a triplex. It has three apartments, one for each of the Aboriginal peoples named in Section 35. The doors to each of these apartments require a very particular kind of key, or combination of keys. There is the key marked S.91(24). Another is marked Treaty, (with an appropriate name or number.) Still another is marked "comprehensive claim." There is one more key called the "Indian Act." There is talk of a fifth (trilateral) key, but the rumour is yet to be confirmed.

Some Aboriginal people have two or even three of these keys. Others have none. In fact, most of the Aboriginal people of Canada cannot enter the House of Aboriginal and Treaty Rights at all. Metis are not allowed the 91(24) key. Non-Status Indians might have that key, but somehow it doesn't work. By governmental practice most Metis and Non-Status Indians are excluded from Treaty, the Indian Act, and from most claims processes. By any reasonable standards all of these people are Aboriginal people within the meaning of Section 35, but are denied access to the house. That is the situation that Equity of Access is addressing.

Federal Application

There are a number of obvious federal areas in which the Equity of Access principle must be applied. As long as the status quo remains specific equity of access mechanisms will be required in the context of constitutional amendment.

As long as Metis and Non-Status Indians are unilaterally excluded from the bilateral federal relationship accorded other Aboriginal peoples under Section 91(24), specific equity of access accommodation will be required in the context of constitutional amendment.

As long as Non-Status Indians are unilaterally excluded from registration under the Indian Act, specific equity of access accommodation will be required in the context of constitutional amendment.

As long as descendants of Treaty Indians are unilaterally deprived by Federal policy from participation in treaty rights and benefits accorded other descendants of the same Treaty Indians, specific equity of access accommodation will be required in the context of constitutional amendment.

As long as Metis and Non-Status Indians are unilaterally excluded from specific and comprehensive claims processes, south of 60, accorded to other Aboriginal people, and to which they have a demonstrable relationship, specific equity of access accommodation will be required in the context of constitutional amendment.

Provincial Application

Similarly, if not quite so obviously, there are a number of provincial areas in which the Equity of Access principle must be applied. Again, as long as the status quo is maintained, specific equity of access mechanisms will be required in the context of constitutional amendment.

As long as Metis and Non-Status Indians have provincial laws applied to them specifically because those peoples are not recognized under Indian Act, equity of access accommodation will be required in the context of constitutional amendment.

As long as Metis and Non-Status Indians are deprived of programs and services accorded other Aboriginal peoples because, they are not registered under the Indian Act. Specific equity of access mechanisms will be required in the context of constitutional amendment.

As long as Metis and Non-Status Indians are deprived of programs and services related to Section 92 heads of jurisdiction which are accorded other Aboriginal peoples under Section 91(24), (i.e. education), specific equity of access mechanisms will be required in the context of constitutional amendment.

Constitutional Accommodation

In the face of these inequities, the Native Council of Canada has both the responsibility and the mandate to correct the situation in the only forum open to it -- the First Ministers' Conference on Aboriginal rights. The NCC has no option open to it, but to insist that any amendment to the Constitution of Canada which affects Aboriginal and Treaty rights, specifically ensures the Aboriginal rights of its constituents.

Given the status quo, in terms of Federal and Provincial policy toward Metis and Non-Status Indians, there is no avenue by which NCC constituents can equitably access benefit accorded other Aboriginal peoples. Whether the House of Aboriginal and Treaty Rights is furnished or unfurnished, Metis and Non-Status Indian people cannot get in without a key specifically fashioned for that purpose. The creation of that key is the purpose of including equity wording in constitutional amendments related to Aboriginal and Treaty Rights.

Self-Government Amendment

Over the last several months it has become increasingly apparent that neither Federal nor Provincial governments intend to make "copies" of existing keys for Metis and Non-Status Indian people. It is also apparent that we are on the verge of drafting a self-government amendment. From the NCC's point of view, that amendment must include the crafting of a new "key" which will ensure that whatever arrangements are constitutionalized must be at least as available to NCC constituents as they are to other Aboriginal peoples.

Accordingly, the NCC has been examining the options in relation to Equity of Access with the intention of bringing amendment language forward for the consideration of delegates. The precise option and language we will propose is currently under examination internally, and certainly will be affected by the outcome of this meeting.