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# GRAND COUNCIL TREATY #9

"Association of Treaty #9 Chiefs"

Central Office: Tel. (705) 267-7911 - Telex 067-81595  
71 - 3rd Avenue, TIMMINS, ONTARIO P4N 1G2

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BRIEF  
TO THE SPECIAL JOINT COMMITTEE OF THE SENATE  
AND THE HOUSE OF COMMONS  
ON THE CONSTITUTION OF CANADA

SUBMITTED BY:  
GRAND COUNCIL TREATY #9  
FOR THE NISHNAWBE-ASKI NATION

DECEMBER, 1980  
TIMMINS, ONTARIO

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We were the Nishnawbe-Aski. We are the Nishnawbe-Aski. In the tomorrows yet to come, we will be the Nishnawbe-Aski. In the year of 1977, we spoke to the Governments of Canada and Ontario. We said that we have no memory of an existence in any other land. Our minds can go back in time only through the history and sacred legend passed on to us from one generation to another. Thus do we trace our roots in this land to time immemorial. Our presence in this land was divinely favoured. The Great Spirit made us to be one with the land. We revered the Earth as our Mother, and we were to be nourished by its resources. The animals, the birds, the fish were our cousins. By Nature's laws, they gave themselves to our needs, and we responded by taking only as our needs required. The legacy given by the Creator was enshrined in our hearts and our minds. The guiding principles or the constitution of our Indian law, was written into the leaves, the trees, the lakes, the streams, the rocks, the sun, the moon and clouds by the finger of the Great Spirit, and made ever fresh to us by the Four Winds as they breathed upon us daily. Nature's law was perfect.

With Nature's law, as the unwritten constitution of the Nishnawbe-Aski, the continuing education of our children was simple, yet profound. The young men learned the nature and the habit of each animal. He learned the sounds of Nature, in the winds. He respected his obligation to the earth and all its resources. The young women learned to utilize every portion of the earth's resources that was given to the people. Nothing was to be wasted. Thus, through this simple yet profound education system, the constitution of the Nishnawbe-Asik, that was written in Nature, was enshrined in the hearts of the people. This unwritten constitution set the basics of the governing structure of the Ojibway-Cree peoples at the broad level, and also set the governing principles of the family unit and the individual.

The Ojibway and the Cree peoples are only two segments of a great family of Nations. The Algonkian peoples are the largest

linguistic and cultural identity among the Indian Nations in North America. They stretch from the Atlantic seaboard (the Mic Mac Malaseet) to the Rocky Mountains (the Plains Cree). They occupy an area from the northern regions of Quebec, Ontario, Manitoba, Saskatchewan, Alberta, to the American states of Michigan, Wisconsin, Minnesota, the Dakotas and even to the eastern seaboard. Because of the geographical difference, this great Nation maintained cultural traits that were appropriate to the environment and the climate that each occupied. Each Tribal grouping had their own governing principles based on the above described constitution. Therefore this paper will only present the right of Indian government of the Ojibway-Cree or the Nishnawbe-Aski of Northern Ontario.

#### THE COMING OF THE EUROPEAN

When the first Europeans came to the Americas, either in the 1000's (Lief Erikson) or 1492, (Christopher Columbus) great disruptions of the governing structures of the Indian Nations began. The European colony of peoples operating under what they called "international law", excluded all areas of the world that did not adhere to the religious principles that they followed. Under this system, the European family of nations governed their own defined areas, under a system of monarchies, emperors or dictatorships. But while they were European or Caucasian, they maintained their right to govern their territories or separate countries, e.g. England, France, Germany, Spain, Holland, Denmark, Sweden etc. The clash of the nations of France, Spain and England over jurisdiction, and right of ownership of the lands reached by Columbus, Cartier, Hudson etc. was based on the fact that their international law did not recognize that those peoples already inhabiting the Americas were governing entities. Thus they felt that America was "terra nullius", a land of nobody. Notwithstanding the presence of the Indian Nations, the French and English struggled for control of North America, with the English gaining the

