

STATEMENT OF PRINCIPLES

FIRST MINISTERS' CONFERENCE
ON ABORIGINAL CONSTITUTIONAL ISSUES

Statement of Principles

Province of Manitoba

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- I. The special status of aboriginal peoples in Canadian society stems from the fact of their occupation use and collective ownership of lands in what is now Canada prior to European settlement and the application of European law. The aboriginal peoples existed as distinct nations and exercised self-governing powers over their territory and over their religious, cultural, social, economic and political life. They also exercised control over living and natural resources of the land they inhabited. Although the treaties and modern agreements have affected the rights of the aboriginal nations to some extent, such treaties and agreements cannot be construed as constituting a general extinguishment of fundamental aboriginal rights.

Over the several centuries which followed the coming of white settlement many developments have taken place in the construction of a Canadian political system. Account must be taken of Canada's political and constitutional structure in the process of identifying and defining aboriginal rights for inclusion in the Constitution of Canada. For example, the fiscal and trust responsibility of the Federal Government stems from the devolution of Crown responsibility (which responsibility is defined in part in the Royal Proclamation of 1763); and such responsibility cannot be unilaterally abandoned.

It is also the case that the right of the aboriginal peoples to self-government (which is hereby recognized and affirmed) must now be further developed in the context of the Canadian Constitution.

II. The subscribing parties to this Statement of Principles recognize the following attributes of aboriginal rights for the express purpose of providing a basis upon which the constitutional recognition of those rights shall be further elaborated within the Constitution of Canada and reflects a commitment by the Federal and Provincial Governments of Canada, in the spirit and intent of S. 37(2), to elaborate and secure the rights and freedoms of the Aboriginal peoples of Canada:

(1) Aboriginal rights and title are based on but are not confined to the use and occupancy by the original peoples of land over which they exercised collective control and governance.

(2) The rights of the aboriginal peoples include:

(a) Aboriginal title and land entitlements, as modified and secured by treaties and agreements analogous to treaties, which title and claims are not subject to arbitrary interference of appropriation.

- (b) The right to have treaties and analogous agreements constitutionally protected.
 - (c) The right to self-government subject to the Canadian Constitution and within the Canadian Confederation.
 - (d) The right to preserve and develop their own distinct aboriginal cultures, languages and religions free from arbitrary interference.
 - (e) Their historic right to hunt, fish, trap and gather, and their right to participate in the protection and enhancement of living resources of the land for the continued use, benefit and enjoyment of all Canadians both present and future.
- (3) It is recognized as essential that the aboriginal peoples have the right to benefit fully from the use of their lands and renewable and non-renewable resources as a base for self-sufficiency, and for the social, economic and political development of their communities.

- (4) It is further recognized that a special relationship of fiscal responsibility exists between the aboriginal peoples and the Federal Government. Section 91(24) of the Constitution Act, 1867 is only one expression of that relationship as it applies to Indians and the Inuit. The Federal Government and the Provincial Governments have special responsibilities to the Metis as well.
- (5) It is further recognized that, when defining and developing aboriginal institutions of self-government, it will be essential that adequate fiscal resources be made available to the aboriginal peoples. Such resources are required to provide services reasonably comparable to those available to Canadians generally, taking into account the special social, cultural and economic needs of aboriginal peoples.
- (6) It is further recognized that, consistent with the present division of Federal and Provincial responsibilities for the delivery of programs relating to health, education, community services and economic development, and consistent with fiscal responsibility as above stated, program delivery should be transferred to the developing institutions of aboriginal self-government.

- (7) It is further recognized that rights to be identified and defined for inclusion in the Constitution of Canada shall not derogate from other rights enjoyed by the aboriginal peoples.
- (8) It is further recognized that there should be a clause in the Constitution expressly providing for the enforcement of the collective and individual aboriginal rights guaranteed by the Constitution.
- (9) It is further recognized as a matter of principle:
- (a) that the aboriginal peoples should have the right to initiate amendments to those constitutional provisions which directly and exclusively affect them, such initiation to take place through their representative national organizations; and
 - (b) that no amendment to the Constitution of Canada which directly and exclusively affects one or more of the aboriginal peoples may be made without the agreement of those aboriginal peoples so affected. Such agreement can only be given or withheld by the representative national organization of those aboriginal peoples.