

**CLOSING AN INCOMPLETE CIRCLE OF CONFEDERATION:  
A BRIEF TO THE JOINT PARLIAMENTARY COMMITTEE  
OF THE FEDERAL GOVERNMENT ON THE 1987  
CONSTITUTIONAL ACCORD**

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ABSTRACT/RESUME

As part of a continuing commitment to address current issues, *The Canadian Journal of Native Studies* reproduces one submission to the Joint Parliamentary Committee on the 1987 Constitutional Accord (the Meech Lake agreement). Although this presentation expresses the author's own ideas, it outlines some widely-held concerns with the agreement, especially in terms of its effects upon Native people in Canada.

Dans un souci constant de présenter des questions d'actualité, *La Revue Canadienne des Etudes Autochtones* reproduit ici une présentation à la commission Interpaflementaire sur l'Accord Constitutionnel (l'Accord du Lac Meech) en 1987. Bien que cette présentation fasse état des idles de l'auteur, elle expose dans leurs lignes générales quelques inquiétudes largement partagées concernant l'accord, et en particulier ses effets sur les autochtones au Canada.

## PART I (22 July, 1987)

This submission examines the implications of the proposed constitutional amendment, particularly in relationship to the rights of Aboriginal peoples and in relationship to the self-determining rights of Northerners generally, especially those residing in the Yukon and Northwest Territories. A view of the First Ministers' accord from this perspective, it is argued, reveals much about the underlying philosophy informing every aspect of the envisaged constitutional changes. Thus the following analysis, although focusing primarily on the destiny being held out to Native peoples and to Northerners, speaks really to issues which go beyond the narrow interests of particular groups in Canada. Rather, an emphasis on the rights of Native peoples and Northerners places in the forefront a variety of matters pertaining both to the oldest traditions of the country's constitutional evolution as well as to the most advanced frontiers of Canada's political, economic and social thrust into the future.

Hence any agreement which fails to advance the long frustrated aspirations of Northerners and Native peoples will ultimately not serve the best interests of Canada as a whole. The laying of a sound constitutional basis for the development of Canada into the twenty-first century simply cannot be authentically accomplished by setting in place a constitutional status quo that effectively denies a meaningful nation-building role to those for whom this country is an ancient homeland. Nor can it be achieved by entrenching a constitutional arrangement which would see Northerners made a permanent underclass of citizen, subject always to domination by politicians representing the mass of voters in Southern Canada.

SELF-GOVERNMENT IN THE NORTHWEST TERRITORIES:  
THE UNLEARNED LESSONS OF HISTORY?

One of the most glaring problems in the envisaged constitutional amendment is the extension of veto power to each of the existing ten provinces. The concern here is particularly in relationship to parts (h) and (i) of the proposed new section 41 of the Constitution Act, 1982 (See Appendix 1). The provision would give every provincial government determining power over when and how any territory is to acquire the status of a new province within Canada. This effectively gives Southerners absolute control over the constitutional destiny of those residing in the Yukon and Northwest Territories - a control which alternatively strips from Northerners any formal constitutional say over their own future within the Canadian federation. Thus in important respects the proposed constitutional amendment effectively disenfranchises the residents of Canada's northern territories. It entrenches their status as second class citizens through a process of constitutional reform where they were not represented. This speaks poorly of the overall character of an accord that so unfairly undermines the self-governing powers of those who historically have been inadequately represented at the First Ministers' negotiating table. It is reflective of a cynical constitutional deal that would jealously squeeze rather than generously broaden

the as-yet incomplete circle of confederation.

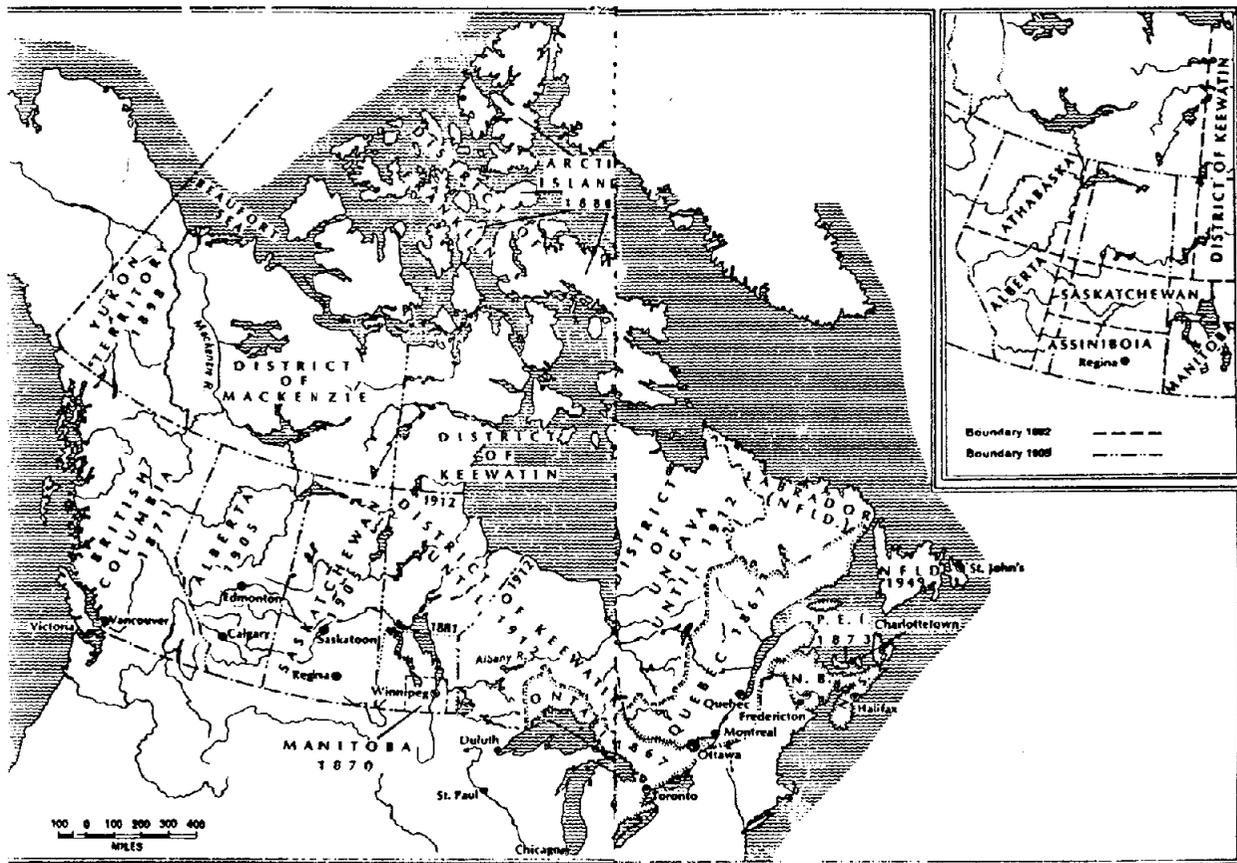
A glance at the country's history underlines the significance of the First Ministers' decision to deny the self-governing rights of the residents of Canada's northern territories. It was not many years ago that most of Canada's present-day land mass was known as the Northwest Territories. This vast region, including present-day Alberta, Saskatchewan, and Manitoba, as well as the larger part of Northern Ontario and Northern Quebec, was purchased by the young Dominion of Canada from the Hudson's Bay Company headquartered in England. When Canada attempted to assert its administrative control over this vast region without due regard for the self-governing rights of the local inhabitants, Louis Riel protested as President of the provisional government of Assiniboia. Largely as a result of his actions and those of the Native peoples who backed him, Manitoba was extended provincial status through an act of the federal legislature. In 1885 Louis Riel and his followers again resisted, this time violently, the assertion by eastern Canada of its economic self-interest over the rights of the indigenous peoples of the Northwest Territories. The affair was climaxed, if not resolved, by the hanging of Riel.

