

Your Opinion

Consensus recognizes Native rights

Last week, I began a series of columns leading up to the October 26 national referendum. Like other Canadians, I'm trying to make up my mind whether to vote "yes" or "no" to the question: "Do you agree that the Constitution of Canada should be renewed on the basis of the agreement reached on August 28, 1992?" If you want to participate in this discussion, you can write to me c/o NORTHERN INSIGHTS, 72 Jean Street, Thunder Bay, Ontario P7A 5E9 or fax me at (807) 343-0446. If you're making up your mind like I am, you should take the time to read the actual text. A free copy



**NORTHERN
INSIGHTS**

by Larry Sanders



can be had at any MPs office, or by calling the federal government's toll free number, 1-800-561-1188. This week, I want to discuss one of the cornerstones of the "Charlottetown Consensus": recognition of the inherent right of aboriginal people to self-government.

I have a problem with those who argue that they can't vote "yes" to the constitutional deal on October 26 because they don't understand what aboriginal self-government is. I think those people are using code language. What they're really saying is that they don't want native people to finally get out from under the yoke of oppressive legislation white governments have imposed for generations on native people, like the Indian Act.

Joe Clark and Ovide Mercredi make compelling arguments when asked about to COST of aboriginal self-government by turning the question around: "what is the cost now of a disproportionate percentage of native people in our prisons? The cost of a higher suicide rate among native young people?" The hope of the native leaders who worked with the first ministers on the deal is that constitutional recognition of the right (never relinquished) of native people to run their own affairs will lead to improvements in health, education, economic development, not to mention spirit.

As well, those who say they don't know what self-government is haven't taken the time to read the agreement. It's only true on a superficial level to say that many aspects of self-government are subject to further negotiation and definition. The aspects that remain to be worked out include how native people will be represented in the new Senate, and the exact details of how aboriginal

governments will be financed.

What the agreement does spell out is a commitment by provinces and Ottawa to the status quo—the negotiation of self-government agreements in every part of Canada where native organizations want one. This process started years ago in Ontario with the Nishnawbe-Aski Nation, culminating in August of 1991 with the signing of the "Mount McKay Accord" in Thunder Bay, whereby Ontario gave formal recognition to the aboriginal governments as equals. The "Charlottetown Consensus" recognizes this, and gives more framework to these self-government negotiations by calling for:

A contextual statement should be inserted in the Constitution, as follows:

The exercise of the right of self-government includes the authority of the duly constituted legislative bodies of Aboriginal peoples, each within its own jurisdiction:

(a) to safeguard and develop their languages, cultures, economies, identities, institutions and traditions; and,

(b) to develop, maintain and strengthen their relationship with their lands, waters and environment

so as to determine and control their development as peoples according to their own values and priorities and ensure the integrity of their societies."

This contextual statement will be used by the courts to guide decisions they might be asked to make interpreting self-government rights. As well, the Charlottetown Consensus includes a political agreement not to take self-government issues to the courts for five years. During that five-year delay existing aboriginal and treaty rights will be maintained, and the Charter of Rights will apply right away to aboriginal governments.

The major problem raised by native women to the agreement is the fact that, after the five years is up, self-government agreements could be negotiated which do not give equal status to aboriginal men and women. In addition, the Charlottetown Consensus (as it now reads) will allow aboriginal governments to invoke the "notwithstanding" clause in the constitution, just like provinces can. This clause allowed Quebec to pass its French-only sign law, despite (or "notwithstanding") court rulings that said the law contravened the Charter of Rights. Native women are also arguing that it was wrong of the first women from the negotiations that led to the Charlottetown Consensus.

I think that problem can be rectified through later negotiations, and spelled out more clearly in the legal text of the

constitutional amendments that will eventually be dealt with by the federal and provincial legislatures. It's not a serious enough problem to warrant defeat of the entire package, in my view.

So I like this part of the Charlottetown Consensus. If it was the only part coming up for a vote, I would mark "yes" on my October 26 ballot.



