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## Chapter 5

# Aboriginal Title

## No Surrender

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**T**HERE ARE SOME who suggest that the Union of B.C. Indian Chiefs' position during the 1970s and the position of all First Nations that refuse to sign termination agreements with the government – which includes the majority of Indigenous peoples in the B.C. Interior – is to reject all development. Nothing could be further from the truth. We simply understand that the cause of our poverty, and of the enormous distress that comes with it, is the usurpation of our land. The only real remedy is for Canada to enter into true negotiations with us about how our two peoples can live together in a harmonious way that respects each other's rights and needs. We are looking for a partnership with Canada, while Canada is trying to hold on to a harmful and outdated colonial relationship.

We well understand that economically and environmentally sustainable development of our lands is essential. As long as development respects the integrity of the land and minimizes its impacts, we must take advantage of opportunities to build diversified economies that also take into account the modern imperative of clean energy – which is required to save our planet.

Soon after the James Bay and Northern Quebec Agreement, I saw how development can be handled in a much different model. In 1976, a year after the Cree signed the James Bay Agreement, Ron Derrickson was elected chief at Westbank, the Okanagan community across the lake from Kelowna. He showed through his deeds that a community could develop its land without selling or ceding it to the Crown – in fact, by making the community's collective ownership of its land an economic asset.

At the time, Chief (now Grand Chief) Derrickson was already a successful businessman, who had built his business the hard way. He was born into his family's small farm on the Westbank reserve, where his father was barely able to eke out a living to keep his family fed. When he was school-aged, Ron and his brother were sent to the white school in Kelowna, but they encountered such racism that they soon transferred to the nearby residential school. There, at least, they would not be hounded by white bullies.

Derrickson left school at a young age and worked in the orchards of Washington State. Eventually he moved to Van-

couver, where he learned the welder's trade. Always a hard worker, he lived frugally and saved enough money to return to Westbank to buy a small ranch. Over several years, he purchased small strips of land and built a number of mobile home parks. Later he invested in more capital-intensive developments like marinas, recreational developments, and real estate. Today he is the owner of more than thirty businesses.

When he was elected chief in 1976, Derrickson immediately put his business knowledge and experience into developing the Westbank economy. Over his first five terms as chief, from 1976 to 1986, he brought about a dramatic rise in revenue for the band and in the standard of living of his people. He accomplished both his private business and the later band development by using the existing tools for Indian on-reserve business: Certificates of Possession (CPs).

Most people think that Indian reserves are without private property, but there has been a system in place since the beginning. In our own Secwepemc culture, families had recognized places on the river for their fishing camps, their own traplines, and territories for their mountain base camps and for their wintering houses. These lands were passed on from generation to generation. They were not formally marked off; everyone simply knew exactly what belonged to whom. Today almost half of the Indian bands in Canada continue with this custom allotments system of ownership.

The others operate on Certificates of Possession. CPs have been around since the original Indian Act in 1876, when they were called Location Tickets. They give individual band members individual lands in a formal way, but still largely based on the original custom allotments. But while a CP gives the holder lawful possession of an individual tract of land, it is fundamentally different from the fee simple title that Canadians use.

For reserve land to be allotted to individuals through Certificates of Possession, it requires first a land survey and a band council resolution. Then it requires the approval of the Department of Indian Affairs. The CP is then sent to the band council, which forwards it to the title holder. With a CP, band members can pass on the land to their children or sell it to another band member. What they can't do is to sell it to non-Indians, and it is protected from forfeiture by any individual or corporate entity, such as a financial institution. So it is not something that can be directly mortgaged in the way that you mortgage fee simple lands. This means it can never be truly alienated from the community.

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It does not prevent you from developing the land, though. Instead of mortgaging it, you can lease it long-term. This can be done by either individual or band CP holders, although it requires approval – which generally moves at a bureaucratic crawl – from the Department of Indian Affairs.

It was this leasing system that Chief Ron Derrickson used to develop the Westbank First Nation. He was able to take advantage of the fact that the community was just across the lake from the rapidly growing city of Kelowna. The land's value was increased when the province built the Connector highway, a faster route to Vancouver joining the Okanagan Valley to the Coquihalla Highway, along the southern edge of the reserve. The band began to lease these lands to businesses, and suddenly a new revenue tap was opened up to the people of Westbank. Today, it is one of the most prosperous Indigenous communities in Canada, and this was done without surrendering an inch of land.

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While Chief Derrickson was working to build the economic future of his people, my life was one of wandering. I had returned briefly to British Columbia in 1974 to work with Philip Paul at the Union of B.C. Indian Chiefs. My contract was to organize a demonstration to mark the fifth anniversary of the White Paper. By then, it was already clear that while the White Paper had been formally withdrawn, the broad outline of the policy – terminating the legal existence of the First Nations in Canada – remained the central drive of the Liberal government and the Department of Indian Affairs.

Travelling through the back roads of British Columbia was an important education for me. I drove a beat-up old Chevy on potholed dirt roads to remote communities, and everywhere I was confronted with the systemic poverty of the people. Communities left in Third World conditions with little access to education and health services. Living on a tiny percentage of their lands and surviving on what amounted to a few dollars a day under the Indian welfare system.

