

ASSOCIATION OF IROQUOIS AND ALLIED INDIANS

Declaration of
Member Indian Nations
Relationship to the Imperial
Crown

Submitted to the
Special Joint Committee on
the Constitution of Canada

November 25, 1980

We are of the Nations described in the Royal Proclamation of 1763 as "The Several Nations or Tribes of Indians with whom we are connected and who are under our protection". The Royal Proclamation of 1763 was enacted by George III employing a Crown Perogative to legislate directly for the colonies, and is the first written Constitutional Document for Canada, its provision still being in effect in Canada. Our specific relationship to the Imperial Crown was then one characterized as a Protectorate. The Proclamation set out specific procedures for Treaties between our Nations and the Crown. These procedures included that Treaty relationships were to be between Representatives of the Crown and Leaders of the Aboriginal Nations, and that Indian lands could only be acquired in accordance to the Treaty procedures prescribed in the Royal Proclamation.

When our Nations entered into the Protectorate Status of the Imperial Crown, the Crown undertook a basic obligation to protect our Nations. This the Crown acknowledges in the Royal Proclamation of 1763 as well as the Report of The Select Committee of the British House of Commons on Aborigines (British Settlement). This was not a unilateral obligation. We accepted a special relationship with the Imperial Crown. Britain expanded her colonies and acquired lands in Canada as a result of these Treaties. We in return received a pledge of protection and recognition of The Imperial Crown that any change in this relationship should only occur by mutual negotiation and agreement. This arrangement benefitted Great Britain and Her subjects, however, Our Nations have not been as fortunate. Nonetheless, that is the status between Our Nations and Great Britain which still exists to this day. Included therein are obligations that cannot be lightly disregarded without a breech in faith.

Treaties negotiated in Canada on behalf of The Imperial Crown from your first contact with Our Nations through to the present all rely upon the perogative powers of The Imperial Crown and in the Royal Proclamation of 1763. The Royal Proclamation of 1763 is the source of all power for the negotiating and entering into of Treaties. And, any treaties negotiated were in fact negotiated on behalf of the Imperial Crown, not on behalf of The Crown in the right of Canada or The Government of Canada. Neither the British North America Act of 1867 (section 91(24)) delegating responsibility in relation to "Indians, and lands reserved for Indians"); The Statute of Westminster of 1931 (which gave Canada power to negotiate International Treaties); nor any other piece of legislation in Canada before or after Confederation gives authorization for Canadian Officials to negotiate Treaties with Aboriginal Nations. Nor were these powers transferred to Canada in 1949 when an amending power to amend The Constitution was given to Canada by The Imperial Parliament. The Imperial Parliament could not have given The Canadian Parliament the power to amend The Royal Proclamation, a document which was Imperial and not solely Canadian in nature. Historically the record is clear, that officials negotiating Treaties, acted on behalf of the Imperial Crown, not the Government of Canada, the Prime Minister of Canada or the Crown in Right of Canada.

Although certain transfers, financial and administrative responsibilities of Imperial Obligations to Our Nations to Canada have occurred over the years, the process of Treaty Negotiation has remained the same. It has always been pursuant to The Royal Proclamation of 1763. The Royal Proclamation of 1763 remains embodied

as an operative part of The Constitution of Canada. Although section 2(2) of The Statute of Westminster provides that Canadian Law can alter "Laws of England" or any Act of the Parliament on the United Kingdom, it does not alter The Royal Proclamation. The Royal Proclamation of 1763, as a Perogative Imperial Enactment relating to Canada, has no application to England, is not a law of England nor an Act of The Parliament of The United Kingdom.

The changes in responsibilities from The Imperial Crown to Canada, occurred in practice but not in law. We were weak then, but now Our Nations call upon The Imperial Crown under its historical obligations and responsibilities to help us in our struggle to decolonize our relationship with Canada and The United Kingdom.

Our Nations recognize that Britain has by convention not normally interfered in the internal domestic affairs of Canada. However, Our Nations have a special relationship with The Imperial Crown. No other grouping in Canada has an equivalent historical, legal or moral claim to The Parliament of The United Kingdom. Our Nations request that Parliament examine all Canadian proposals regarding The Constitution in light of the rights and statutes of the Aboriginal Nations. You have pledged to protect Our Nations. The time is at hand when we need your protection.

The early pattern of direct Imperial perogative responsibility for relations with Our Nations involves an obligation to protect Our Nations and involves a commitment to change only through agreement. The shift in Imperial Crown obligations and responsibilities that occurred in 1860, 1867, 1931 and 1949 neither explicitly nor implicitly transferred the Imperial obligations and responsibilities

to Canada. Therefore, if the United Kingdom desires to transfer them to Canada, it cannot legally or morally do so without the consent of Our Nations. Particularly in this case due to the basic model of negotiation and counsel in the Treaty process prescribed by the Royal Proclamation of 1763.

What Our Nations want is clear. We want to be self-governing Nations within Confederation. To ensure that we are self-governing, we want to maintain our special relationship to The Crown; a relationship which is parallel to that of the Government of Canada and Canadian Provinces. We want an affirmation of the fundamental principle of The Royal Proclamation that changes in our relations with the Imperial Government and Canadian Government will be negotiated and proceed on the basis of consent. We assert these rights to protection; of self-government and of Treaty relationships today because of the obligations Great Britain undertook by virtue of The Royal Proclamation.

We have asserted these rights in Canada without success. The Imperial Crown, now is called upon by the Nations it pledged to protect, to fulfill its obligations and responsibilities by refusing patriation to Canada of the B.N.A. Act without the necessary consent of the Indian Nations.