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greater control. Under their concept of international law, the British King issued a charter of governing power to the Hudson's Bay Company over nearly three million square miles of land stretching from Quebec to British Columbia. And following the determined resistance of the Indian Nations under Chief Pontiac in the 1700's, the King then issued a Royal Proclamation in 1763, that recognized in America, the presence of Indian Nations, and their tenure in the land. This proclamation is still a legal document that predates British North America Act, and the subsequent federalism of the Provinces that make up Canada. From the proclamation also we find the mechanism to be used in the making of treaties, by which the British Crown would gain the jurisdictional authority over the lands of the Indian peoples. At the time of Confederation in 1867, the British North America Act, by section 91(24) removed Indian people from the jurisdictional division of powers between the federal and provincial governments, making the Indian peoples a unique constitutional entity.

To this constitutional committee, we the Nishnawbe-Aski respectfully submit that:

- a) prior to European advent in the Americas, we were a Nation of Aboriginal peoples amongst a larger body (bodies) of Aboriginal Nations.
- b) the European advent, which began full scale in the 1500's signaled the erosion of the Aboriginal concept of government.
- c) the Royal Proclamation of 1763 demonstrated the determination of the European to take over control of the economy and the resources of America, while recognizing the fact of Aboriginal right in America.
- d) the B.N.A. Act recognized the unique constitutional identity of the Indian people.
- e) the Canadian Government in 1867-69 enacted legislation under the enabling powers of the B.N.A. Act section 91(24) to bring what Indian legislative competence that still remained under the care and control of the federal Department of Indian Affairs.

In 1969, the federal government again declared that the Indian peoples should be completely assimilated and become equal to other Canadian citizens. Indian government became the theme of the 1970's, but it was to be under the watchful eye of the Department of Indian Affairs through a charter system. The Indian people as one body rejected this concept, and turned back to our historic ties by treaty to the British Crown, and to the Royal Proclamation to emphasize our rights. Today we greatly fear the continued implementation of the 1969 White Paper, through the efforts by the Trudeau government to patriate the B.N.A. Act.

INDIAN GOVERNMENT UNDER A CONSTITUTION PREPARED AND RATIFIED BY THE INDIAN PEOPLE, AND RECOGNIZED AS SUCH IN A NEW CANADIAN CONSTITUTION

The concept of Indian Government under a Constitution prepared and ratified by the Indian people and recognized as such in a new Canadian constitution is the only option we see as viable to the Native people in their choice of self-determination. This option is perhaps the ideal option, the one option which clearly recognizes Indian Sovereignty as a right, and which best accommodates our definition of Indian Government. Before taking a closer look at Indian Government under a constitution, it might be beneficial to define a "constitution" and to examine the Canadian Constitution, in light of Indian rights, treaties and Indian Government.

a) What is a constitution?

A constitution is a legal document which sets out the principles and the rules by which a society is to be governed, as well as the roles, functions and structures of the Governing Body. But a Constitution is more than that. It is an indication of the will of the people to unite and build a better world around them. A constitution must reflect the aspirations and goals of the people it was inspired by; it must come from the

heart of those people. Only then will it be a true Constitution, and a strong basis for a healthy and dynamic society.

With this definition in mind, it is not surprising to find Canada in a constitutional crisis. The spark that lit the present fireworks is perhaps the outcome of the Quebec referendum, however the constitutional problems have been simmering for a long time. The French-English cleavage, the East-West cleavage, the North-South cleavage, and the Native-White cleavage have all been leading to an inevitable head-on collision. If no adequate resolution of the problems can be reached, it can mean the end of Canadian federalism. The status-quo can no longer meet the demands of society - much work must be done to renew the Constitution. For our purpose, it will not be necessary to discuss all the constitutional issues that have been dealt with in the past few months. Emphasis will be put on Native issues - aboriginal rights, treaties, and Indian Government.

b) Reform of the Canadian Constitution-Native Issues:

In June, 1978, the Government of Canada released a paper, A Time For Action, outlining a plan for renewing federalism, including constitutional reform. The Paper gave high and specific priority to the place of native peoples in this work. Since then, many conferences, meetings, and discussions have taken place, although no concrete action for reform has followed. The Government has stated that Indian, Inuit and Metis will be consulted and be allowed to participate in on-going constitutional debates, however it has not committed itself to allowing full and equal participation from the Native people: Nevertheless, Indian people are bringing their demands forward; and the Government cannot help but react.

