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POSITION PAPER
on the
CANADIAN CONSTITUTION
prepared by
METIS ASSOCIATION OF ALBERTA

For presentation to
THE JOINT SENATE-COMMONS COMMITTEE
ON THE CANADIAN CONSTITUTION

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The Metis people have been called The Forgotten People, suspended in a chasm created by the differences in identity, culture, lifestyle and thought between our Indian ancestors and our European ancestors.

We refuse to be forgotten any more.

For generations we have lived on the edge of roads, on the edge of reserves, on the edge of towns, denied full access and acceptance in either society, denied the opportunity to participate fully in worlds in which the blood of our ancestors give us full rights, denied the freedom to pursue our full potential.

We refuse to live on the edge any more.

We have been labelled outsiders by both of our founding races, aliens ostracized unjustly like bastard children banished with their mothers to wander outside in the cold seeking shelter. And like a banished mother and child, neither family wants to take us in.

We refuse to stay outside any more.

It is time for us to come in from the cold, to claim the birthright that is ours, to participate fully in this society created by the descendants of our European ancestors, to enjoy the benefits of special status in that society because of the aboriginal rights of our Indian ancestors.

The time for that to happen is now, the place for it to happen is the Parliament of Canada, and the people to make it happen are the men and women chosen to play such a role in the House of Commons and Senate.

We don't want a vague and insecure assurance of our rights in a Bill of Rights enshrined in the Constitution by the British Parliament prior to patriation of the Canadian Constitution.

The Metis Association of Alberta, as does the Association of Metis and Non-Status Indians of Saskatchewan, believes that changes should be made in Canada by Canadian legislators who are inherently accountable to the people of Canada, with full participation by the First Ministers of each province and territory and Metis and Non-Status Indian nations by virtue of their aboriginal rights.

In contrast to the limited definition proposed by the Native Council of Canada, we, like Saskatchewan, believe that the definition of "Native" should be all encompassing, and include Metis, Non-Status Indians, Status Indians, Inuit and other Native people.

While we can sympathize with the desire of the Prime Minister and his Government for a fast action on patriation, looking back at more than 100 years of injustice gives us a perspective that dictates a preference for security over speed. We see no value to rapid action if that action does not result in full resolution of those injustices through a recognition and guarantee of the rights to which our aboriginality entitles us.

The abundance of research into aboriginal rights and land claims has produced a multitude of evidence to support our aboriginality, to prove prior recognition, and to document the gradual erosion of those rights through neglect, deceit, bureaucratic manipulation and legislative changes.

The proposed constitutional amending formula which gives considerable power to amend to majorities of both the Canadian Parliament and provincial legislatures, undermines the security of any recognition of our rights which may be granted to an unacceptable extent. Under that formula, past erosion of our rights could too easily be repeated.

Our aboriginal rights must be enshrined in the Constitution in such a way that they cannot be compromised by the vagaries of public opinion or legislative pragmatism. Further, equitable settlement of those rights must be an inherent component of that recognition.

To effect the guaranteed recognition of our aboriginality to which we are entitled, we have identified a number of specific steps which must be taken:

The Metis people of Canada must be recognized as a distinct "nation" within the Canadian mosaic, unique because it is the result of a melding of separate founding peoples.

The Metis people of Canada must be recognized as world citizens, entitled to the individual rights and freedoms identified by the United Nations, of which Canada is a founding member, and articulated in the Universal Declaration of Human Rights, which proclaims itself as "a common standard of achievement for all peoples and all nations", and specifically "reaffirms faith" in "fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women".

The Declaration also specifies in Article 15, that "(1) Everyone has a right to a nationality, (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality" and in Article 8 that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".

Violation of the rights respecting the equality of men and women is glaringly obvious in provisions of the Indian Act which

allow an Indian man to marry any woman and pass on his Treaty rights to her and their offspring, while an Indian woman and her offspring lose Treaty rights if she marries off the reserve.

We are particularly opposed to this legislation for it is a major cause of Metis people losing the aboriginal rights to which their Indian blood entitles them.

Our other major concern relative to existing legislation is the denial of Metis aboriginal rights through the narrow interpretation of the term "Indian" in the B.N.A. Act, 1867.

We contend that this interpretation subverts the intent and inherent guarantee of the Royal Proclamation of 1763 and the two Joint Address to Her Majesty regarding the admission of Rupert's Land and the Northwest Territories into Confederation, one of which provides:

"That, upon the transference of the territories in question to the Canadian Government, for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines".

This was further reinforced in Section 146 of the B.N.A. Act, 1867, which states in part that:

"...the provisions of any Imperial Order in Council in that behalf shall have the effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland..."

and in subsequent Imperial Order in Council passed by the British Parliament regarding Rupert's Land which contained the following: provision regarding the Hudson's Bay Company:

"14. Any claims of Indians to compensation for lands required for the purposes of settlement shall be disposed of by the Canadian government in communication with the Imperial Government and the Company shall be relieved of all responsibility in respect of them".