But even with all this, it was not a sombre experience. Along with the poverty, I encountered the richness of the cultures, pride, and a sense of resistance to the outside forces. I spoke to dozens, even hundreds, of Elders and youth, and they did not need me to tell them we had to continue to fight government encroachments on our rights. They understood all too well the source of their poverty and the solution to it. It was not a philosophical question, but something that they had in their DNA. The land was theirs, it was given to them by the Creator, and they would do whatever was necessary to get it back.

After my sojourn in British Columbia was over, I went to Quebec as a youth worker, but I can't say that this period was particularly useful for me. I had a contract as a youth coordinator for Chief Andrew Delisle's Indians of Quebec Association (IQA), and I soon found myself in an uneasy situation. It

was in the run-up to the Montreal Olympics, and Chief Delisle and the IQA had already accepted to participate in their assigned role of providing local colour to the ceremony. When I met with the youth, I discovered they pretty well detested everything that the IQA – with its conservative and deferential approach to Aboriginal title and rights – stood for. When the youth, with me standing with them, began protesting the preparations for the 1976 Olympics as a way of bringing attention to the land question in Quebec, I was quietly laid off from my job.

I stayed on in Montreal and attended Concordia University without any academic plan, spending most of my free time working with a group that was trying to set up a Native Friendship Centre in Montreal. Eddie Gardner was the head of the founding group, but I was temporarily made president when they needed someone who could do a little fist pounding to get official accreditation from the national organization of Friendship Centres. We succeeded. Eddie took over again, and I continued with my directionless studies.

My life was changing during this period. Now in my mid-twenties, I was no longer part of the "youth." On my trip back to Neskonlith in 1974, I had met Beverly Dick, a beautiful and intelligent Secwepemc woman, and we soon became a couple. She had been raised in a traditional way by her grandparents and had avoided residential school, so she still spoke our language. She returned to Montreal with me and we were married there. Our twin daughters, Mandy (Kanahus Pa\*ki) and Niki (Mayuk), were born in 1976. We would have five children together. Neskie was born in 1980, Ska7cis in 1982, and Anita-Rose (Snutetkwe) in 1986.

The arrival of the twins made me realize that I had to get more serious about my life. I had a family to support. I decided the best way to take care of my family and continue the struggle for my people was to go to law school. I was part of a small wave of young activists of my generation who saw the law as a promising avenue for the struggle to have our rights respected. I think the Supreme Court's *Calder* decision had something to do with that. Trudeau had mused that we had more rights than he thought, and we were determined to see how far we could push that.

I buried myself for several months in LSAT preparations, which require an enormous amount of work. I took the LSAT at McGill University, and applied and was accepted at Osgoode Hall at York University in Toronto. I then took the six-week preparatory course offered through the Native Law Centre at the University of Saskatchewan.

At Osgoode, it was not easy to find anyone with expertise on Aboriginal issues. No one at law school was interested, and I felt isolated there as I constantly tried to find ways to apply what I was learning to the struggle for recognition of Aboriginal title and rights. I did have a genuine respect for the law professors, though. They stressed that we were not there to learn about the law, but about how judges made



Montreal, July 1975

decisions on the law. An important distinction when you see how interpretations of the same laws evolve through time, especially the laws related to my people.

In a personal sense, I was moving from the streets to a challenging and competitive part of the academic world, and it was a big step. My law school experience afforded me the opportunity to study the huge amount of colonial material you have to understand in order to understand the true plight of Indigenous peoples. It provided me with the legal framework to think through Aboriginal and treaty rights problems and understand them in relation to national and international human rights. It also helped me understand the limitations of seeking justice solely through the courts.

Our legal decisions always have that political element that, if we want to see the legal opinions implemented on the ground, requires us to also get the co-operation of the federal and provincial governments. And for that, we must be able to put political pressure on the governments to force them to act. In the last twenty years, I have been working at this on the economic and international civil rights spheres. It will not be lawyers, Indigenous or otherwise, who will bring the fundamental changes we need. That power, I am more convinced than ever, rests with the people themselves.

In the end, I did not finish law school. I left still needing to complete one field course on family law that I had no interest in. I have no regrets about leaving before completion,

because I know that even if I had graduated from law school, I would never have practised law. I would be doing exactly what I am doing now.

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My father was also seeing the need for a people's movement to break the deadlock. He left the presidency of the National Indian Brotherhood in 1976 with the idea of trying to build a movement to try to effect fundamental change. By then, he had decided he had gone as far as he could in Ottawa. He had helped build a fairly highly functioning national organization, and he had carved out a place for Indigenous issues on the national agenda – where there had been none. Indians were able to get a hearing, at times at the highest levels, and there were small gains in a number of areas like health and education. But the gains were always small. My father realized that our people could not simply lobby their way into justice.

One of the avenues for fundamental change, he knew, passed through international institutions. And some of his most important activities during this period were devoted to building up the World Council of Indigenous Peoples, which he had established at a mass meeting of Indigenous peoples from around the world that he organized on Vancouver Island in 1975. After he stepped down from the NIB leadership, he undertook extensive travels to solidify the World Council.