In the wording of the Meech Lake/Langevin accords is the basis of a dynamic with the potential to set in motion cycles similar to those enacted during the last century in the region of Canada then known as the Northwest Territories. Again interests based in the more populous parts of Canada are moving to assert domineering control over the indigenous inhabitants of a part of Canada lacking responsible government. This places in grave jeopardy the fruits of the innovative work that has been done by Northerners over recent years in the design of new models of self-government which, while responsive to the democratic rights of all constituents, would also reflect the forms of collective decision-making most deeply rooted in the indigenous culture of the area. A political development unique in the constitutional history of the world is in danger of being cut short because of limitations in the powers of imagination of Canada's First Ministers.

#### NEW PROVINCES WITHIN THE DOMAIN OF EXISTING PROVINCIAL JURISDICTION

A glance at the accompanying map demonstrates the large number of jurisdictional adaptations made in Canada over the last one-hundred and twenty years. This period has seen several new provinces added to the Dominion, several new provinces created from the old Northwest Territories, and the extension of several provincial boundaries. Fortunately Canada's constitutional fabric has been flexible enough to allow for this constant adaptation in the framing of the country's jurisdictional outlines. The proposed constitutional amendment would put an abrupt end to this flexibility, flexibility that will be needed in the future as much as it has been needed in the past.

The proposed constitutional changes would have the tendency to freeze the map in its present shape, a shape that there is no reason to view as the final culmination of this country's short history. Alternatively, the amendment would



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impose the demand for an enormous expenditure of lobbying energy in order to make any adaptation in the jurisdictional design of Canada's geography. Such energy could otherwise have been directed at the accomplishment of a host of other beneficial political tasks.

The proposed constitutional amendment would also make it next to impossible for the residents of existing provinces - some of them vast domains indeed - to create smaller new provincial jurisdictions. In the next century, for instance, it is possible that the residents of a more populous Northern Ontario might decide that they would be best served by creating a new seat of provincial government more responsive to Northern needs than Queen's Park. Even if Southern Ontarians agreed that this was appropriate, however, the matter could not be decided without the agreement of every other provincial legislature in the country. Under these circumstances the right of Ontario citizens to determine their own destiny within confederation would become subservient to the control of interests outside the province.

Given the vastness of Canada and the distinct possibility that the country's population density and distribution could change significantly over time, it is not far sighted or wise to tie ourselves into such an inflexible regime of jurisdictional change.

#### CLOSING THE DOOR ON THE POTENTIAL OF ABORIGINAL SELF-GOVERNMENT

Nowhere is the underlying philosophy informing the envisaged constitutional amendment made so clear, as in the proposed new section 41 of the Constitution Act, 1982. The section stipulates how provincial governments are to assume veto power over major reforms of federal institutions. What this conveys is that henceforth the federal government in Ottawa is to be understood as basically a creature of the ten provincial legislatures. For it is the provincial governments that would be granted complete power to decide the basic shape of federal institutions and, by implication, the reach of federal authority.

While this proposed modification has been described by some as "decentralizing", the Prime Minister has dismissed this characterization. His assertion is not without justification. It can truly be said that the proposed amendment, while significantly enlarging the scope of provincial jurisdiction, will at the same time be centralizing. This is true in so far as Ottawa would become the site of a good deal more lobbying by provincial governments among themselves. While power would be drawn to Ottawa, however, the proposed amendment would significantly alter the nature of government transactions most regularly made in the nation's capital. It would see the federal government become less and less a distinct sovereign jurisdiction in its own right, and more and more the creation of ten provinces seeking selectively to co-operate among themselves in those instances where collaboration is perceived to be in the provincial interest.

Probably there are no groups who would be so immediately or so thoroughly affected by this proposed reform as Indian and Inuit peoples. Their ability to exercise their rights as members of distinct Aboriginal societies, and thereby

realize an important form of regional cultural autonomy in Canada, depends largely on the existence of a strong central government willing and able to assert its own jurisdictional authority *visa vis* the sometimes conflicting interests of the province. The envisaged amendment, however, would push the constitutional evolution of the country in the opposite direction. By making the federal government increasingly a creature of the provinces, and by thereby narrowing the base of the central authority's unique jurisdictional powers, the well being of Aboriginal societies will, in turn, be further undermined. In order to clarify why this is so, a brief reference to Canada's constitutional history is required.

