

THE CANADIAN GOVERNMENT AND THE GREAT WHITE LIE

In June of 1978, the Federal Government of Canada announced its intention of seek patriation of the Canadian constitution. Two months later the National Indian Brotherhood passed a resolution at its annual general assembly that a delegation of Chiefs and Elders would go to England to visit the Queen and make representations to her based upon the historic and legal ties of the Indian Nations to the Queen in Right of England. The Chiefs and Elders were seeking the support of the Queen in their efforts to prevent the patriation of the Canadian constitution until the outstanding issues between the Indian Nations and the Canadian and British Governments were resolved. When the representatives arrived in England, the Prime Minister of Canada refused to allow the Queen to meet with the Chiefs and Elders. The reason for this move by the Prime Minister is clear. In a confidential document prepared after October, 1980, entitled "Briefing Material on Canada's Natives Peoples and the Constitution" the current federal position is unambiguously set out:

"There is likely to be a major effort by Canada's Native Peoples to win national and international support (especially at Westminster) for their stand against patriation. If the Native Peoples press forward with their plans and if they succeed in gaining support and sympathy abroad, Canada's image will suffer

considerably. Because Canada's Native Peoples live, as a rule, in conditions which are very different from those of most other Canadians - as sample statistics set out below attest - there would be serious questions asked about whether the Native Peoples enjoy basic rights in Canada:

- Indians have a life expectancy ten years less than the Canadian average;
- Indians experience violent deaths at more than three times the national average;
- approximately 60% of Indians in Canada receive social assistance;
- only 32% of working-age Indians are employed;
- less than 50% of Indian homes are properly serviced;
- in Canada as a whole the prison population is about 9% Native, yet Native Peoples make up only 3% of Canada's population. In 1977, there were 280 Indians in jail per 100,000 population, compared to 40 for the national average."

This document reveals the federal government's strategy to deal with the Indian Nations' determination "to obtain a better future for their peoples." The strategy is consistent with the Trudeau government's tactics over the past decade in diluting the Indian position and protecting Canada's "image" in the eyes of the world. Providing Indian organizations with funds to develop their position on the Constitution is seen as a way to sap the energy of the Indian leadership in promoting time consuming discussions while patriation, in the meantime, is being accomplished.

The federal government pleads ignorance as to what aboriginal rights are. Yet the Indian nations have provided the government with a clear and precise statement in the Aboriginal Rights Position Paper which was adopted by the National Indian Brotherhood in 1980. The government has had this statement for a year and has not responded in any manner, expect to continue to profess ignorance as to the Indian position. Canada has not allowed the Indian Nations to participate in the constitutional discussions as equal partners with the provinces. The talks have proceeded without the Indian voice being heard, talks which concerned a re-distribution of the resources in Canada as between the federal and provincial governments. Much of these resources belong to the Indian people as 40% of the land in Canada is unceded Indian territory.

The government states that a mechanism is set up the patriation package which would allow for discussions to continue with the Indian leadership after patriation. And yet its internal Briefing Material reveals the true position:

"Native leaders realize that entrenching their rights will be enormously difficult after patriation, especially since a majority of the provinces would have to agree to changes which might benefit Native Peoples at the expense of provincial power. They therefore demand an entrenchment of Native rights before patriation."

Canada represents to Britain that it has done its duty to Indian people by including in the Charter of Rights the recognition of aboriginal and treaty rights. However, those rights are not defined in the Charter. The Briefing document recognizes the falseness of asserting that substantial rights are included in the Charter.

"Constitutionalizing treaty rights, for example, which many Indian leaders have called for, begs the questions of how treaty rights should be interpreted. Additionally to constitutionalize treaty rights does nothing for the vast majority of Native peoples in Canada, who either have never been party to treaties or who have excluded themselves from the groups which did sign treaties."

The government would leave the definition of aboriginal treaty rights to the domestic courts. These courts have in the past been hopelessly divided on the issue of aboriginal rights. Some judges have gone so far as to assert that treaty rights are

mere promises which the federal government may rescind at any time, and aboriginal rights may be extinguished at any time. Canada recognize that the written terms of the treaties, for example, does not reflect the actual negotiations which took place with the Indian nations. Yet Canada shields itself behind laws of its own making to say that "Canada's governments have been legally correct in their dealings with Indians and Metis."

Prime Minister Trudeau has over the years become more sophisticated in the representation he makes about the position of Indian people in Canada. Yet the underlying policies of his government have not changed since 1969; all that has happened is that Mr. Trudeau has come to realize he cannot afford to be so blatant in his denial of Indian rights. In a speech on August 8, 1969, in Vancouver, British Columbia Mr. Trudeau said:

"While one of the things the Indian Bands often refer to are their aboriginal rights, in our policy, the way we propose it, we say we won't recognize aboriginal rights. We will recognize treaty rights... This will mean that perhaps the treaties shouldn't go on forever. It's inconceivable, I think, that any given society one section of the society have a treaty with the other section of the society... But I don't think that we should encourage the Indians to feel that their treaties should last forever within Canada so that they will be able to receive their twine or their gunpowder. They should become Canadians as all other Canadians."

With respect to the stated Indian request for a preservation of aboriginal rights he said: "Our answer...is no."

The policy of assimilation has prevailed in Federal thinking for many years. In 1947 A Plan for Liquidating Canada's Indian Problem within 25 Years was presented to the Parliamentary Joint Committee. The objective was:

"To abolish, gradually but rapidly, the separate political and social status of the Indians (and Eskimos); to enfranchise them and merge them into the rest of the population on an equal footing. The realization of this plan should:

- A. improve the Indians' social and economic position, now so depressed as to create "leprous" spots in many parts of the country;
- B. abolish the permanent drain on the federal treasury of the millions of dollars yearly now spent on Indian administration;
- C. Fulfil the almost forgotten pledge of the government when it adopted the system of confining the Indians to special reserves.