At the back of his mind was the idea of returning to British Columbia to try to build a grassroots movement to push the sort of anti-colonial struggle our situation called for, a struggle that would work to decolonize first our minds and then our lands. But when he returned to the province in 1977 to take over the Union of B.C. Indian Chiefs and build the people's movement, he found an organization racked by internal dissent. A number of the key coastal leaders, notably Bill Wilson and George Watts, had left the Union and were openly trying to build a rival organization. I will not go into detail here about that battle, as it has already been chronicled by others. But I did have personal evidence that the break with the Union by the dissident leaders was, if not orchestrated, at least strongly encouraged by the Department of Indian Affairs.

My accidental insight into this situation came while I was a guest in an Indian Affairs car being driven downtown from the Vancouver airport. I was just out of law school, living in Ottawa, and had flown to a meeting in Vancouver with the Anishinabe lawyer David Nahwegahbow. We met Indian Affairs Minister John Munro and his Indian assistants, Raymond Goode and Danny Grant, on the plane. David and I knew Raymond and Danny well, so we struck up a friendly conversation with them. As we neared Vancouver, Raymond said they had a couple of cars coming from Indian Affairs to pick up the minister and his staff and offered us a ride in the staff car. We accepted the offer thinking that, really, things did seem to be changing at Indian Affairs.

But when we got into the car, the driver, an Indian Affairs official, assumed that David and I were also Munroe's Indian assistants. So during the long drive into the city, he cheerfully described a litany of underhanded actions the Vancouver office was taking to undermine and divide the Union, including secretly supporting the dissidents. Danny, who was in the front seat, turned around with an embarrassed smile on his face and Raymond sat with a frozen grin while the white official spilled the Indian Affairs beans to David, an activist Indian lawyer, and me, the son of the president of the Union. Neither Raymond nor Danny said a word to stop the outpouring from the white guy. I suspect, in their own way, they were pleased to see DIA exposed for what it was.

For me, it was good to be reminded of the type of people, despite their occasional attempts to charm us, we were dealing with at Indian Affairs. As soon as I was out of the car, I called my father with the news. He wasn't shocked by it at all. He'd known all along about the leadership role the Department was playing in splitting up the Union. His response was to go ahead and try to build the people's movement.

Within the Union, they were working first on an Aboriginal Title and Rights Position Paper that listed twenty-four areas where First Nations had to recoup rights and powers that had been usurped by the governments. I will quote sections of the position paper here, because it gives a clear contrast to the position taken by those Indigenous leaders who accepted "cede, release and surrender" as the only option.

In its preamble, the position paper states that it "represents the foundation upon which First Nations in British Columbia are prepared to negotiate a co-existing relationship with Canada." It begins with an invocation of where our rights come from:

The Sovereignty of our Nations comes from the Great Spirit. It is not granted nor subject to the approval of any other Nation. Our power to govern rests with the people and like our Aboriginal Title and Rights, it comes from within the people and cannot be taken away.

We are the original people of this land and have the right to survive as distinct Peoples into the future;

Each First Nation collectively maintains Title to the lands in its respective Traditional Territory;

Economic Rights including resource development, manufacturing, trade, and commerce and fiscal relations.

National Rights to enjoy our National identity, language and history as citizens of our Nations.

Political Rights to self-determination to form our political institutions, and to exercise our government through these institutions, and to develop our political relations with other First Nations, Canada and other Nations of the World.

Legal Rights to make, change, enforce and interpret our own laws according to our own processes and judicial institutions including our own Constitutions, systems of justice and law enforcement.

Citizenship Rights of each individual to human rights

as embodied in the Universal Declaration of Human Rights.

The conclusion of the paper is unequivocal:

Our people have no desire, under any circumstances, to see our Aboriginal Title and Rights extinguished. Our People Consistently state that our Aboriginal Title and Rights cannot be bought, sold, traded, or extinguished by any Government under any circumstances.<sup>1</sup>

This is the bar, set more than thirty-five years ago, below which no negotiation with governments can fall. No nation on earth should be forced to enter a negotiation that is destined to end with its own extinguishment. The demand that we extinguish our Aboriginal title and rights is an attack on the fundamental rights of our people and a contravention of our basic human rights as set out in the United Nations Declaration on the Rights of Indigenous Peoples, which even Canada finally felt compelled to endorse in 2010. The UN has explicitly recognized that in its essence, "extinguishment" contravenes international law and "the absolute prohibition against racial discrimination." As the UN Permanent Forum on Indigenous Peoples observed in 2010: "No other peoples in the world are pressured to have their rights extinguished."

Some might argue that all people have the right to do whatever deal they want, including to extinguish their sovereign rights. The problem is that the birthrights they are selling are not theirs alone, they are those of their children and grandchildren and great-grandchildren. And those we do not have the right to sell.

When these battles were being fought in British Columbia in the late 1970s, the first issue the Union of B.C. Indian Chiefs took up was fisheries. The government had enacted a plethora of regulations against our Aboriginal right to fish and maintain an economy based on fishing. After launching a province-wide campaign with a Fish Forum in Vancouver, and arming itself with legal opinions, the Union supported a series of symbolic "fish-ins" around the province. In Lillooet, this symbolic act resulted in scuffles and fistfights when twenty-four Department of Fisheries officers descended on the protesters and tried to muscle them off the river. As tensions rose, the Union didn't back down. It issued a press release stating that it would "meet violence with violence."

