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UNION OF NEW BRUNSWICK INDIANS

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VIEWS ON THE CANADIAN CONSTITUTION
AS IT AFFECTS INDIANS OF NEW BRUNSWICK

PRESENTED BY
UNION OF NEW BRUNSWICK INDIANS

JANUARY 6, 1981

I. INTRODUCTION

The Union of New Brunswick Indians has existed as a non-profit organization since 1969. We were formed collectively for political, cultural, economic, and social survival.

There are more than fifteen Indian Reserves in present day New Brunswick and fifteen of them have a Chief & Band Council. The Chief of each of those fifteen Reserves and Lennox Island, P.E.I., comprise the Board of Directors of our organization. We represent the Micmac and Maliseet tribes of New Brunswick.

One of our foremost concerns has been the safeguard, protection, and continuation of our rights under the present Constitution and its affiliated documents. For us, the aspects of trusteeship, treaties, proclamations, and other historical developments make up our unique rights and status as Indians in New Brunswick.

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II. ABORIGINAL RIGHTS

Many people have asked for a precise, concise, and memorized definition of what elements form the concept of aboriginal rights. It cannot be examined in that scientific and clinical fashion. After all, our ancestors were living in this Country long before any European set foot on this Continent. Our traditional, cultural, and social way of life cannot lend itself to precision and concise cohesion. Our economic, political, legal, educational, and religious systems have yet to be fully researched and examined by us before we can advance our aboriginal rights accordingly.

Aboriginal rights should be accepted by you as official representatives of the House of Commons and the Senate. You have been duly elected and given responsibility by your constituents, colleagues, peers, and party leaders to listen to us. This should not be a one-shot opportunity for us to put forth our views on our rights and how the constitutional documents affect our rights.

If you are able to adopt that principle that aboriginal rights preceded all else, that would be enough to start and begin a renewed dialogue. Aboriginal rights do include our hunting, fishing, trapping, and gathering as it relates to plant and animal life. Aboriginal rights include our right to exist as Indians, to govern ourselves, and to determine our livelihood, political, cultural, economic, social, and legal units. We have these rights and much more because we have never been conquered, released, or have never extinguished our aboriginal rights in New Brunswick.

In fact, our very essence of belief is we cannot sign our rights away. How can we, as descendants, sign away aboriginal rights that have

existed since time immemorial of our past, present, and future generations of Indians? We would not and that is evidenced by the fact that up to now, our past and present Indian leaders would not sign their Indianness away and would not break away from our traditional aboriginal rights. "Aboriginal rights" is more than a slogan, more than a people because it includes our spiritual, cultural, physical, and emotional needs.

We hope that you, as Honourable representatives of Canada, will act duly with good faith and freedom of thought, to accept the principle that aboriginal rights do exist today in New Brunswick.

III. TREATY RIGHTS

Our treaties in New Brunswick and the Maritimes, in general, are attached to this submission. We have researched many hours, many days, and many times to locate these documents and we hold them dearly. Within a short time of eleven years, our Rights & Treaties Program have discovered and found documents that we have used in courts to establish our existing treaty rights. There is more work that is required. We will continue to achieve a greater volume of information to know of our past.

Our treaties are examples that the Europeans had an upper hand in the execution and negotiation of these documents, but our leaders always maintained their traditional livelihood of hunting, fishing, and trapping. Our existence depended upon capturing game and wildlife. It provided us with food, clothing, barter, commerce, and cultural practises.

These treaties are dated as follows: 1713, 1725, 1752, 1778, & 1779. There are also numerous occasions when some of these treaties were renewed, ratified, and sanctioned. We, as descendants of the representatives that

signed, continue to cling and maintain our treaties. All were signed before the Province of New Brunswick was established in 1784. Some were over one hundred years old at the time of Confederation.

We have not released our treaty rights. Yet, we continue to face prosecution in courts at the authority of the Attorney-Generals who show no respect for our solemn treaties. We have lived up to our end of the bargain and yet face harassment and persecution. Our people cannot afford to pay their fines. Why has Parliament stood silently and allowed our treaty rights to be abrogated by Federal legislation such as the Fisheries Act, Migratory Birds Convention Act, National Parks Act, and regulations enacted at the whim of conservation officers who advise the appropriate Minister? We have been denied the equitable and just exercise of our treaty rights without compensation, without consultation, and without our consent. There were two parties represented in those treaties. How come we are now denied our right to participate and protect our treaties?

There is a solution to this dilemma. We will present it in the part touching on entrenchment. We will also never sign away our treaty rights. It is beyond our authority. Besides, treaties are not like contracts and agreements, they are solemn commitments and obligations on both sides as a sacred covenant.

IV. PROCLAMATIONS

In colonial times in our area, many Governors who were representing Nova Scotia were empowered to set up relationships with the Indian tribes. This was crucial. In fact, the treaties mentioned above were signed and entered into when there was a pending or conclusion of a military conflict

between the French and the English. Two particular Proclamations affect our treaties in New Brunswick. They are the Belcher's Proclamation of 1761 and the Royal Proclamation of 1763. Both recognized the unique and special relationships with the Indian nations at the time.