The plan contemplated the appointment of a commission to "study the various Indian reservations throughout the Dominion and to advise on the best means of abolishing them, of enfranchising the inhabitants".

The assimilation policy, the objective of which is to destroy the unique culture, traditions and, in fact, the very existence of the Indians as a people is still the order of the day. In a policy Document #408-79 entitled "Native Claims Policy - Comprehensive Claims" date July 20, 1979, the government states frankly what its policy is regarding the outstanding Indian claims:

"There has also been a spreading attitude among the native leadership that Indian title, rather than being extinguished, should be confirmed, which has been diametrically opposed to historical federal policy."

No government should be fooled as to the objectives of Prime Minister Trudeau in dealing with the Indian nations. The Indians assertions of their rights to their traditional territory runs completely contrary to the government's planned use of that territory. When the federal government voiced its support for the Alcan Pipeline, the question arose as to the interference with the development by Indians asserting their claim to the land. The government's internal policy document of November 30, 1977, reveals that Indian title will not stand in the way of development:

"A few things are clear. The government Canada is prepared to extinguish native land claims if necessary by legislation to support its international work and commitment..."

With respect to the proposed Alaska Highway Gas Pipeline, hearings were conducted after the government had made a commitment to construct the pipeline. The task for the presiding officer was simply to set out the terms and conditions for the building of the pipeline, a major portion of which went through traditional Indian territory. In his report February 15, 1980, the presiding officer stated:

"Even a minor erosion of land base, income or socio-cultural position could be serious for a people already feeling hard pressed...it is one thing to push a person who stands in the middle of a field. It is very a different matter to push a person who stands on

a cliff face.' The accumulative impact of oil and gas development, forestry, agriculture and recreational and other activities has now placed the Indian people 'on a cliff face.' The pipeline could provide the final 'push'."

There is absolutely no question but that the federal government, despite all its representations, is prepared to allow the destruction of the Indian nations if they obstruct the direction of the government. Canada has adopted the politics of expediency in relation to the Indian people in Canada. It will say whatever is convenient, shifting its position depending on the prevailing political climate, desperate to shield from world view the true nature of its treatment of the Indians.

In 1931, when the Statute of Westminster was passed, Section 141 of the Indian Act of Canada made it an offense, with imprisonment of up to two months, to solicit funds for the purpose of pressing land claims. The same statute made it an offence for Indians to celebrate their religious ceremonies (Section 140). While these sections have been repealed, Canada continues to deny the Indian nations their land rights. During the Helsinki conference the Canadian government was asked to account for its treatment of Indians. The response was that the Indians in Canada were British subjects.

In November of 1980, the Fourth Russell Tribunal held hearings on the rights of the Indians of the Americas. Representatives of the Indian Nations in Canada made submission concerning the patriation proposal. In its report, on page 37, it states:

"(5) Violations of All Forms of Internal Self-Government and even of the Right of Local Community-Level Government, as in the cases of the communities of Colcabamba and Tayacaya and elsewhere in PERU, of virtually all Brazilian groups, of the Mapuche in CHILE, of native groups refused recognition as Indians in CANADA, the UNITED STATES, and elsewhere, and also with the Pitt River Tribe, the Lakota, the Puyallup and other nations in the UNITED STATES. This is a general problem in almost every country of the Americas.

Special mention should be made of the 'termination' policy of the USA, which asserts the ultimate right to totally eliminate native societies as governmental units.

"(6) The General Refusal or Failure to Involve Native Nations in the Creations of Constitutions or Basic Instruments of Government in the States of the Americas, even in instances where the federal principle of government obtains, as in the current creation of a new constitution in CANADA where Indian rights are, at present, not being considered. As sovereign units of governance, Native Nations and Republics or Pueblos possess the inherent right of refusing any incorporation or of being authentically represented as a self-governing unit where their territory has been included in the area claimed by a state apparatus. In other words, a constitution and government cannot be imposed on Indian people without authentic participation and the right of refusal to be incorporated involuntarily is a precondition."

Canada has not responded to this criticism or altered its intended course of conduct in any way. In the introduction to its report the Tribunal made some general comments about the nature of the testimony before it:

"Many voices have spoken before us and have expressed vividly the vitality and the capacity for resistance, found among the Indian people.... A significant number of Indian nations and communities in the Americas have preserved their own identity and cultural initiative, in spite of the unremitting efforts of genocide and ethnocide directed against them... The program of cultural destruction and social oppression of the native People of the Americas did not cease when the several countries of the American continent declared their independence. On the contrary, they simply assumed new forms. Since then, the machinery of internal colonialism has been continuously consolidated, ruthlessly seeking the desintegration of Indian communities. Now we are seeing an intensification of aggression led by governmental and local ruling groups, often dominated by transnational centers of powers..."

"We are faced with a universal uprising of oppressed nationalities and growing demands for autonomy. They seek an end to enforced alienation and the recovery of cultural identity. Centralized governmental structures are experiencing crises in states which include different nationalities and ethnic groups. This situation coincides, in America, with the breakdown of a European-centred concept of civilization according to which the only civilized people are those who act like Europeans or those elites who pretend to be carriers of 'western' culture.

This tribunal has served as a forum for testimony against ethnocidal oppression and for the free expression of the will to struggle against those powers that still wish to wipe out the authentic character of the oldest cultures of America."

These observations should be kept in mind when Britain considers what the government of Canada is doing in relation to the Indian people in patriating the constitution.