

THE CONSTITUTION

Mr. Premier and Honourable Ministers:

Your government and the Indian Nations of this province share a common concern about the way Federal authorities are handling the process of constitutional amendment and patriation. Ottawa is attempting to reshape relationships and powers among the members of confederation, and is ignoring long-established conventions in favour of legal technicalities to support its unilateral action.

Most provinces are upset and as Indians, we know how they feel. During the past year, provinces have been exposed to much the same sort of treatment on the constitutional issue from Ottawa which Indian Nations have been getting for the past one hundred years.

Insofar as constitutional amendment and patriation is concerned, we support your government in any action which will provide more time for reflection and negotiation. We agree with you that the constitution is Canada's fundamental law and is not something to be treated casually or tampered with recklessly and unilaterally. The constitution is the guidance system which orders Canada's institutions, inter-group relationships and expectations. A badly programmed guidance system can lead to a disastrous pile of wreckage.

Given our apparent agreement on the issue of Federal constitutional tactics, it is also important that we understand the nature of our differences. If we understood Mr. Johnson's letter of May 19, 1981 to us correctly, your government is opposed to the entrenchment of special Indian rights in the constitution. Your position seems to be that aboriginal and treaty rights are in the same general class as the rights and freedoms of other Canadians, which traditionally are subject of direct statutory control by Federal and Provincial parliaments.

If our interpretation of your position is correct, we have to conclude that your Ministers are either very badly informed about the nature of Indian rights, or that you recognize our rights and would like to see them terminated. Whatever the case, we see you aligned with Ottawa on the specific issue of our rights and regret very much that this seems to be the case.

We sincerely hope that we have read your position incorrectly or that you will be prepared to reconsider your views if they are as reported. Alberta's support for our position would go far in reinforcing the proposals which we may have occasion to present to the forthcoming First Ministers' Conference later this year.

The opinion of most Indian Nations in Canada, including our own, is that the aboriginal and treaty rights sections of the amended constitution lacks substance. The constitution as it now reads merely flags these rights for future negotiated settlements, or for subsequent definition by the courts within Canada. Our present recourse to the Parliament of the United Kingdom, which now carries residual responsibilities as a signator of Treaties and other agreements, will be severed forever.

Our long and unhappy experience with Canadian governments over many generations, has taught us to be skeptical about their willingness or ability to protect our aboriginal and treaty rights. Consequently, we stress that there should be a clear and detailed understanding reached about our place in a Federated Canada before the constitution is patriated.

We are committed to this position and, given the possibility of a Supreme Court decision supporting Ottawa's constitutional intentions, we are prepared to carry our public lobby and legal battle to England.

Without taking up your time with historical and legal details, which you have heard before, we would like to state our constitutional position as simply and directly as possible.

The British North America Act, as it now stands, deals with two sets of relationships: one — describes the relationship between the Federal government and the provinces in terms of their respective spheres of powers; the other — identifies, but does not define, a relationship between the Federal government, Indians and land reserved for Indians. (Section 91(24))

The present constitution also requires that Ottawa provide for the "peace, order and good government" of those parts of Canada that do not form a part of established provinces.

The Proclamation of 1763, as well as the Treaties and related statutes, are explicit in recognizing the rights of Indian Nations to sovereignty, land, resources and a livelihood. These were obligations solemnly undertaken by the Crown to ensure peaceful relations between Indian Nations and European settlements. These obligations were transferred by the Crown to the Federal government at the time of confederation in the form of a trust responsibility and are implicit in Sec. 91(24) of the present constitution.

These are the salient features which distinguish Indian Nations and Indian lands in Canada. What this means is that Ottawa has never exercised its constitutional prerogatives and responsibilities to bring Indian Nations and their lands into confederation, as it did other territories in Canada. Instead, those of us who have chosen to preserve our identity by remaining on our lands, have been administered as an internal colony of Canada under the direct control of a special Minister, who exercises all the powers of an old-time colonial governor.

We believe that the time has come to bring our lands and our Nations into confederation in a way which preserves the intent and spirit of our initial agreements with the Crown. Ottawa can provide for the "peace, order and good government" of Indian territories — which are not and never have been a part of any province — by providing for a properly constituted Indian government.

In a constitutional context, Indian government is not the same thing as Band or Reserve government. The former describes a constitutional basis for Indian government related to Indian society and Indian lands in their entirety. The latter defines a form of local administration which has a statutory basis and which, without the protective umbrella of an Indian government, remains vulnerable to the assimilation and termination policies of Ottawa.

Alternatives to Indian government as a legitimate and necessary next step in Indian political development, are not acceptable. There are only two other options. One is to remain as an administered colony of Ottawa; the other is to accept the termination of our special constitutional rights, to give up our identity as Indian Nations, and to assimilate into the general population.

Unlike European immigrants to this continent, we do not have custodians of our history, culture and language in overseas countries. If Indian Nations disappear in Canada, their destruction will be complete and permanent. Our Treaties were supposed to ensure that this would not happen.

We therefore come back to the only alternative that makes sense and which will ensure our full participation in the political, economic and social life of Canada; that is, an Indian government for Indian lands as an added and necessary dimension of Canadian confederation.

This is our position on Indian Government in the manner in which we will participate in any renewed confederation of Canada. We place this forward to you today not for consideration, but as notification to you as a Provincial Government.

The Chiefs Constitution Committee

NOT EXPAND BUT NOT
RETRACT EITHER