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HOUSE OF COMMONS
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Dear Members of The Six Nations and New Credit Reserves:

ABORIGINAL RIGHTS AND THE NEW CONSTITUTION

The initial Liberal proposal for a Charter of Rights included the following as its only reference to the collective rights of Canada's native peoples:

Undeclared Rights and Freedoms

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.

The day the proposed Constitutional resolution was introduced Ed Broadbent served notice that his "caucus colleagues are particularly concerned about the rights of native people. I am not going to elaborate on that aspect, but you can be sure that someone in committee will be raising from our point of view our concerns about the inadequacy of the measure as it affects native Canadians".

Peter Ittinuar elaborated on the NDP's concerns in the House during a later stage of the same debate. "The aim of the charter of rights and freedoms is to give individuals and minorities recourse to the courts if these rights and freedoms are violated. This I do not argue with. However, the proposed constitutional resolution omits any reference to the collective rights of aboriginal peoples. Canada's native people have a unique and historic relationship with the federal government, based on their aboriginal rights as the original inhabitants of Canada. Section 24 of the constitutional resolution provides that existing rights and freedoms of native people will not be affected by the rights and freedoms in the charter. I wonder what kind of guarantee this is when native people have been exerting considerable time and effort on the task of changing and improving the status quo. Are we now to be content with the same unsatisfactory status quo?"...

The situation is further complicated by the fact that an explicit charter of individual rights and freedoms may be used in the courts to argue against the collective rights of native people. A constitution which does not include a clear reference to the aboriginal rights of native people may, in fact, lead to an erosion of existing rights and freedoms.

Jim Manly, another NDP member, went on to point out that "the government has argued that we need a charter of rights because we cannot entrust rights to the changing whims of legislatures. I ask you: What people have suffered more legislative infringements on their rights than the Indian people and to remind the House that the Indian people today still remember the 1969 white paper which would have stripped them of all their rights.

This 1969 white paper was the catalyst which brought them together with a great many organizations and helped them to advance to the level of political involvement in which they find themselves today. But as they look at the proposed charter of rights, they see clauses in it which would have the same effect and which would leave them without rights, without protection and without even the basic, minimal recognition which they have at present. The Prime Minister (Mr. Trudeau) has promised the native people that they could be participants in all constitutional amendments which concern them. What could possibly concern native people more than the entrenchment of their rights? Yet Indian people were not consulted about the charter of rights. In their absence, a vague clause was inserted which does violence to their rights.

Last week, the Prime Minister said that as soon as the constitution is brought back to Canada, native rights will be one of the first items on the agenda. What hypocrisy! The Prime Minister knows full well that by placing Indian rights on a post-patriation agenda, he is denying these people their last chance to obtain justice."

The response of the Liberals to criticism of the proposed Charter was the introduction of an amendment replacing section 24 with a new section 25 that reads as follows:

"The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of

(a) any aboriginal, treaty or other rights or freedoms that may pertain to the aboriginal peoples of Canada including any right or freedom that may have been recognized by the Royal Proclamation of October 7, 1963; or

(b) any other rights or freedoms that may exist in Canada."

When Jean Chretien appeared before the Special Joint Committee on the Constitution to present this amendment, Jim Manly urged him to recognize the "necessity for having some positive enshrinement of native rights because in spite of your best efforts, you are always working against provincial governments that are very slow, if they are willing to make any recognition of these rights at all.

So I think it is absolutely essential that, given the government's historic obligation to native people, that there be some positive recognition of those rights."

NDP Members also shared the concern of native peoples organizations that in addition to a positive affirmation of aboriginal rights, a guarantee was required that negotiations to further define such rights and settle some of the many outstanding grievances of native peoples would be initiated at an early date.

Peter Ittinuar questioned the minister of justice on this point:

"Of the three major native organizations and others from the country suggested the entrenchment of a section that would formalize the Prime Minister's political commitment to negotiate certain aspects of native relations in Canada.

Now, as a matter of good faith why was this not included in the amended resolution?"

Jim Manly echoed this concern:

"Would it be possible not to have some affirmative declaration of those rights, rights which you acknowledge exist, rights which you acknowledge the Crown has an obligation to protect, would it not be possible to have an affirmative declaration of those rights following by a commitment to negotiate on the meaning of those rights in different part of the country?"

Finally, on January 30, the Liberals agreed to accept the following sections dealing with native rights.

24. The guarantee in this charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

- (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- (b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

25. The guarantee of 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.

and (b) renumbering the subsequent clauses accordingly.

Section 32(2) now reads:

A conference convened under subsection 1 shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those people to participate in the discussions on that item.

Most significantly, the NDP has been successful in getting the government to include the entrenchment of aboriginal and treaty rights in the constitution:

Moved by Peter Ittinuar:

"Recognition of aboriginal and treaty rights

PART 11

Rights of the Aboriginal
Peoples of Canada

31 (1) The aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition "aboriginal peoples of Canada"

(2) In this Act, "aboriginal peoples of Canada" include Indian, Inuit and Métis peoples of Canada.

ABORIGINAL RIGHTS

The New Democratic Party reaffirms its recognition of the aboriginal rights of the Indian and Inuit peoples within Canada. These rights should be enshrined in the Canadian Constitution in a way which will enable them to preserve and protect their languages and cultures, and which will place a clear responsibility upon the federal government to recognize and deal with their aboriginal land title.

Recognition and dealing with the aboriginal peoples on their land title must involve the following principles:

- (1) a recognition of the obligation to deal with Indian Claims in non-treaty areas of the country. In the areas where Indian people have lost or are gradually losing the use of the land, either the full use of the land must be protected or restored or the claims based on Indian title must be dealt with to the satisfaction of the Indian people involved;
- (2) in the areas where Indian people still have the use and control of their lands, no encroachment is permissible without the consent of the Indian people involved;
- (3) if treaties meet adequate standards of fairness, a recognition of treaty promises as they were understood by the Indian people. If the treaties fail to meet adequate standards of fairness this failure must be acknowledged and fair and adequate arrangements made to the satisfaction of the Indian people involved;
- (4) a recognition of the obligation to restore or, with the consent of the Indian people, to compensate for the loss of specific rights (such as hunting, fishing or trapping rights) which are either preserved in treaty areas or which exist in non-treaty areas as part of unextinguished Indian rights and which have been curtailed by government action.

— Federal Convention 1973

I hope the above clarifies the NDP's fight for Indian rights.

Sincerely,



Derek Blackburn, MP
BRANT