In 1867 jurisdiction over "Indians, and Land reserved for the Indians" was vested by the British North American Act in the newly-created Dominion government in Ottawa (See Appendix 2). Later judicial interpretation of this provision determined that the federal government is also responsible for the Inuit and Inuit lands. On the other hand, the BNA Act specified that control of natural resources was largely a matter of provincial jurisdiction. This constitutional arrangement almost inescapably set the provincial governments as the natural opponents of Aboriginal rights. Alternatively, the separation of powers by the BNA Act created a dynamic where proponents of a strong central authority in Ottawa found that it served the interests of the federal government to advance an expansive legal interpretation of the idea of Aboriginal rights.

This dynamic found full expression during the late 1880's in a constitutional showdown between the Ontario and federal governments. They disputed the right to issue timbering licenses in the area of present-day northwestern Ontario. The government of John A. Macdonald authorized the St. Catherine's Milling Company to cut wood, claiming authority to do so on the basis of federal jurisdiction over "Lands reserved for the Indians". In the view of the Macdonald Conservatives, lands reserved for the Indians meant all those territories in Canada that at the time of confederation were not covered by Indian treaties. This was by far the largest portion of the land mass of the country. Officials of the Ontario government opposed this view, penalizing the St. Catherine's Milling Company for cutting timber illegally. The extended court case that followed saw federal and provincial authorities endeavouring to advance the interests of their respective governments by taking opposing positions on the issue of Aboriginal rights. The stakes in this contest of legal interpretation were nothing less than ultimate power to control the development of natural resources in Canada. The federal officials attempted to secure Dominion authority by maintaining that Canada was heir to a long tradition of Crown recognition of the integrity of Indian land rights in North America. In opposing this view, Ontario officials argued that Indians lacked inherent rights of any large consequence; that they were too primitive and too socially unorganized at the time of European colonization to retain any significant legal interest in their ancestral lands.

The arguments of the lawyers for Ontario in the St. Catherine's Milling case were to be repeated by officials for many provincial governments over the following decades. The affair established clearly the pattern where the advancement of provincial interests, based largely on asserting the exclusiveness of provincial jurisdiction over natural resources, leads almost inevitably to a cor-

responding hostility to the idea of Aboriginal rights. This tendency was demonstrated most graphically on the night of November 5, 1981. As their final price for agreeing to patriation, several of the provincial premiers demanded that a positive affirmation of Aboriginal and treaty rights be stripped from the proposed text of the Canadian constitution. It was only a broad wave of public revulsion against this that prevented the hostile premiers from getting their way.

Between 1983 and 1987, in the four First Ministers' Conferences on Aboriginal rights which followed, many of the premiers again revealed their unfriendly attitude towards Aboriginal rights by arguing against the proposition that Native societies in Canada have inherent powers of self-determination. The failure of this long process of public negotiation, one so different from the hurried private deal-making that resulted in the Meech Lake/Langevin accords, provides fresh testimony of a continuing provincial unwillingness to regard Aboriginal communities as distinct societies with an inherent right of self-government that should be constitutionally recognized. At the last First Ministers' meeting on Aboriginal issues, only Richard Hatfield and Howard Pawley sought sincerely to cut through the constitutional blockade maintained by the other premiers, separating Native peoples from the tools they require to practise their group rights within the self-governing institutions of Canada. To blame, therefore, the breakdown of the negotiations on the non-participation of Quebec, as both Senator Murray and Prime Minister Mulroney have done in the public defense of the Meech Lake/Langevin accords, is simply unjustified. Such an interpretation could only be based on a purposeful decision to misinform or on a lack of understanding of what actually transpired during the lengthy course of the First Ministers' meetings on Aboriginal rights.

Given this background, the future vitality of distinct Native societies depends largely on the ability and willingness of the federal government to act as a proponent of Aboriginal rights against the often conflicting claims of provincial jurisdiction. The essential element of such action must be to protect and affirm the land rights of Aboriginal groups, especially against the voraciousness of the provincial appetite for complete control of all natural resources within provincial boundaries. Moreover, because the Canadian constitution as presently framed makes "Indians, and Lands reserved for the Indians" the unique jurisdiction of the federal parliament, it is clearly the federal government which carries the primary responsibility to modify national institutions so that Aboriginal societies are no longer denied their rightful democratic powers of self-determination within the overall governing structures of Canada. The performance of these duties, ones upon which the honour and integrity of the Crown rule of law significantly depends, makes special requirements of a strong and flexible federal authority. The proposed constitutional amendment, however, would work at cross purposes to this need. In re-tooling the central government so that its basic powers are increasingly derived from the delegation of provincially-rooted jurisdiction, it will become more rather than less difficult for justice to be rendered to distinct Aboriginal societies - societies which for far too long have been unjustly held outside the incomplete circle of confedera-

tion.

An example of how the proposed new section 41 would undermine the federal government's ability to fulfill its constitutional duties with respect to Aboriginal rights is as follows: The envisaged amendment would require unanimous provincial support for any change in the system of representation at the basis of the design of the federal parliament. In the past Aboriginal communities have virtually lacked spokespeople of their own choosing in the House of Commons. Indian and Inuit adults have lacked the franchise during the largest part of the history of Canada. Even though they have been allowed to vote in federal elections since 1960, their numbers have been too small and their geographic distribution too dispersed to enable them to exercise a significant influence in the electoral process (except in the Yukon and Northwest Territories). One approach to rectifying this lack of real representation would be to allocate a certain number of seats in the federal parliament specifically for Aboriginal constituencies. Such a modification might involve the imposition on the electoral map of all Canada, of perhaps six or seven new Aboriginal electoral zones. This reform would be made with the accompanying provision that every Native person in the country has the right to use their franchise in the election of a candidate seeking to represent the Aboriginal constituents of the new Aboriginal jurisdictions. The victors of this process of Native self-government would then assume office alongside all the other members of parliament in the House of Commons.