At a 1978 assembly in Penticton, my father said the fishery was just the first battle. "Self determination has to be our goal in our quest to recover the lands, energy, resources and political authority that we have entrusted to the White political institutions. We are saying that for the past hundred years we gave you, the White government, the responsibility to manage our lands, energy, resources and our political authority. You have mismanaged that trust and responsibility. Now we

<sup>1</sup> Union of B.C. Indian Chiefs, "Aboriginal Title and Rights Position Paper," 1978.

are taking it back into our hands and we will manage our own resources through our Indian political institutions.”

The next issue was child welfare. In 1980, the Union led a massive march on Victoria to demand the government stop scooping our children from our reserves and placing them outside of the community. The impetus for this action came from a young Splatsin Chief, Wayne Christian, who had passed a resolution in his community insisting that Indian children would be cared for in the community, except in the most exceptional circumstances. The B.C. Indian Child Caravan moved through the Interior picking up supporters along the way, until more than a thousand people took to the steps of the legislature demanding a meeting with the minister for Child Welfare, Grace McCarthy. Finally, it took the 1981 three-week Women’s Occupation of the B.C. Department of Indian Affairs regional office to win full control of Indian communities to care for their children, an occupation my own mother was part of and was arrested for. The Child Caravan was the opening shot in that ultimately successful Union battle.

British Columbia was in ferment, and my father was emerging now as the war chief of the movement. He was not the only member of my family involved. I had just finished law school when my brother Bobby suddenly emerged onto the national scene to run for the position of national chief. He was still in his early thirties, but he had already made a name for himself in B.C. Indian politics, and he became the torchbearer of the people’s movement on the national scene.

Like most Native youth, Bobby had spent a few years trying to find his place in the world. He worked at mill jobs to earn a little money and moved around to see a bit of the country. In 1970, he had a driving offence with a \$250 fine that he couldn’t afford to pay. To escape a jail term, he headed down to Washington State to pick fruit and lay low for a while. But he received the same surprise visit from our father that I had had as a teenager in residential school.

It must have been an interesting meeting. After we had run into him at the Chase train station on our way to Chilliwack with my mother, Bobby had in fact spoken to my father when he saw him in town. He’d told him, “You don’t have a family anymore. They all left!” That was a measure of the youthful anger and resentment he held. But when my father travelled down to Washington to meet with Bobby, several years had passed. Bobby was in his early twenties and my father was beginning to recognize the mistakes he had made with his children. He came to make amends. It was during the period that he had taken his strategic vacation to allow Harold Cardinal to do the politics required to get him elected as president of the National Indian Brotherhood, and visiting Bobby was his first stop. He counselled his eldest son to go back to British Columbia and deal with the legal problem, and he suggested he go to see Philip Paul, then the director of Camosun College. When my father returned to Alberta, he

sent Bobby a signed copy of Harold Cardinal’s newly published book, *The Unjust Society*.

My father’s visit set Bobby on his own path of activism. Philip Paul took Bobby under his wing, and Bobby enrolled in a course at Camosun on community development. When he returned home to Neskonlith a couple of years later, he was elected chief. Bobby also became active in the Union of B.C. Indian Chiefs, where he was a member of the executive in 1977 when my father returned to B.C. to head the Union.

As a leader, Bobby had earned his own base of support across the province, where he was seen as a young, soft-spoken activist with an uncompromising conviction on our Aboriginal title and rights. In 1980, in a last-minute campaign, he took that message to the chiefs across the country when he ran for the National Indian Brotherhood presidency. He began as a long-shot candidate, but by the time the votes were counted, he lost by only a single vote to the much less confrontational Del Riley. It was a message to the government that something serious was brewing in Indian country.

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An even greater challenge was waiting just around the corner. In the months before Bobby ran for national chief, my father had visited me at law school. The constitutional issue had been on and off the Canadian agenda for the past decade. Prime Minister Trudeau had tried to patriate the BNA Act from Britain in 1971 and failed when Quebec premier Robert Bourassa withdrew his support. By the end of the decade, Trudeau was trying again to get consensus from the provinces and warning that if they refused, he would do it unilaterally.

This issue was in the news in the spring of 1979 when my father visited me in Toronto. That evening, he told me he was trying to understand the full implications of constitutional patriation for Indigenous peoples. His first thought was that maybe we should just stay out of it, that it was a non-issue for us. And wouldn’t trying to get recognition of our rights in the Canadian Constitution imply that we were part of the country – and therefore put in question our sovereign rights?

I disagreed. After almost three years in law school, I understood that the Constitution was where all of the rights, including territorial rights, were sorted out. It was the document that the courts looked to hold governments to account. If we were not in there, we were not in the game at all.

