

position that what this word encompasses should be defined at future constitutional conferences.

Land Claims Agreements

Your Committee heard evidence which indicated differences of opinion or at least confusion as to the effect of the clause through which the meaning of treaty rights is enlarged to include "rights that now exist by way of land claims agreements or may be so acquired".

The Minister of Justice, in evidence before your Committee has confirmed that it was "impossible to be precise" about the effect of this section. In addition a letter received by your Committee from the Government Leader of the Yukon suggested there might eventually be a conflict between entrenched aboriginal rights and entrenched rights under a land claims agreement.

Equality Clause

The other major clause in the proposed Amendment is the so-called "equality section" which states:

"Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."

Your Committee heard some evidence to the effect that this clause was not in fact the one to which the various native signatories to the Accord had agreed and that it apparently was changed to its present wording just prior to the signing of the Accord. This view appeared to support a statement made by Premier Richard Hatfield of the Province of New Brunswick when he introduced the proposed Amendment in the New Brunswick legislature. However, your Committee did not receive any material which would confirm this statement. On the contrary, the Office of Aboriginal Constitutional Affairs provided copies of each of the four drafts which were considered by the parties at the conference. The drafts indicate that there was a change in the "equality clause" after the first draft but that all three succeeding drafts contain the precise wording of the subsection as in the proposed Amendment.

As your Committee discussed the substance of this section with various witnesses it became clear that there was no unanimity regarding its possible effect.

The view of the Minister of Justice, as stated to your Committee and concurred in by the Minister of Indian Affairs and Northern Development, was that the equality clause "will not reach" section 12(1)(b) of the *Indian Act* which provides that an Indian woman who marries a non-Indian automatically loses her Indian status. On the other hand, the official response from the Government of Alberta which has already approved the resolution, was to the effect that this section of the proposed Amendment "will override subsection 12(1)(b) of the *Indian Act*".

Your Committee heard a variety of opinions from native groups on the effect of this section. It was obvious that some Indian witnesses did not wish to deal with the "equality clause" only as it relates to section 12(1)(b) but rather in the

broader context of band membership. Most argued that the individual groups be allowed to determine their membership which would address both the issue of female equality and the readmission of others to the band who had lost their status due to the application or interpretation of other sections of the *Indian Act*.

Consent Clause

Another matter of substance raised by the native witnesses was that both the Constitution as it is presently worded and the proposed Amendment require only that the representatives of the aboriginal groups be invited to participate in discussions concerning possible amendments to the Constitution relating to aboriginal rights. Almost all native witnesses were adamant that constitutional amendments affecting their rights should be accomplished only with the consent of the aboriginal people affected. They stated that a consent clause should be entrenched in the Constitution, but were unable to specify how and by whom consent would be exercised.

Self-government

Many native groups claimed a right to self-government or self-administration, but the range of powers which they felt they should exercise varied widely. Your Committee is aware that this subject is presently being dealt with by a Special Committee of the House of Commons and will be debated fully after its report is tabled.

Conclusions and Recommendations

The series of hearings conducted by your Committee provided a forum for all parties to express views and to expose areas of misunderstanding, lack of consensus and possible conflict in the interpretation of the proposed Amendment. Nevertheless, all witnesses except one urged its speedy passage as it would provide the parties with a vehicle for the continuation of negotiations.

Your Committee therefore recommends that the Senate approve the Resolution proposing the Constitution Amendment Proclamation, 1983.

On the basis of the evidence presented at the hearings, your Committee makes the following recommendations to the parties involved in the constitutional negotiations:

- that as a first priority, they reach agreement on the definition of certain terms which are the foundation stones upon which any future agreements must be built; that is, they should agree on the meaning and scope of such fundamental terms as "existing treaty rights", "aboriginal rights" and "land claims agreements".
- that they should also reach a clear understanding of what portions of treaties, land claims agreements and aboriginal rights would be entrenched in the Constitution and which parts would be simply ancillary and capable of change by bilateral agreement.
- that, since the impact of the "equality clause" is unclear and the question of equality of the sexes is closely connected with the determination of membership within each