A modest electoral adaptation of this sort would help to provide a degree of democratic representation for Aboriginal communities in Canada, most of whom have long been so appallingly marginalized by a political system brought by newcomers to their own homeland. Such realistic kinds of reform will increasingly be recognized as necessary if elected parliamentarians are ever to move beyond the stage of mouthing mere lip service to the idea of Aboriginal self-government while denying its substance. For if Aboriginal governments are eventually to become more effectively functional, innovative means will have to be found to integrate them with the larger mechanisms of democratic decision making in Canada. By moving in this direction Canada would be following a lead long since established by New Zealand, where several of the seats in the national parliament are designated as specifically those of the Maori. Hence the adoption by our government of a parliamentary system that includes room for the expression of specifically Aboriginal concerns, would be entirely consistent with our proud commonwealth heritage.

The proposed new amending formula, however, would make it virtually impossible ever to reform parliament in this way. Officials of provincial governments have again and again demonstrated their zeal to strike down any initiative that would seem to suggest that Aboriginal groups are distinct societies whose members share the right to make decisions about their own affairs based on no other higher authority but the reality of their collective existence. Many of the First Ministers demonstrated this attitude very clearly when they repeatedly refused over a four-year period to recognize the principle of Aboriginal self-government as a fundamental human right of Aboriginal peoples. To now extend the provinces a virtual constitutional monopoly over the kind of reform

of national institutions which will be required if Native people are ever to assume meaningful control over their own affairs, is as much as to shut the door on the possibility of Canada breaking out of an ever renewing cycle of injustice to Aboriginal peoples - injustice founded ultimately in the tenacious old view that Indians and Inuits are not quite as fully human as the White-skinned colonizers who did claim and do claim North America as all their own. To continue this cycle of injustice amounts to a failure to grow and mature as a nation; to entrench constitutionally the legal weapons of cultural destruction, is to deny "an essential essence of Canada's own uniqueness as a distinct society in its own right. Accordingly, the proposed amendment speaks more of nation dismantling than it does of nation building. A dynamic, proud and authentically-rooted Canadian identity simply cannot be founded in a constitutional genesis so profoundly disrespectful of the indigenous societies of this country.

The extent of the disregard of an Aboriginal role in the self-governing institutions of Canada is made apparent in virtually every facet of the proposed constitutional amendment. It details, for instance, large new powers for provincial governments in the nomination of candidates for the Senate and the Supreme Court. This would effectively close off the possibility that Aboriginal governments (or officials of the territorial legislatures) will gain their rightful part in the determination of how these key national institutions are to be constituted. Moreover, the proposed means of making court appointments would eventually result in the creation of a national judiciary peopled by individuals generally sharing an interpretative perspective on the constitution favouring the primacy of provincial interests. Such a bias would have an unfortunate fragmenting tendency throughout Canada, but it would over the long run be especially devastating for Native peoples whose Aboriginal and treaty rights have so consistently been undermined by the enlargement of provincial jurisdiction. Indeed, there are serious questions to be asked about any constitutional amendment that would so enormously expand the already huge powers of an unelected, unaccountable group of judges, making them responsible to decide so many matters that formerly have been within the democratic realms of electoral politics in Canada.

Similarly, the proposed addition of section 106a(1) to the Constitution Act, 1867, has implications that harm the potential for the healthy development of the required institutions of Aboriginal self-government (see Appendix 3). What, for instance, would be the result for Aboriginal communities within the boundaries of a province, if that province should decide to opt out of a national shared-cost programme? How will section 106a affect the ability of Aboriginal governments to develop programmes of their own design but "compatible with national objectives"? How can Aboriginal groups influence the genesis of these national objectives? To what extent will Aboriginal governments at the local, regional and national levels be able to develop their own objectives for social programmes? The many provisions Of the proposed amendment dealing with immigration constitute yet another area of envisaged reform, laid out with virtually no reference to the implications for Aboriginal peoples and for Aboriginal governments. The symbolic significance of this, given the legacy for

Native groups of a long experience of large-scale immigration into their country, is striking.

The only part of the proposed amendment that deals specifically with Aboriginal issues, section 16, is revealing of an attitude towards Native people that would push them even farther from access to the levers of government than is already the case (see Appendixes 4, 5, 6). The envisaged change would add several hundred new lines of dense legal text to the Constitution, dealing with a whole host of issues: immigration, government spending, the judiciary, the Senate, language rights, education rights, the distinct character of Quebec, federal-provincial relations, etc. After detailing these extensive reforms, which together represent a fundamental re-structuring in the distribution of powers between various government bodies in Canada, section 16, added obviously as an afterthought, basically says that none of the changes should affect Aboriginal peoples (or the multicultural heritage of Canada). How absurd! Clearly what this brief reference to Aboriginal rights most reveals is the racist kind of assumptions that must have informed the proposed amendment's drafters; they must see Native communities as basically static and outside the fundamental governing structures of Canada. Otherwise, how could it be imagined that the government of the country could be so completely re-shaped without affecting the frustrated efforts of Native groups to re-assert some degree of collective self-determining power over their own affairs?

As Native people constitute a large percentage of the population of the Yukon and Northwest Territories, and a massive majority in the eastern arctic region of Nunavut, there is clearly considerable overlap between the effects the proposed amendment would have on the self-determining powers of Northerners and Aboriginal communities. The envisaged change, as presently outlined, would not only perpetuate the colonized condition of these groups but it would actually compound this unacceptable state of affairs. It formalizes a kind of second-class Canadian citizenship for those individuals and groups lacking regional representation at the First Ministers' negotiating table. While the specifically Northern dimension to these problems is important, however, it is essential also to bear in mind that the vast majority of Native people presently live within that part of the country covered by provincial jurisdiction. And it is these provincially-bound Aboriginal groups who probably face even greater obstacles than their northern cousins in the achievement of authentic forms of self-determination.

The oppression encountered by Native groups, both in provinces and northern territories, is most fully personified in the attitudes of several provincial premiers who remain intent on using the constitution as a weapon against Aboriginal peoples. This was their tactic in 1981 when nine of them agreed to patriation on the condition that a positive affirmation of Aboriginal and treaty rights be ripped from the text of Canada's new supreme law. And it continues to be the strategy of many of them as demonstrated by the breakdown without resolution of the First Ministers' talks on Aboriginal self-government. There can be virtually no doubt that several of the premiers carried over their urge to crush Aboriginal rights into the design of the proposed constitutional amend-

ment. In fact Premier Getty of Alberta openly declared as much on the eve of the Ottawa meeting to ratify the text of the 1987 Accord. He asserted that one key reason for insisting upon unanimous provincial consent for future constitutional changes, was that this would preclude the possibility of any province being pressured into the observance of Aboriginal rights (The Edmonton Journal, June 8, 1987).