In the BNA Act, the British had allocated all of the powers in Section 91, which outlined federal powers, and Section 92, which outlined provincial powers. There was no room at all for Indian power. Our sovereignty was effectively stamped out in Section 91(24), which gave the federal government complete control over “Indians, and Lands reserved for the Indians” – in other words, over our lives. After approving this colonial document, the British sent it across the ocean to their successor state. We had to turn to older British constitutional decisions, like the Royal Proclamation of 1763, to find any Indigenous rights at all. And we had to hold the British

government to task for our exclusion from the BNA Act, in what is essentially a white supremacist constitution, and find a way to break the Section 91 and 92 stranglehold on power.

When he left my flat in Toronto, my father still seemed unconvinced. But when, immediately after the failed Quebec referendum on independence in May 1980, Trudeau was ready to move on his threat to go it alone, and include in the repatriated constitution a Canadian charter of rights and freedoms, it raised alarm bells for First Nations across the country. Even after ten years, the White Paper battle was still fresh in our memory. What would happen if the charter of rights and freedoms could be interpreted to remove our Aboriginal status and protection of our lands in the name of “equality” with other Canadians?

The worst was confirmed in June 1980 when the Continuing Committee of Ministers on the Constitution released a twelve-item agenda for the constitution that did not include a word about Aboriginal title or rights. The Union of B.C. Indian Chiefs immediately launched a court action to block patriation without the consent of Aboriginal peoples.

At the end of the summer in 1980, while the Child Caravan was still marching on Victoria, the Union met to review the federal government’s repatriation plan and a decision was taken. The chiefs passed a resolution that “the convention gives full mandate to the UBCIC to take the necessary steps to ensure that Indian Governments, Indian Lands, Aboriginal Rights and Treaty Rights are entrenched in the Canadian Constitution.”

By November, the Union launched a massive operation to fight any patriation of the constitution without the explicit recognition of Aboriginal title and rights. The Constitution Express was born.

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## Chapter 6

# The Constitution Express

### A Grassroots Movement

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**T**HE CONSTITUTION EXPRESS was an expression of a people's movement that changed the country in a fundamental way. Both the issues it addressed and the organization of the protest have important implications for our struggle today.

My own role in the protest was minor, but I was at Ottawa Central Station when the train pulled in on the morning of November 28, 1980. Two trains, with more than a thousand protesters on board, had left Vancouver four days earlier, taking different routes through the Rockies and joining together in Winnipeg, where they stopped for a night of rallies hosted by the Manitoba Indians.

In gathering support for the constitutional battle, the journey had already been a success. In British Columbia, hundreds of Indians had met the trains as they passed through the towns and cities along the route. In Alberta, the crowds reached the thousands. By the time the train left Winnipeg, the whole country was watching. The national news media were filled with speculation of what this Indigenous army would do when it reached the capital. In Ottawa, the RCMP began to fortify Parliament Hill with riot gates, and rumours of violent confrontations began to circulate.

By this time, Canada was in its own turmoil over the constitution. That September, after the failure of a last-ditch federal-provincial constitutional conference that our people were excluded from, the prime minister announced that he was moving ahead as promised to request unilateral patriation from Britain by a simple Act of Parliament. His idea was to move quickly enough that patriation would be a *fait accompli* before the Supreme Court had time to make a ruling on the Indigenous case and another attempt to block patriation filed by eight of the ten provinces. All the British had to do was to take a quick vote to approve the Canadian changes, and the deed would be done. Politically, Trudeau knew it was impossible for the premiers – even those most set against patriation and the charter of rights – to argue that the constitution, once patriated, should be sent back to Britain. Or that a charter of rights, once adopted, would be abrogated.

Prime Minister Trudeau presented his constitutional package for passage by the Canadian Parliament on October 2, 1980. Even though most of the provinces opposed the move, polls showed that he had the support of the majority of Canadian people. He also had the support of the New Democratic Party in the House of Commons.

For Indigenous peoples, it was an example of the often



Chief Robert (Bobby) Manuel, Constitution Express, November 1980

sharp differences between us and non-Indigenous Canadians. For the average Canadian citizen, particularly for English-Canadians, the battle between the premiers and the prime minister was a jurisdictional one between two levels of government. Most wanted a deal to be worked out that provided the benefits of patriation and the charter of rights and preserved the current balance of power, but the worst that could happen is that some power would shift from the provinces to the centre. For us, just as much as in the case of the White Paper, our future as peoples was at stake.

In the “equality” provisions of the charter of rights, the federal government would have the tools to undermine our nations by stripping away Aboriginal rights that were not the same as those as other Canadians enjoyed. At the same time, patriation presented us with an opportunity to correct the exclusion of our rights from the 1867 Constitution, which had given all power over our lives and our lands to the federal government. The protection of our Aboriginal and treaty rights in the new constitution was a question of our very survival.

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The thousand grassroots protesters on their way to Ottawa on the Constitution Express were demanding that the recognition of Aboriginal title and treaty rights be explicitly written into the constitution. On the train, the Union of B.C. Indian Chiefs activists, which included my brother Bobby, were running workshops on the constitution and on what it would mean for our rights. They also laid out plans for demonstrations in Ottawa and stressed the need for discipline from all of the participants.

As the Union information package told participants:

“Trudeau has challenged the Indian people to prove that we have our own rights and freedoms and these have meaning for us. We must show him in the courts and we must show him to his face. We must take as many Indian people to Ottawa as we possibly can.” The Union also stressed the utmost discipline from all participants because “the Government can only hope to make us look bad. We cannot tolerate any alcohol or drugs. This is a very very serious journey that we are undertaking, to defend our existence as Indian people.” To ensure discipline, those chosen for the security detail on the trains had been given both physical and spiritual training.

