

PRESENTATION BY THE COUNCIL FOR YUKON INDIANS
TO THE SPECIAL JOINT HOUSE OF COMMONS AND SENATE COMMITTEE
ON THE CONSTITUTION OF CANADA

OTTAWA, DECEMBER 3, 1980

or violence in our homelands in exchange for the opportunities of a life in Canada.

In contrast to the rights of other minorities, it must be remembered that the rights we deserve are not tempered by any arguments that we are here by choice. We alone have always been here and we alone are the only Canadians who are not Canadians by choice.

It must be understood that we do not oppose the concept of a constitutionally entrenched Canadian Charter of Rights and Freedoms. Rather, we believe in the fundamental necessity of such. We also strongly support entrenched minority rights; for we believe that the primary purpose of law in any true democracy is to protect minorities against the caprice of the ruling majority. We know of no better place to establish such protection than in country's foremost legal document, the Constitution.

As the original sovereign occupants of the lands now comprising Canada, we demand to see our rights clearly defined and protected in the country's foremost legal document.

The appropriate time to define and entrench our special status as Yukon Indians and Native Canadians is now, not later. New Canadians may have been waiting one hundred thirteen (113) years for their own, made-in-Canada constitution but we have been waiting much longer and at an infinitely greater cost for a bona fide recognition of our People's age-old rights.

The fundamentally appropriate time to define and constitutionally entrench our rights is now: The government's proposed Charter purports to establish the rights and freedoms of generations of Canadians not yet born and of future minorities not yet emigrated.

Clearly there exists no honourable justification for rushing towards such a constitutional milestone while, at the same time, ignoring the special rights of those Canadians who have resided here since time immemorial.

An appreciation of our unique position in Confederation, and of the staggering social, political, and economic costs we have incurred during our centuries long slide from the status of sovereign nations to our current position, makes it morally indefensible to suggest our rights will be established constitutionally at some vague future date. The opportunity exists now to constitutionally protect our rights and simply speaking, the nature of our claim to special constitutional protection is such that by comparison the claims of others - be they individuals, minority groups or levels of government - are secondary. Clearly the patriated Constitution must include protection of the rights and freedoms of Canada's first citizens, the Native Peoples'.

THE YUKON AND THE YUKON INDIAN PEOPLE:

Our people's history in the Yukon mirrors, in essence, the history of all North American Native peoples. That is to say that we lived sovereign for

tens of thousands of years and our cultures, which were as symbolically rich and as valid as any other, thrived. The European immigrants arrived and disaster ensued.

The most notable distinction between our experience in the Yukon and that of most other Native peoples is the relatively late date at which the fateful contact occurred, and the accelerated rate at which your culture asserted its dominance.

As you are no doubt aware some of the Indian Nations in the south-east part of this country first experienced on-going contact with the Europeans almost three hundred years ago. As the records show the Native/European relations were not what they are today; Native societies were then sovereign, they sought after military allies of European Kings. For many generations after the initial contact they lived secure in the well-founded belief that their culture and lands had been protected in perpetuity by the royal decrees of their European allies. Eventually however, they all came to learn that "what protection has been legislated yesterday can be removed or limited by another enactment tomorrow".

In the Yukon, on-going contact was only established about one hundred years ago when a handful of prospectors, traders and missionaries began to ply their respective trades here. We did not feel the full weight of your culture, however, until the turn of the century when the stampede to the

Klondike gold fields occurred. This event, which occurred within the living memory of some of our Elders, marked the point at which our people were conscripted into Confederation. Since that time our aboriginal rights have been continuously eroded, ignored and denied.

Our prospects of reinstating official recognition of our rights took a positive turn in 1973 when as a result of the Nishga decision, the government of the day acknowledged the possible existence of aboriginal rights and subsequently agreed to negotiate towards a resolution of outstanding Native claims.

Since 1973, the Council for Yukon Indians and the Canadian government have been attempting through consultation and negotiation to produce a comprehensive definition of the special rights and freedoms of the Yukon Indian people. The Agreement, when it is achieved will determine what it means to be a Yukon Indian; it will clearly define the social, political, cultural, and economic rights accruing to the Yukon Indian people in recognition of our status as the first people of this land.

Moreover, the resolution of our aboriginal claims and the subsequent definition of our rights will establish a new status quo in the Yukon Territory. Currently, social, political, and economic development in the Yukon is, for the most part, an adjunct of the claims settlement process.

There exists a consensus amongst the parties concerned, albeit grudgingly, that it is appropriate to resolve the claims of the Yukon Indian people prior to embarking upon developments which will prejudice the prospects of a just settlement.

In the last year or so we have come tantalizingly close to a determination of the outline of our Settlement, despite the fact that we have had to deal with three different federal governments and the ancillary changes in policies, Ministers and federal land claims negotiators.

However, due to the constitutional events of recent months our concern has shifted, in no small part, from whether or not we will be able to negotiate acceptable special rights and protections for our people, to whether or not the settlement we negotiate will be constitutionally valid.