What a sad and dishonourable rationale for constitutional reform! Surely any constitutional change justified on this basis lacks real legitimacy. This is no way to lay the constitutional foundations for twenty-first century Canada. Tragically, Premier Getty's comments would not seem out of place as a pronouncement of the White minority regime in South Africa. And yet they come from the leader of the great province of Alberta, on the eve of an effort to create a new kind of confederation in Canada. That those who would constitute this new federation spent five years finding the rationale to deny Aboriginal self-government, only to emerge one month later with such a sweeping declaration of provincial rights, fails to instill confidence in the process of constitutional reform as practised thus far in post-patriation Canada.

## PART II (19 August, 1987)

### THE LINGUISTIC DIMENSION OF CANADA'S FUNDAMENTAL CHARACTERISTIC

The symbolic core of the 1987 Accord is almost certainly the phrases which are proposed as a new section 2 of the Constitution Act, 1867 (see Appendix 7). In these passages the drafters of the envisaged amendment take on the ambitious task of attempting to articulate "the fundamental characteristic of Canada". Clearly there are enormous implications in including this kind of language in Canada's constitution.

The issues raised are similar to those considered at the time of patriation when the country's political leadership opted to move away from many features of British constitutional practice more towards a republican approach to government. The result was a unique Canadian hybrid where "the Crown" was maintained as the symbol of Canadian sovereignty at the same time as a written constitution was adopted as the country's "supreme law". In moving towards this adaptation, there was growing recognition of the need for comprehensiveness in the codification of the human and political rights of all Canadians. For by basing the power of the state largely on a declaration of rights in a single constitutional document, there was the clear consequence that any human right not explicitly articulated as such in the key foundational statement of the country would henceforth not be enforceable in law.

There would be similar implications in adopting the proposed amendment. By attempting to define in the constitution "the fundamental characteristic of Canada", the drafters create the circumstance where any feature of the country not explicitly included in that description would become, for the purposes of judicial interpretation, something qualitatively less. Thus, just as the listing of

some human rights in the constitution necessitates the outlining of the full range of rights, so too does the mention of one "fundamental characteristic" call for the explicit articulation of all national characteristics considered essential to the Canadian identity. There can be no doubt that the articulation of such an all-encompassing constitutional elaboration of Canada's fundamental nature will be difficult to achieve. But nothing less than a complete statement of Canada's fundamental characteristics can be acceptable under the circumstances. Otherwise those citizens whose cultures, languages and aspirations are not included within the framework of the key declaration of the country's fundamentals will find themselves facing a kind of second-class status in their relationship with the government. The necessity of achieving completeness in our constitutional definitions of human rights and national characteristics, is the cost we must bear for shifting from the sometimes useful vagueness of an unwritten constitution rooted in British tradition, to the stark precision of a written constitution more in keeping with republican models.

Others are currently engaged in showing the importance of including in section 2 of the Constitution Act, 1867, some mention of the multicultural heritage of Canada. Surely this is an essential aspect of this country's fundamental characteristic which deserves and requires explicit recognition. I leave, however, these arguments to those who can develop them more fully than I. Let me rather continue with a main thrust of my presentation, by focusing on the impact the proposed amendment would have on the destiny of the distinct Aboriginal societies of Canada. More particularly, as the proposed new section 2 describes our fundamental characteristic as the fact that there are French-speaking and English-speaking Canadians who share the country, I want to look at the ramifications of this declaration for the future of Aboriginal languages.

In a report written in 1982 for the federal Commissioner of Official Languages, Michael K. Foster identified 53 Aboriginal languages still spoken by Native people in Canada. Most of these tongues, however - languages that by any standard must be considered the most uniquely characteristic of this country - are on the verge of disappearing. Eight languages, most of them in British Columbia, had at the time of the survey in 1981 less than ten speakers! Five Aboriginal languages had between ten and one-hundred speakers. Thirteen are continuing through the linguistic facility of between one and five hundred individuals. Only three Aboriginal languages, Ojibway, Cree and the Inuit tongue, have a reasonable chance of survival given that they are currently spoken by several thousand individuals each.

The same survey revealed that as of 1981, only approximately one-quarter of the Native population learned an Aboriginal language in their home. What these statistics outline is a human tragedy of major proportions. Any language constitutes a tremendous resource representing the accumulated insights and perceptual powers of countless generations. As long as a language lives on, it continues to cast forward links of continuity that tie those individuals who speak it into an influential web of family, social, philosophical and, sometimes, economic inter-relationships. Conversely, to lose a language is to lose one of the most resilient connections with heritage and tradition; to lose a language is to

lessen the sum total of humankind's precious linguistic inheritance. Our shared commonwealth of means to describe and interpret our universe is thus diminished. And the tragedy is accordingly born by all of us, although those most immediately cut off from the comforting lines of connection binding Native languages to Native communities will suffer first and suffer hardest.

There are a number of agencies who must bear a part of the responsibility for the silencing of the indigenous voices of this land. Certainly the clerics in charge of Indian residential schools, where young Native people were often punished for speaking their own languages, carry some of the blame. Similarly, provincial, federal and territorial schools which have also served Native communities have often failed to provide satisfactory instruction in Aboriginal languages. This legacy of neglect or outright suppression has unfolded in a larger context where Native people have found themselves increasingly marginalized in their own homeland. This social, political and economic reality has been reflected by a government policy which has afforded virtually no official recognition whatsoever to the continuing existence, in spite of all odds, of Native languages in Canada.