The unique constitutional position of Canada's native people must be recognized and guaranteed in any new Canadian Constitution. In the past, Treaty and Aboriginal Rights have raised

a number of constitutional problems. One of these is the fact that jurisdiction over Indians and Indian lands lies with the federal government, yet jurisdiction over lands, natural resources and hunting and fishing lies with the provincial governments. The complexity of the Canadian federal system has been used against Indians. Canadian law has failed to recognize adequately either aboriginal rights or the character of Indian treaties.

The B.N.A. Act of 1867 recognized Indian communities as separate areas by removing them from the regular division of powers between the federal and provincial governments. The B.N.A. Act section 91(24) gave legislative authority over Indians to the Federal government and could have meant either domination by the federal government over Indians or the recognition by Ottawa of Indian bands as self-governing communities. The government chose the former interpretation, and any new constitution must now entrench the latter. There must be no ambiguity in the new constitution. Indian government must be recognized and its exclusive powers specified.

Indian people see such constitutionally guaranteed jurisdictional areas complementing other treaty and aboriginal rights and including such areas as citizenship, family law, education, the administration of justice, resource rights and taxation.

This is by far the most appropriate and logical approach to Indian Government: This is the only way that two fundamental principles of Indian Government-sovereignty and jurisdiction can be adequately recognized and therefore, be binding on all levels of government. The entrenchment of the right to Indian Constitutions within the Canadian Constitution must be the ultimate approach to the implementation of Indian Government.

#### c) Indian Government under a Constitution-Nishnawbe-Aski Constitution

The Nishnawbe-Aski Declaration, submitted to the Federal and Provincial Governments in 1977 set out clearly the inalienable rights of the Cree and Ojibway peoples of this region to self-determination, local Indian Government and the continuing

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existence of our Nationhood. We further stated in this declaration that the Nishnawbe-Aski wish to work in harmony and co-operation with the governments of this country in full implementation of the Nishnawbe-Aski principles. To this end our Chiefs and Elders met in full conference in Thunder Bay, in January, 1980, to establish the Nishnawbe-Aski Constitutional Commission which is mandated to develop the Nishnawbe-Aski Constitution. It is our position that the current approaches by the Federal Government to Indian Act Revisions cannot meet the principles of Nishnawbe-Aski Government as we have stated, we are not looking for a "mini-constitution" nor a charter system, neither are we looking for an increasing role of our people in their own affairs, nor a "lessening" of the role the Department of Indians Affairs. As long as the Minister of Indian Affairs retains the veto power and the administrative authority, we cannot expect Indian government to become a reality.

These excerpts from the Nishnawbe-Aski's constitutional position paper clearly set out the direction which will be followed in the implementation of Indian Government. A Nishnawbe-Aski Constitution must be drafted to include the principles, aspirations and goals of the Nishnawbe-Aski as well as the structures, functions and jurisdiction of the Nishnawbe-Aski government. This Constitution must be drawn from the hearts of the people. This is true authority and true Indian Government. It comes from the people and the culture-it is inherent and irrevocable.

d) Conclusion

Much work must be done and much thought must be given to the drafting of a Nishnawbe-Aski Constitution. The structure of the Government must be outlined (will it be a tri-level system?); the jurisdiction of the Government must be outlined (land; resources; education; socio-economic development, etc.); funding arrangements must be outlined; the responsibility, authority, and accountability of each level of government must be clearly spelled out. All these elements of a constitution must come together under the principles of Nishnawbe-Aski; and it must be ratified by the People who will be affected by it.



The implementation of Indian Government can only be achieved if there is a fundamental change in Government policy. Since the coming of the white men policy concerning Indians has been one of paternalism and assimilation. All legislation dealing with Indian Affairs reflects this policy. A complete revision must be taken at once. Half changes and minor revisions are totally unacceptable. An overwhelming thrust must be undertaken by the Indian nations so that they will be understood; this the "bottom-line" of the implementation of Indian Government.