The most recent continuation of that aboriginal recognition, in the proposed Charter of Rights and Freedoms, uses the term "Native", but fails to define that term, thus allowing the same ambiguity of interpretation that has been responsible for denying Metis people their aboriginal rights in the past:

"24. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the Native peoples of Canada".

We fully support the Association of Metis and Non-Status Indians of Saskatchewan in their recommendation of the following amendments to that clause:

(1) The phrase "the existence of any other rights and freedoms" be amended to read: "the existence of land and/or any other rights and freedoms".

(2) The phrase "including any rights or freedoms" be amended to read: "including the aboriginal and/or Treaty rights or freedoms".

(3) The phrase "the Native people of Canada" be amended to read: "the Indian, Inuit, Metis, and other Native peoples of Canada".

(4) Section 51 in the proposed Constitution be amended to delete subsection 91(24) of the B.N.A. Act, 1867 wherein the Federal Government assumes the legislative responsibility for "Indians and Lands reserved for Indians". A new subsection 24(2) to the Charter of Rights would, we propose, re-assert and confirm Federal responsibility for the Indian, Inuit, Metis, and other Native peoples of Canada, and their rights.

(5) Therefore, we proposed the following:

"S. 24(1). The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of land and/or any other rights and freedoms that exist in Canada, including the aboriginal and/or Treaty rights or freedoms that pertain to the Indian, Inuit, Metis, and other Native peoples of Canada.

24(2). The Parliament of Canada shall have the legislative authority to protect land and/or any other rights or freedoms that exist in Canada relating to the aboriginal and/or Treaty rights and freedoms that pertain to the Indian, Inuit, Metis, and other Native peoples of Canada".

We believe a mechanism for a just settlement must be an integral part of recognition of our aboriginal rights, but recognize it must be our responsibility to identify the rights of our people, define the nature of our claims and propose the manner in which they should be settled.

We recognize that this is a difficult undertaking rife with complex issues. Our pursuit of that settlement will take us through a legal and legislative no man's land where we will encounter unexpected obstacles. But we believe in our aboriginality and the fundamental rights to which it entitles us.

The proposed revisions to Section 24 will enable all of us responsible for representing our Metis people to negotiate legitimately with those who have the means to redress generations of injustice and resolve the multitude of problems born of that injustice.

We feel, however, that we must have an equal place at the negotiating table, and therefore fully support the recommendation of the Association of Metis and Non-Status Indians of Saskatchewan that Section 32 of the proposed Constitution be amended to read:

"S. 32(1). Until Part V comes into force, a constitutional conference composed of the Prime Minister of Canada and the first Ministers of the Provinces shall be convened by the Prime Minister of Canada at least once in every year unless, in any year, a majority of those comprising the conference decide that it shall not be held.

"S. 32(2). Such constitutional conferences shall include the direct participation of the Indian, Inuit, Metis, and other Native peoples of Canada".

We likewise propose, and strongly recommend, an amendment to the proposed Joint Address along the following lines to follow the present third "WHEREAS" clause.

"AND WHEREAS it is also desirable to provide in the Constitution of Canada for the rights of Indian, Inuit, Metis, and other Native peoples of Canada",

Finally, we must strongly state the importance of our own representation on behalf of the Metis people of Alberta.

Although we are nominally a member of the Native Council of Canada, neither the N.C.C. and its Executive, nor the Metis and Non-Status Indian Constitutional Review Commission and its Commissioner have the authority to speak on our behalf on matters relating to the Canadian Constitution.

There are two basic reasons why it is important that each provincial and territorial Metis and Non-Status Indian organization be recognized as the only authorized spokesman on these matters:

- 1) The Metis and Non-Status Indian people of British Columbia, Saskatchewan and Manitoba are not members of N.C.C. but comprise a major portion of the Metis and Non-Status Indian population of Canada; and
- 2) Presentations to date by N.C.C. have not reflected the diversity of opinion of organizations across Canada, nor the people they represent, and have failed to take into account the concerns and conditions peculiar to certain regions.

We consider the patriation of the Canadian Constitution, and revisions to it, to be the most critical opportunity in our history.

Finally, we have an opportunity to validate our identity, to confirm our aboriginality, to redress past wrongs and enjoy present rights.

Finally, we can move from the edge to the centre of society where we belong, move from the outside to within where we can fulfill our potential to contribute, move in out of the cold into the warmth of full recognition of our rights and the benefits that go with those rights.

Finally, our "Forgotten People" can make a place for themselves in the Canadian mosaic where they won't be forgotten any more.