The result of this long history of injustice is to be seen in the statistics describing the precarious circumstances of virtually all Native tongues in this land. And yet it is not too late to reverse the tragic trend of Aboriginal language loss, to mobilize energies and resources for Aboriginal language renewal. If this does not take place soon, posterity will have good cause to charge this generation with being pathetically short-sighted about the preciousness of this country's most distinctive and characteristic linguistic inheritance. For Aboriginal languages are like no other tongues spoken in Canada. If these indigenous voices cannot find a secure place where they can be sustained in this milieu, they must disappear altogether as living languages from the face of the planet. This cannot be said of all other languages brought to this country from other places. If, for instance, by some bizarre twist of fate people ceased using English here, English would probably continue as a living language in England at least. If, however, Cree is allowed to die in Canada, Cree will become, for all intents and purposes, a dead language. And if Cree dies, words and phrases that over thousands of years have grown out of this land's unique geography - the local terrain, the local plant life and animal life, not to mention this country's most deeply-rooted social and philosophical traditions - all this wealth of insight ceases to be a perpetually renewing resource from which any sincere student can draw.

The quickening pace of the tragic demise of Aboriginal tongues has been taking place under a regime where only French and English are afforded official status by the federal government. The effects of this on Native communities are many. It has helped advance a sorry situation where many Native individuals and groups have basically given up hope of seeing their own languages sustained as part of Canada's future linguistic makeup. For example, when faced with a choice of having their children learn an Aboriginal tongue as a second language at school, some Native parents opt to have their children instructed in official bilingualism instead. Native parents like any others want to see their offspring

maximize their employment opportunities, and government language policy must figure significantly in any calculation of curriculum choices.

There are practical reasons, then, why Aboriginal languages should be afforded some official recognition. There are also tremendously significant symbolic justifications for taking such an affirmative step. Alternatively, how could posterity view as anything other than a serious crime of omission the failure of this generation to afford Aboriginal languages some kind of explicit constitutional recognition and protection. Clearly such a recognition would not in itself rejuvenate Aboriginal languages. This is a task of cultural renewal that largely depends on the commitment of Native people themselves. But constitutional recognition would certainly help to establish the context where the best efforts of Native communities in the cause of Aboriginal language retention would be encouraged and facilitated rather than frustrated.

The kind of official recognition extended to Aboriginal languages, of course, would have to be different from the status of French and English in Canada. It would probably be unrealistic and unnecessary, for instance, to translate all the laws of the country into Aboriginal tongues. Similarly, one wouldn't expect the government to hire fifty-three Aboriginal language translators for duty in the House of Commons just in case a speech were given in one of these tongues. On the other hand it is only just that Native communities be extended some of their government services in their own language. Moreover, individuals fluent in an Aboriginal language plus French or English should be considered by the civil service as officially bilingual for the purposes of employment and promotion. Indeed, if Native tongues are to survive it is crucial that they be afforded some official status in the wider world of wage-paying work. This need could in part be filled by a major expansion in the educational task of Aboriginal language renewal, an objective of sufficient importance to merit its being made a national priority. After all, who could calculate the extent of the immense loss to Canada if the indigenous tongues of this land were to be permanently silenced? What more awful symbol could there be of this country's loss of cultural distinctiveness, integrity, vitality and, ultimately, sovereignty? Explicit constitutional recognition of Aboriginal tongues as official languages of Canada, if in a different sense than French and English, is therefore long overdue. Such an affirmative act would signal that it is no longer tolerable to continue burying this land's most distinctive and characteristic linguistic inheritance under the power of communicative networks whose root sources lie exclusively in other countries.

The proposed amendment, however, would ultimately have a deteriorating rather than ameliorative impact on the process of Aboriginal language renewal. By constitutionally raising the status of French and English to a point where they become basic legal features of Canada's "fundamental characteristic", Aboriginal languages would conversely be further marginalized as of no or little concern to the apparatus of the Canadian state. Once again an oversight would have the impact of essentially treating a key component of Aboriginal culture as foreign to the institutions of Canada. What justification can there be for failing to make any explicit reference whatsoever to Native languages as

part of the linguistic makeup of Canada's fundamental characteristic? Indeed, given the dictionary meaning of "fundamental" - that is "foundational"; "pertaining to the basis or the groundwork"; "primary, original"; "lying at the bottom strata" - it would constitute a simple breakdown in logic (an egregious error) to fail to mention Aboriginal languages and culture as part of this country's underlying nature.

Consider the impact of the proposed amendment on the possibility of including a constitutional role for Native languages in the future government of that part of Canada now known as the Northwest Territories. What chance would the Dene and Inuit people there have of seeing their own tongues entrenched as an aspect of official bilingualism in that part of the country where the vitality of Aboriginal expression remains most unhindered? What possible justification can there be to use the constitution as a weapon to undermine this vitality?

### PART III (24 August, 1987)

#### THE DEEPER AND WIDER CONTEXT OF THE MEECH LAKE DEAL: ITS PLACE IN HISTORY AND ITS POSSIBLE IMPACT ON CANADA'S INTERNATIONAL EFFECTIVENESS

The formation of a national constitution, if it is to be a great one worthy of the majesty of Canada, must place extraordinary demands on the political process out of which it is to emerge. For a key criterion of the worthiness of a national constitution must be the extent to which it protects the fundamental human rights of the poorest and weakest members of society from hostile encroachment by the richest and most politically adept. True democracy seen in this way requires far more of the institutions of the state than a mere extension of the rough competitive logic of the marketplace. It is not good enough for the government simply to grade members of society as either winners or losers, and then to facilitate the process where the declared winners sweep the declared losers into the dustbin of history. And yet, unfortunately, this appears to have been precisely the process which has been followed in the Meech Lake/Langevin accords. In this private deal-making the Prime Minister of Canada facilitated the sacrifice of Aboriginal and Treaty Rights - an area of jurisdictional competence assigned by the B.N.A. Act as most singularly his own - to the accelerated ascendancy of those whose interests are most integrally bound up with pre-eminence of provincial governments.

There can be little doubt that Aboriginal peoples as a group are those who have thus far benefited least from Confederation. By virtually any standards they qualify as the poorest and most politically vulnerable societies in the country. The fact that the four First Ministers' Conferences on Aboriginal rights eventually focused on the issue of Aboriginal self-government, is indicative of this. That such a discussion took place at all on this high level, is implicit recognition that Aboriginal peoples lack the constitutional means to determine their own destinies within Canada. And when the question was ultimately posed

in the most clear terms possible - should the country's new "supreme law" recognize the inherent powers of Native groups to make decisions about the future of their own communities? - the answer of many of the provincial premiers was a flat and ugly NO. What real legitimacy does Canada's new constitution have when, in its first public test, the document was used by the First Ministers in such a cynical fashion to undermine the fundamental democratic rights of those in Canada who historically and presently most lack the powers of self-government?

