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THE CHAIRMAN, INTERDEPARTMENTAL LIAISON COMMITTEE ON INDIAN POLICYIndian Treaties 8 and 11

At its meeting of December 10, 1969, the Interdepartmental Liaison Committee on Indian Policy established a sub-committee comprising a representative of each of the Departments of Justice, Finance, Indian Affairs and Northern Development, Treasury Board and Privy Council which examined the proposal set forth in Cabinet Document No. 853-68 dated November 19, 1968. The purpose of this memorandum is to report the findings of the sub-committee.

I. Background

Cabinet Document No. 853-68 proposed that rather than establish an Indian reserve system in the Northwest Territories

- (a) Canada discharge its land obligation under Treaties 8 and 11 on the basis of a cash settlement;
- (b) the amount of the cash settlement be determined by an upward revision of the 1960 valuation of \$31.00 an acre, including minerals;
- (c) the per acre valuation thus determined by the basis of the cash settlement and negotiation with the Indian bands of the Mackenzie District; and
- (d) Indians be granted title in fee simple to those plots of land which they now occupy and be provided with additional areas to meet future residential requirements.

On November 13, 1969 Cabinet directed that the above proposal be further examined by the Interdepartmental Liaison Committee on Indian Policy as above noted, in relation to:

- (a) the white paper entitled "Statement of the Government of Canada on Indian Policy, 1969", and specifically, the proposed Indian Lands Act;
- (b) its financial implications; and
- (c) its effect upon the aboriginal rights issue.

II. Findings of Sub-Committee

- 1. (a) It was noted that the setting up of a reserve system in the Northwest Territories is against present policy and, in particular, the evolving northern development strategy. There are indications that it is not the wish of the Northwest Territories Council to have reserves established.
- (b) The Sub-Committee was unanimously of the opinion, however, that the proposal of a cash payment rather than reserve land, was, when properly understood, a proposal to renegotiate the Treaties rather than to perform a Treaty obligation as promised in the White Paper. Performance of the outstanding land obligations under the Treaties can only be the setting aside of lands for reserves following designation thereof, after consultation with the Indians, by the person authorized by the Government of Canada to do so.
- (c) Renegotiation of any Treaty at this stage would not seem to be a course of action that could be recommended.

- (d) If a cash settlement were to be made, it appeared to the Sub-Committee that legislation dealing with all obligations to be at an end would be necessary. To take such a step at this time in regard to these two Treaties might hinder acceptance of the new Indian policy.
2. Having accepted that the proposal is not performance, but is an offer that is open for negotiation and acceptance, the Sub-Committee agreed that the proposal should, since it was a government negotiating position, satisfy all criteria established by the White Paper. Upon examination, the proposal could be argued to be contrary to the White Paper in a number of respects.
- (a) Special or discriminatory legislation. The Sub-Committee noted that the proposal speaks of the need for special legislation relating to the administration of the funds paid over to the Indian bands. Such special legislation, even if it did not offend the principles enunciated in the White Paper, would have the effect of reinforcing special status for it would necessitate the preservation of a definition for the term "Indian". The Sub-Committee recognized that the performance of the Treaties as promised in the White Paper requires the maintenance of a definition of "Indian" for so long as annuities are paid and reserve lands are held by the Crown. Notwithstanding this, however, the Sub-Committee concluded that the proposal might lead to further entrenching special status and discrimination and to this extent was contrary to the thrust of the new Indian policy.
- (b) Aboriginal rights. It was the opinion of the Sub-Committee that it could be implied from the proposal that the Government of Canada acknowledges that the aboriginal inhabitants of Canada have continued to maintain an interest in the lands that requires to be satisfied. Whatever may have been the treatment accorded aboriginal inhabitants in the past in respect to land the implication of the White Paper is that the Government is not prepared today to enter into new proceedings to acquire the proprietorship in Canada. The Sub-Committee was of the view that the proposal amounted to entering into a new proceeding and as such could open up the whole question of aboriginal rights. In this event the Government might be required, in order to be consistent, to undertake similar proceedings to extinguish the Indian interest in British Columbia, the Yukon, Quebec and the Maritimes and the Eskimo interest in the north.
- (c) Fairness of consideration under existing treaties. The Sub-Committee also concluded that the proposal gives rise to the implication that the fairness and adequacy of the consideration under existing treaties is open for renegotiation. In making an offer based on the proposal, the offer may be construed as an acknowledgement by the Government of Canada that the land entitlement consideration is unconscionable and ought to be renegotiated. Signatories of other treaties could say with logic that the consideration under treaties to which they are parties should similarly be examined. Revaluation of past considerations would seem to be an unavoidable consequence of the proposal and be contrary to the White Paper.
3. The Sub-Committee also noted that the proposal might, without clear advantage to the Government of Canada, trench substantially upon the jurisdiction of the Indian Claims Commissioner. The land entitlement under Treaties 8 and 11 could give rise to a claim that is within the terms of reference of the Commissioner. The Sub-Committee concluded that the land settlement question ought not to be prejudged by denying the Commissioner the possibility of proposing or inventing a new and better method for determining the question.

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It did not consider that the further delay in having the question examined by the Commissioner should be a determining factor, having regard to the fact that the question has already been in issue for many years.

4. The Sub-Committee was concerned with the financial implications of a cash settlement should this course be decided upon ultimately. It was noted that rising land values and increasing population would affect substantially a final settlement on this basis. Values are rising in the existing settlements, which with the exception of three or four, have developed around communities that are or were almost exclusively Indian. The location of possible reserves would be a critical factor as valuation depends upon proximity to roads or water frontage, population centres, essential services and active mineral development. Some measure of what is involved in terms of acreage and probable cost is set out on the table below.

| <u>Year</u> | <u>Estimated Indian Population (at end of year)</u> | <u>Land Entitlement</u> | <u>Cost per acre</u> | <u>Total Cost (Millions of \$)</u> |
|-------------|---|-------------------------|--------------------------|--|
| 1960 | 4567 | 596,096 | \$16.00 | 9.5 |
| 1965 | 5569 | 712,832 | 31.00 | 22.0 |
| 1968 | 6082 | 778,496 | 40.00 | 31.1 |
| 1975 | 7347 (Estimated) | 940,416 | ? | ? |

5. Conclusion

In light of all the above considerations the Sub-Committee is of the opinion that the only feasible course at present open to the Government in respect of the land settlement question is

- (a) the acceptance of the issue as one of priority by the Indian Claims Commissioner should the Indians in question decide to submit it to him, and
- (b) in the interval, no action be taken in respect of the land settlement except insofar as it may be included as an unidentifiable part of the total consideration being offered to the Indian people by the Government of Canada for relinquishment of special status, rather than as settlement of a treaty obligation.

J.B. Bergevin
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Chairman,
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Members:

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