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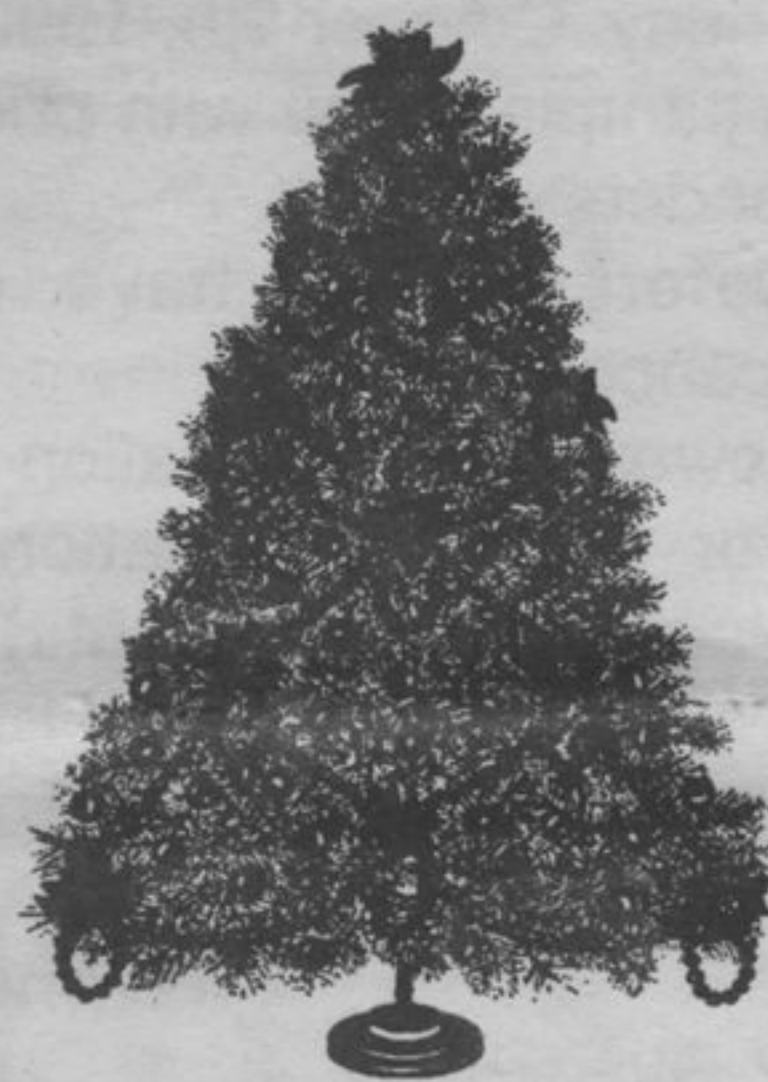
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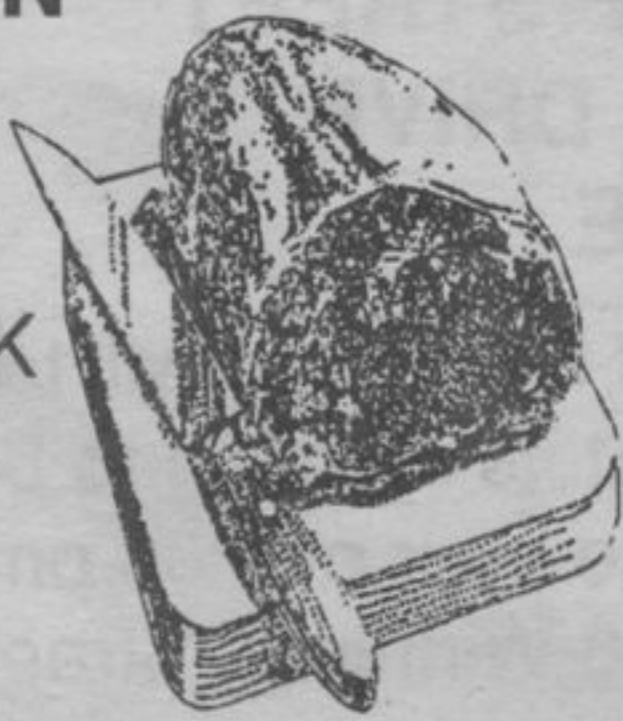
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