Rather than fulfilling his constitutional obligation as the Crown's chief trustee of Aboriginal rights, a crucial function as long as Native peoples are deprived of recognition as self-governing groups within Canada, the federal Prime Minister chose instead to use his powers for the advancement of the provinces' agenda. He simply terminated the process of First Ministers' Conferences on Aboriginal rights, and thereby took the issue off the country's constitutional timetable. While morally and constitutionally improper, such a move unfortunately reflects the harsh realities of the political environment in contemporary Canada.

Put simply, there are few votes in Aboriginal rights issues. Native peoples are small in number and widely dispersed across the country. Moreover, they have few domestic supporters whose concern for their interests is broad enough to dictate how they will vote in federal and provincial elections. And there is no reason realistically to anticipate that this situation will fundamentally change in the foreseeable future.

This is the crux of the problem of political powerlessness for Aboriginal peoples. Hence, the Aboriginal rights issue is in a way the great litmus test by which the level of justice expressed in our new constitution can be judged. For here is the classic instance where constitutional devices must be put in place to protect those often fragile societies which have been shown, again and again, to be most vulnerable to abuse by those with the greatest access to the levers of political and economic power in Canada. And yet rather than develop a Constitution which protects Aboriginal rights - rights which never can be genuinely expressed in the sometimes brutal marketplace of straight electoral politics - the First Ministers are currently moving us in the opposite direction back towards the old colonizing road of nineteenth-century social Darwinism. Their current moves, however, now come wrapped in the misleading terminology of "political will". If Indians fail to turn out the vote, politicians are in effect saying, let them die off as coherent communities within Canada. It is not for Aboriginal peoples to "promote" their "identities" through new constitutional powers as "distinct societies". Rather the old themes of racial superiority are repeated, if in new language that too often succeeds in disguising the assimilationist goals which have sadly been the usual hallmark of Aboriginal policy in this country.

The treatment afforded Aboriginal peoples in the process of constitutional formulation as practised in post-patriation Canada, is most graphically revealed when contrasted to the special arrangement which the proposed amendment holds out for Quebec. Of course there has long been an interweaving of destinies

as they have unfolded for French-speaking North Americans, known formerly simply as Canadiens, and for Aboriginal peoples in the land now called Canada. The deep ancestral links that run between many French Quebecers and Aboriginal families are well known. After the conquest of Quebec by the British in the Seven Years War, Indians and Canadiens found themselves increasingly subject to similar colonizing tactics as practised by the imperial agents of Crown rule. In the Royal Proclamation of 1763, for instance, the new laws of Quebec were laid out on a basis similar to those describing the creation of a huge Indian reserve in the North American interior. In subsequent decades special provisions were made by Crown authorities for the recognition of Aboriginal rights and the recognition of Catholic education and French-language rights, in the face of the emergent power of the new republic of the United States. Quebecers and Indians were thus encouraged to ally themselves with what remained of Britain's old American empire. This they chose to do, and as a result the Crown retained a North American territorial base upon which the new Dominion of Canada later grew. In the latter half of the nineteenth century, the many controversies surrounding the life of Louis Riel demonstrate again the intertwined patterns of the course of Aboriginal peoples and French-speaking Quebecers through our national history.

In this century it was Pierre Trudeau's background as an activist in Quebec that most stimulated him, upon becoming Prime Minister, to oppose the idea of special status for Indians. As a well known opponent of the idea of special status for the province of Quebec, he sought to fight the thrust of Quebecois nationalism by asserting in the face of his growing political force the principle of the equality of individual Canadians before the law. Trudeau chose Indians, who have most obviously suffered under the oppressive weight of centuries of racial discrimination, as the first target for the application of his strategy - an initiative that was to have been the cutting edge of his self-proclaimed ideal to bring about "The Just Society". In a document soon known generally as the White Paper of 1969, he and his young Quebec lieutenant, Jean Chretien, laid out their proposed programme to bring Indian treaties to an end and to eliminate gradually the Department of Indian Affairs and the Indian Act. While a ground swell of Aboriginal resistance to this proposal caused it to be withdrawn, it remains to be seen to what extent judicial interpretation of section 15 of the Constitution Act, 1982, will undermine recognition of the special status of Indian and Inuit people (see Appendix 8). It is easy to anticipate how the idea of individual equality before the law, regardless of sex, nationality or race, could be abused to further disengage Native people from the territorial basis of their unique jurisdictional status.

In the steps leading to the patriation of Canada's Constitution with a Charter of Rights and Freedoms, the inter-related circumstances of Aboriginal peoples and of the descendants of les Canadiens was again illustrated. On the fateful night of November 5, 1981, two groups found themselves rather ruthlessly cut out of the deal that was struck. Officials of the government of Quebec were not even invited to the late night kitchen cabinet deal that led to patriation. And those who were there contrived to cut from the new constitutional docu-

ment the key phrase that asserted Aboriginal and Treaty Rights. An outgrowth of reaction to the latter development was the four First Ministers' Conferences between 1985 and 1987 on Aboriginal rights. They ended in complete failure because, claimed the First Ministers, there was a lack of political will. The absence of Quebec government officials among the architects of the 1981 constitutional deal, however, later resulted in the accords made at Meech Lake and in the Langevin block. How are we to account for the disparity in outcomes?

Quite simply Quebec has immensely more political clout than Aboriginal peoples. Its several million citizens, living within the well defined boundaries of a rich province, tend to vote as a block. As a result, Quebec usually constitutes the basis of national governments in Canada. Their political strength notwithstanding, however, the injustice done Quebecers on the night of November 5, 1981, was very serious. There was a difficult constitutional problem created that eventually had to be faced.