The people on the trains remember the great cultural celebration as they crossed the country, with singing, drumming, and Elders speaking. The protesters drew strength from this celebration with every mile along the track.

They were also made aware of the fears they were generating in official circles. At one point, between giant granite rock cuts in the Northern Ontario bush, the train suddenly screeched to a halt. RCMP officers poured onboard. Bobby asked the RCMP what was happening.

“Bomb threat,” they told him. “Everybody off the train. And take your luggage with you.”

Bobby looked outside and saw that they were trapped between the granite walls. Not a place you would stop a train if you were worried about a bomb exploding. It soon became obvious, as the thousand protesters opened their luggage for the RCMP search in the wet November snow, that it was not a bomb they were looking for but weapons. That is how edgy many in the country were getting as the train wound its way east through the Laurentian Shield.

Many, but not all. Some Canadians, such as Ottawa mayor Marion Dewar, hoped that the Indians would be able to stop Trudeau’s unilateral patriation drive, as the provinces seemed to have failed. While the RCMP were busy fortifying the city, Dewar told the people of Ottawa that the B.C. Indians were on their way and they should open their hearts and their homes to them.

Before the train pulled into the Ottawa station, the Constitution Express had already begun to have a political effect. The House of Commons committee studying Trudeau’s legislation had been scheduled to end its hearings that week, but it decided, when the train was just a couple of hundred kilometres from Ottawa, to extend the hearings to give the B.C. Indians an opportunity to have their say.

At the time, I was living in Ottawa doing contract work, sharing an apartment with my friend Dave Monture. For me, the Constitution Express was not only a major political event that shook the city, but also something of a family reunion. My father, who was having health problems at that time, had not taken the train. He had arrived in Ottawa a few days earlier as part of the advance team, and after making a fiery speech at the All Chiefs meeting that was being held in

Ottawa to coincide with the Express, he felt ill and was taken to Ottawa General Hospital. It turned out he had had a heart attack, his second. It was a symptom of the slowly progressing heart disease that would continue to weaken his body over the coming years.

My father was forced to follow the Constitution Express from his Ottawa hospital room. But along with Bobby, my wife, Beverly, was on the train with the twins, Mandy and Niki, and our four-month-old son, Neskie.

When I arrived early to meet the train, I was surprised to find a thousand people, many of them Indians from the All Chiefs meeting, already jammed into the station to greet the B.C. protesters. Indian Affairs Minister John Munro was also there, standing with Del Riley, the man who had beaten Bobby for the national chief’s job a few months earlier. Del did not look particularly happy. I had heard that at the National Indian Brotherhood, they were peeved that the Manuels were storming into town with the B.C. Indians and stealing their thunder in the anti-patriation fight. These men were, after all, politicians, so we all understood their concerns.

As the train pulled in, the atmosphere was electric. There were drummers and singers gathered to greet the B.C. Indians, and more drummers and singers coming off the train. The station throbbed with Indian music and with the excitement of the arriving protesters. It took me a while to find Beverly and the kids in the crowd. When I finally spotted them, I could see Beverly was exhausted but joyful.

When Bobby got off the train, he was met by a couple of the B.C. Union advance men who told him, shouting in his ear above the noise of the drumming, that Mayor Dewar had installed a set-up for a quick press statement. They led him away, passing close by John Munro and Del Riley, but Bobby didn’t glance at them. When he reached the microphone, he didn’t mince words.

Bobby denounced the Trudeau constitutional moves as a direct attack on our people. He said they were part of Trudeau’s vision to steal Indian people’s homelands and leave them to end up in the slums of the cities. He concluded by warning that if the government did not include recognition of Aboriginal title and rights in the constitution, the Constitution Express activists “would not only head to New York to protest at the United Nations, they would begin working toward establishing a seat there.”

Then the Constitution Express organizational team went into action, assigning everyone billets and matching them with those who’d offered places to stay. I was enormously impressed by the way people had responded to Mayor Dewar’s call. When the advance team had arrived in Ottawa, they had only a few dozen billets. Dewar put her city team behind the search for accommodation, and by the time the train reached the station, there were not enough Indians to go around to meet the offers. We should have a special place



of honour to acknowledge those like Mayor Dewar who stand by us in our hour of need.

While the others were heading to their lodgings to rest after the four-day journey, Bobby led a smaller group to Rideau Hall to deliver a petition to the Governor General, as the Queen's representative. It stated: "The Creator has given us the right to govern ourselves and the right to self determination. The rights and responsibilities given us by the Creator cannot be altered or taken away by any other nation."

The petition asked that "Her Majesty refuse the Patriation of the Canadian Constitution until agreement with the Indian Nations is reached." It also asked the Crown to enter into internationally supervised trilateral negotiations to decide the issue and "to separate Indian nations permanently from the jurisdiction and control of the Government of Canada whose intentions are hostile to our people."<sup>1</sup>

There had been a plan for Bobby's delegation to take over Rideau Hall and hold their own constitutional hearings for a couple of days, but at the last minute, Bobby decided against it. He was criticized by some within the movement at the time, but in retrospect, the takeover wasn't really needed.