V. ENTRENCHMENT

Although the word "entrenchment" sounds inflexible, concrete, and undesirable to come, it is also a process by which certain rights and principles are guaranteed to be beyond the reach of law-making institutions. Our treaty and aboriginal rights have to be protected, have to be safeguarded, and preserved. Our unique relationship with the Crown has to be manifested by entrenchment into this Country's most sacred, solemn, and honourable Constitution.

Various courts in this Country have reluctantly ruled that Federal legislation has abrogated and extinguished our treaty and aboriginal rights. Members of Parliament and the Senate cannot hide behind this judicial veil. You, as the members of the Highest Court in the Land, namely, the House of Commons and Senate, have the authority to ratify, confirm, and sanction our above mentioned treaties. You have the vested authority in this Special Joint Committee to recommend a century of unjust prosecution and inequitable treatment whenever our Indian people exercised their treaty and aboriginal rights as presented above. Surely, nothing is more unjust and shameful when we have not been compensated for the loss or suspension of exercising our inherent rights.

Entrenchment of treaty and aboriginal rights is a paramount concern for us as Indians. Our people will not stop exercising what they believe

is right, what they have been recognized and promised in the treaties. We do not abuse game and wildlife. We have the greatest respect for them and always will because we have survived.

VI. CONCLUSION

We hope and trust that you, privileged and honourable members of both Houses will listen and read our views. We can help and are desirous to continue to participate as Indian people. We are Indians, we are not Natives. We are members of Indian tribes, Indian nations that existed in the time of European contact. We have never surrendered our aboriginal and treaty rights and cannot and will not because it simply is not our way of life.

We have many problems today on our Reserves. Our family life is being eroded, but we are determined to lead and help our people the best and just way we know how. We must be accorded that freedom to decide what is best for us and not be asked "To Follow A Path," to become assimilated, and be ponded off to the Provinces. We are a Federal responsibility, a special trust relationship does exist and we will not be discarded. We are a proud people, proud of our past, and have renewed our cultural, spiritual, and linguistic customs. We do not want to lose what we have nor be denied the exercise of customs as in the past.

We have faith in your Committee because we have chosen to appear before you. Accepting us for what we are is not difficult. We are who we are. We cannot change our fundamental relationships. We will continue to place trust and confidence so we can work together and allow each other to benefit from this relationships.



RESEARCH COMMITTEE INDIAN RIGHTS AND TREATIES

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INDIAN PEOPLE MUST BE INVOLVED IN THE CANADIAN CONSTITUTION

The Canadian Constitution has been a subject of discussion by the Government of Canada and the Provinces for the past few years. The Government of Canada has seen fit to bring the Constitution home and make the changes that are necessary to benefit Canadians, as well as derive long term benefits. If the Constitution must be changed, it must be changed also for the benefit of the Indian people in Canada. The Canadian Government's responsibility has not been clearly defined to reflect the trustee relationship and obligation to the Indian people of Canada.

The Indians are a race of people who have special status with unique rights and are governed by special legislation and administered by a person who holds a Federal portfolio as Minister of Indian Affairs. There are no other minorities in Canada who are within the framework of the British North American Act.

This special status, with their unique rights, have been recognized by the British Crown by entering into treaty with the Tribe or Nation of Indians inhabiting what are now the Eastern Provinces (see attached treaties). The Treaty of 1725 recognized this, and later treaties that followed.

By the Proclamation, issued by the Lieutenant Governor - Jonathan Belcher on behalf of His Majesty in 1726, it recognized the Indian territory which was not to be settled on by anyone who did not have permission to do so.

His Majesty King George III, also recognized that Indians were nations through his Royal Orders, The Royal Proclamation of 1763. The aboriginal title of the Indians received further recognition in that the King had stated that "Any lands not having been ceded to or purchased by us are reserved to the Indians as their hunting grounds."

Further to that, the relevant portion of the 1763 Royal Proclamation reads:

"And where it is just and reasonable, and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed... We do, therefore with the advice of our Privy Council, declare it to be our Royal will and pleasure...to reserve our Sovereignty, Protection, and Dominion, for the use of Indians, all lands and territories..."

When New Brunswick became a Province in 1784, the influx of Loyalist settlers was so considerable that it was thought desirable to establish a separate Province. This was effected by the Letters Patent or the Royal Commission and instructions issued to Governor Carleton, and published on November 22, 1784.

Under the 63rd section, Carleton was instructed:

"And whereas it is highly necessary for our service that you should cultivate and maintain a strict friendship and good correspondence with the Indians, inhabiting within our said Province of New Brunswick, that they may be induced by degree not only to be good neighbours to our subjects to us, but likewise themselves to become good subjects to us. You are therefore to use all proper means to obtain those ends, to have interviews from time to time with the several heads of the Indian nations or clans and to endeavour to enter into Treaty with them promising them friendship and protection on our part."

Again, as it can clearly be seen, Indians have the full recognition as nations. It is said that the French and English are the two founding nations in Canada. But, there is no mention of the nation that was already here, long before any White Man stepped foot on this Continent - The Indian Nation.

The Indian Nation played a major part in the settlement of this Country. The sharing of resources and knowledge of the geographic layout of the Country was a major contribution to the settlements that were made, not to mention the fur trade which was the largest industry at that time.

As a nation, Indians must have full and equal participation in the Constitution discussions that are taking place. The Indian Aboriginal Rights and Title must be protected by entrenching them in the Canadian Constitution.