Our position regarding the impact of the proposed made-in-Canada Constitution upon our people's rights flows from a number of specific concerns as follows:

1. The government's current proposal does not clearly establish that Canadian Natives, in our case Yukon Indians, are a special, discrete group of citizens not to be confused with or compared to other Canadians, minorities or otherwise;
2. The current proposals do not provide us with special rights and protections commensurate with our unique status in Confederation;
3. The proposed "Charter of Rights and Freedoms" purports to define and entrench the rights of Canadians not yet born, and of future Canadian minorities not yet emigrated while, at the same time, avoiding any mention of our special rights;

4. The proposed "Charter of Rights and Freedoms" will, if patriated, become an integral component of Canada's foremost legal instrument, the Canadian Constitution. This document in its present form does not define and entrench the special rights and protections of native peoples. Moreover - and this is of particular concern to Yukon Indians - it does not clearly state that the settlement we are working towards will be legal;
5. Finally, we are concerned that Native peoples are not included in the proposed amending formula. The degree to which non-Indian legislators and jurists have historically ignored, eroded or denied solemn promises to our peoples precludes our ability to trust them in the future.

The fundamental importance to our people of the Settlement of our Rights is such that we cannot accept ephemeral assurances that the courts will not strike down, as unconstitutional, the provisions of our Agreements. The federal government disingenuously suggests that the future legality of any agreements we may negotiate are ensured through the provisions of Articles 15 and 24. These assurances however, must be contrasted with the fact that future decisions of the courts are not bound by the verbal commitments of today's government.

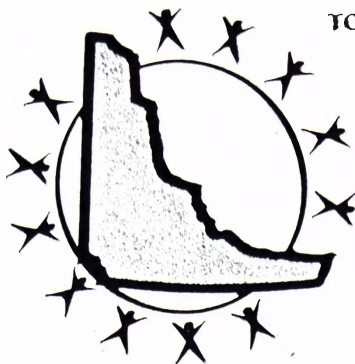
Consider, for example, the matter of mobility rights; one of the most salient features of the Yukon's non-native population is the unusually high number of transients, people who stay here for a few years and then leave. Government studies indicate that as much as 45% of the current non-native population did not live here three years ago. In view of this, and in view of the fact that major industrial developments may exacerbate this situation, the CYI may wish to negotiate residency requirements for participation in the

political process. Residency requirements to vote may be necessary insofar as each and every vote influences decisions affecting the Yukon's future. We do not believe that our future should be influenced to any great degree by people who have no intention of sharing it. We fear, however, that the Supreme Court could strike down as unconstitutional the sections of our agreements relating to residency requirements. The government's current assurances cannot assuage this fear. Instead we deserve and demand amendments to the proposed constitution which explicitly protect any rights we may negotiate.

We are equally adamant as regards our belief that there exists no honourable justification for not establishing our constitutional rights and protections now, prior to patriation. For one thing, we are concerned that the proposed amending formula represents an impenetrable barrier to the post-patriation establishment of our rights; if today we cannot convince the federal government to unilaterally introduce amendments which define and protect our rights, then what are our prospects vis-a-vis the numerous governments we must deal with after patriation?

The fundamental issue to be addressed by this Committee is whether or not the Native peoples of Canada deserve special constitutional protection. If the answer is affirmative there can be no question as to when this protection should appropriately be entrenched. It should be entrenched now.

For all of the reasons discussed above the Council for Yukon Indians respectfully requests this Joint Committee to turn down the proposed Bill and to recommend to the Parliament of Canada that a joint resolution to the British Parliament not occur without meaningful and substantial changes to meet the fundamental concerns of the original peoples' of Canada.



COUNCIL FOR YUKON INDIANS

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FOR IMMEDIATE RELEASE

STATEMENT ON THE CONSTITUTION AND THE PROPOSED CHARTER OF RIGHTS AND FREEDOMS

The Council for Yukon Indians has now had time to consider Mr. Chrétien's amendments to Section 25.

We find them totally unacceptable. They are flawed and specious in three fundamental respects:

First, the expression of aboriginal rights is drafted in the negative;

Second, there is utterly no protection for any rights and provisions which may be contained in our land claims settlement;

Third, nowhere are aboriginal peoples defined.

The Council for Yukon Indians therefore proposes the following revisions to Section 25.

1. The Charter of Rights and Freedoms hereby recognizes and affirms the existence and continuation of all aboriginal rights which pertain to the aboriginal people of Canada, including rights acquired by the Royal Proclamation of October 7, 1763, and without limiting the generality of the foregoing hereby declares the aboriginal people of Canada to have aboriginal title to all lands which they have occupied since time immemorial where title to such lands has not been extinguished by treaty or surrender and such title shall not be extinguished or abrogated in any way unless extinguished or abrogated by treaty or surrender.
2. The guarantees in this Charter of Rights and Freedoms shall not be construed as to deny, diminish or abrogate in any way, (a) rights described in paragraph (1) above or (b) any rights acquired by the aboriginal people of Canada by way of treaty or as a result of any land claims settlement.
3. For purposes of this Charter the aboriginal people of Canada means the Indian, Inuit and Metis people of Canada.

This is the minimum restatement of Section 25 which we are prepared to accept. As things now stand, seven years of negotiations are threatened. Indeed, it may be pointless to continue the process unless we can be given a constitutional guarantee that our settlement will be protected.

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