Over the next several days, our people protested passionately on Parliament Hill. They sang, they chanted, they burned sweetgrass, and they spoke with journalists about the threat that the patriation package presented to our rights as Indigenous peoples. The B.C. Union had done its job well. The protesters were the most eloquent spokespeople imaginable for our cause. They had the grassroots passion and – through the Union workshops before and during the cross-country trip – a deep understanding of how the Trudeau constitutional power play could affect their future.

Their message was getting through to the government and to the Canadian people. In the press, the worried chatter about possible violence in the days before train's arrival was replaced with increasingly positive coverage. More and more voices in Canada were speaking up to support our cause. Finally, a few days after the protesters arrived in the capital, they had their first big victory. Under pressure from his supporters, party leader Ed Broadbent withdrew the New Democratic Party's support for the constitutional deal until Aboriginal people were included. The Trudeau alliance was cracking, and Trudeau knew that the British would be far less likely to agree to unilateral patriation if it was the request of a single party in the Canadian House of Commons.

Jean Chrétien, now minister of justice and Trudeau's point man on the constitution, was sent scrambling to get a deal, of any kind, with the Indians, any Indians. He quickly patched together a couple of clauses that, he said, would ensure that the Indians would not lose anything under the charter of

rights and freedoms. Del Riley quickly accepted the offer on behalf of the NIB. But the politics had already moved beyond Riley and the National Indian Brotherhood. My father and the Constitution Express protesters were demanding far more. The constitution could not simply skirt around our rights; it had to recognize and affirm them. The NIB was pushed back onto the sidelines as the Constitution Express continued to dominate Ottawa, and sent a delegation to New York to protest at the United Nations with the support of American Indians.

But the Union continued to direct its main attention to England, where the National Indian Brotherhood had had an active lobby since 1979. Our people understood that ultimately it was a British wrong that had robbed of us our powers in the BNA Act, and it was their responsibility to right it. In Ottawa, the Union sent a message directly to the British:

We have our own relationship with the British Parliament – a relationship which places a constitutional duty upon the British Parliament to ensure that our rights and interests are protected and that Crown obligations to us continue with the passage of time, until we achieve self determination. The Indian Nations are calling upon the British Parliament to perform their duty to us by refusing to patriate the Canadian constitution until it can be done without prejudice to Crown obligations and until the supervisory jurisdiction presently vested in the British Parliament be vested in the Indian Nations and not in the Federal or Provincial legislatures.<sup>2</sup>

The Union message and the message of the previous NIB lobbying were finally received. While the Constitution Express was still in Ottawa, the British parliamentary committee responsible for passing the patriation legislation fired a warning shot across the Trudeau government's bow. On December 5, the British announced that there would be no quick passage of the bill on their side. They would not move on it until June 1981, at the earliest.

With dwindling support at home and with the British signalling that they would not be rushed into granting the Trudeau government quick passage while the move was so controversial in Canada, the unilateral patriation drive was effectively stalled. Prime Minister Trudeau extended the deadline for the House of Commons Constitutional Committee report. He would have to go back to the provinces and to Aboriginal people to get a deal.

From his hospital bed in Ottawa, my father felt the tide turning. Doctors and nurses and hospital visitors poked their heads into his room to offer encouragement and to let him know they were impressed by the passion and discipline of

1 "Constitution Report of the UBCIC," October 1981, cited in speaking notes of Louise Mandell, QC, UBCIC Chiefs Council, November 22, 2011.

2 Cited in Union of B.C. Indian Chiefs, "The Substance of Great Britain's Obligations to the Indian Nations," presented at the Fourth Russell Tribunal, Rotterdam, Netherlands, November 1980.

the protesters on Parliament Hill. Describing his time at the hospital, he told his supporters, “I was treated like a king. That is how much you stimulated Ottawa.”<sup>3</sup>

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This road would have many twists to come. In February 1981, when the Constitutional Committee presented its report, an affirmation of Aboriginal title and rights was included in Section 35. This set off a new round of the battles between our people, who wanted more, and a group of provincial premiers who wanted Aboriginal rights struck from the deal. The B.C. provincial government delegation took the lead in lobbying for the removal of the clause, and they found support among the other Western premiers.

In September, the Supreme Court blocked Trudeau’s patriation drive without “a substantial measure” of provincial government support. The prime minister called a premiers conference, as a last-ditch attempt to strike a constitutional deal, for the first week of November.

The Union decided this time to target British and international opinion directly and make the Indian voice heard with its European Constitution Express. It was planned for the first week of the premiers meeting. The Union delegation left for Europe on November 1, 1981, with an itinerary that included Netherlands, Germany, France, Belgium, and England. The main destination was London, where the delegation would again attempt to convince the British to refuse patriation without a clear recognition of Indigenous nationhood in the constitution.

Once again, it was a grassroots effort. Because of the cost – \$2,500 each for transportation and lodging – participants sought support from their bands. To make the maximum impression, they were told to bring their traditional dress and hand drums, and gifts for their hosts (jewellery, carving, beadwork, and so on). They were also told “bring information on [their] own band or area if possible, for example; pictures on conditions of communities and pictures of various traditional activities like pow-wows, hunting with game, fishing, new houses and old houses, mills or plants close to reserves, forests, construction roadways, or logging.” The instructions to participants also detailed personal goods they could bring through customs in Europe; since it was for B.C. Indians, the list included “1 salmon (FRESH OR SMOKED) Per Person or six tins of 4 ounces salmon.”<sup>4</sup>

It is important to stress that, just like on the Canadian Constitution Express, the great majority of the people travelling were not leaders or experts but grassroots people. As the Union historian of the period put it:

The Union, under the leadership of George Manuel sent the Constitutional Express to Europe. The UBCIC brought the voices of the people in the communities throughout the country to the international arena and made it clear that the aboriginal people of Canada would not stand back and allow their rights to be infringed upon.

The excellent organization, forethought and vision of the Constitutional Express not only raised the consciousness of the public but also brought back the pride of the aboriginal peoples and the strength which has always been needed to fight for the recognition, the survival and the promotion of our rights.<sup>5</sup>

While the flights were leaving Vancouver, the premiers were landing in Ottawa to hammer out a constitutional deal. After days of deadlock, nine of the ten premiers reached a backroom deal with Chrétien, in what is widely known as the Night of the Long Knives when Quebec premier René Lévesque was stabbed in the back by the other premiers.

But the knife that night was used first against our people. In his account of the evening, lead B.C. negotiator Mel Smith wrote that some of the other provinces were worried about what effect Aboriginal rights would have on their jurisdiction. Others said it was Smith who expressed “strong reservations because almost none of British Columbia had been ceded by the Indians to the province through treaties. There was an uncertainty about the legal effect of this historical fact; the other provinces reluctantly acquiesced to this argument.”<sup>6</sup> So in the middle of night, Aboriginal people were tossed out of constitution, along with Quebec.

In Britain, the presence of the European Express guaranteed extra coverage for the new betrayal of Canada’s Indigenous peoples, and once again, British press and parliamentarians began to urge that the Thatcher government refuse patriation under such contested conditions within Canada. When the Trudeau government listened to the Western premiers and presented its final package, without protection for Aboriginal people, it was met with a storm of protest so strong that the premiers themselves were forced to begin a series of conference calls that ended with Section 35 being reinstated.

The result was that Section 91(24) of the BNA Act, which gave the federal government sole responsibility over “Indians, and Lands reserved for the Indians,” would now be framed by Section 35(1) of the Constitution Act, 1982: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”

5 Union of B.C. Indian Chiefs, “Constitutional Express,” (<http://ubcic.bc.ca>)

6 Cited in Melvin H. Smith, Q.C., “Some Perspectives on the Origin and Meaning of Section 35 of the *Constitution Act, 1982*,” Public Policy Sources, 41 (Vancouver: The Fraser Institute, 2000).

3 George Manuel’s address to the Union of B.C. Indian Chiefs’ 13th Annual Assembly, October 1981.

4 Constitution Express poster (April 11, 1981), Union of B.C. Indian Chiefs Archive.

In the BNA Act, only two entities were recognized in the Constitution – the federal government in the list of Section 91 powers and the provinces in the list of Section 92 powers. These seventeen words in Section 35 announced a new entity in the Canadian power structure: Aboriginal peoples, whose own constitutionally recognized rights would be “recognized and affirmed.”

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Those who hoped that we had finally reached open water were soon disappointed, however. It is impossible to underestimate the depth and intransigence of the colonial mindset in Canada. While legal recognition of our rights was provided in the fundamental law of the land, political recognition would not be forthcoming.

This political dimension was supposed to be resolved in the series of First Nations/federal and provincial conferences that were mandated in the 1982 Constitution. Meetings to define our self-governing rights were held in 1983, 1984, 1985, and 1987. But each of these constitutional conferences ended in failure. There were some very modest changes to the wording of the subsections of Section 35 but no substantial movement to recognize our new constitutional status at a political level. Despite the promise to “recognize and affirm,” it soon became clear that the approach of the federal and many of the provincial governments would be better summed up as to “ignore and deny.” It would only be years later, when the courts finally stepped in again, that real weight would be given to Section 35.

The constitutional battle was a roller coaster ride for our people, but it also provided a model for Indigenous struggle. The main reason it was effective in having our rights recognized in the Constitution was that it focused on mass mobilization of the people rather than on leaders pleading their case in committee rooms or behind closed doors with government officials. Throughout this battle, the B.C. Union leadership had numerous invitations to appear before government committees to plead their case, but they refused the offers. They understood that we needed a much wider playing field.

We need to get outside the narrow bounds of parliamentary procedure and official negotiating tables, and demand our rights with a show of strength. Governments are not moved to listen by arguments or pleas for justice from our leadership. These rain on them at all times and governments are oblivious to them. What moved the government and the people of Canada was the passion and power of our people unified at the grassroots level, demanding justice for themselves and their children. The Constitution Express turned the patriation from a serious threat to an important gain for us that we can continue to build on into the future.

This is what our people accomplished by determined action together. And these are the means by which we can make continued advances today.