What was done at Meech Lake, however, addressed one injury, but by inflicting an even more serious blow to the other party so egregiously assaulted on the night of November 5, 1981. Such an apparent solution cannot in the final analysis be any solution at all. It cannot be acceptable to further disenfranchise those who most lack political power in Canada, in order to gain provincial support for Quebec's assuming its just place as a distinctive and willing partner in Canada's new constitutional order; it cannot in the long run be a viable solution to Canada's constitutional dilemma, to trade off the self-determining rights of Native people and Northerners to the blackmailers among the provincial First Ministers. To proceed in this way would represent a tragic betrayal of our great heritage and our promising future as a truly plural society, as a truly just society. Such a deal, if finalized, would signal that Canada's new constitution has become a kind of weapon available only to the most powerful interests in this young country; it would show the constitution as a tool whereby only those with the best access to the levers of government can tighten their grip of control over Canada's future.

To proceed with the proposed constitutional amendment in its present form would have the effect of thrusting Aboriginal rights questions in Canada more fully into the forum of international politics. The possibilities of the new constitution with respect to Aboriginal issues having shown themselves as basically exhausted, the proponents of justice for Native peoples will have no choice but increasingly to turn to other countries for assistance. This, in some ways, holds out unhappy prospects for the country. No real patriot can anticipate with enthusiasm being forced to the extremity of having to expose actively in foreign lands Canada's most serious human rights infractions. It would be far better if we could address responsibly our own difficulties among ourselves here at home. The Meech Lake deal, however, which would place so many aspects of our national life under the new veto power of provincial jurisdiction, would basically eliminate the possibility of an exclusively local solution to the continuing oppression of Aboriginal peoples here in Canada.

The difficult reality to be faced is that the Meech Lake deal, when seen in

the context of the earlier failed conferences on Aboriginal rights, shows Canada as a violator of international laws which the country's own government ratified in 1976. This law, which is incorporated in the International Covenants on Human Rights, was adopted by the General Assembly of the United Nations because the Universal Declaration of Human Rights did not expressly provide for a people's right to self-determination. Article One of these covenants includes the following statements:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. The state Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination and shall respect that right in conformity with the provisions of the Charter of the United Nations.

Given the kind of perspective on the 1987 constitutional accord that has been developed in this presentation, consider the implications for Canada's international reputation as a country respectful of international law, if the proposed amendment was adopted in its present form.

It is important, then, for Canada's prestige internationally as an upholder of human rights, that our national constitution not be one that essentially works against the self-determining rights of aboriginal peoples and residents of the Yukon and Northwest Territories. We need to be in a position so that our government can move on the international stage decisively and unambiguously as protector of the inherent rights of individuals and of groups. The cost of failing to bring the country's Aboriginal policies in line with the requirements of international law has been painfully demonstrated by interventions in our Prime Minister's important efforts to bring to an end the appalling human rights violations of the White minority regime in South Africa. These interventions show that we must be conscientious in respecting the self-determining rights of Aboriginal communities in our own country, in order to gain unmitigated effectiveness in asserting this same principle abroad.

When our Prime Minister has so conspicuously failed to force the inclusion of the self-determining rights of Aboriginal people within the federal structures of Canada's own governing institutions, how can he then turn to other countries and especially there in the Commonwealth, as a champion of the Black people in South Africa? If Canada is to prove influential in bringing about a change in politics so that Blacks have full enjoyment of their democratic rights in the South African government, the first line of action must be on the Aboriginal rights issue here at home. The Meech Lake deal as presently framed, however, would basically place the chances for authentic amelioration in this constitutional domain outside of the frames of reference of what is realistically possible.

## RECOMMENDATIONS

The primary recommendation put forth here is that the Committee assert in its report the stipulation that the proposed amendment should not be finalized until Aboriginal and Territorial representatives are included in formal constitutional negotiations. Since Territorial affairs and Indian affairs both lie within the unique jurisdictional responsibility of the federal legislature, this recommendation would come most appropriately from the Joint Committee. It is the federal government's unique constitutional duty to assert and protect the self-determining rights of Native people and Northerners. Your Committee has a key role to see that the federal government does not evade its responsibilities by trading off the interests of these groups to subjugation by hostile provincial First Ministers.

A key advantage to this approach would be that it may very well eliminate the need for the controversial section 16 of the 1987 Constitutional Accord. The obvious awkwardness of this proposed provision is in itself evidence of the difficulties we bring upon ourselves by trying to construct a constitutional edifice without developing a clear sense of where the rights of the original peoples fit into the foundations of the structure. The elimination of section 16 would answer the concerns of many witnesses who have appeared before you. The multicultural provision in section 16, of course, presents other questions which need to be addressed. In any case, it is not satisfactory to lump together Aboriginal rights and multiculturalism in the same constitutional section. They are very different kinds of phenomena, and they require different kinds of constitutional elaboration and protection.

The obvious place in the constitution to lay out these distinctions is in the proposed new section 2 of the Constitution Act, 1867. We must not include in our constitution a statement defining "the fundamental characteristic" of Canada without being comprehensive. Clearly it would be an absolute travesty to attempt to include in the constitution a statement of fundamental characteristics that does not include reference to the original and continuing role of Aboriginal people in the country's makeup. Such a statement should include specific reference to Aboriginal languages as a key feature of Canada's linguistic

A good part of the activities of the Sudbury Steering Committee of the Canadian Coalition on the Constitution have focused on the lack of an open democratic process that includes a respectable and authentic role for public involvement in constitutional amendment. The kind of closed executive federalism practised by the First Ministers at Meech Lake - such a different process than the one followed in the four First Ministers' Conferences on Aboriginal rights - is not one worthy of the genius of the Canadian people. It is not a process that can draw the best the citizenry has to offer into the vital task of constitutional renewal.

Accordingly, the final recommendation offered here is that the Joint Committee continue its activities well into the future. The process of hearing public testimony should be taken on the road out into this vast, diverse wonder-

ful country of ours. It is this kind of public airing of issues that will result in truly realizing the potential of renewed federalism. There is only a limited role for secret back room deal-making which so far has primarily characterized the formulation of the 1987 Constitutional Accord.

Your Committee has the unique opportunity - indeed the duty - to see that Canadians are not pushed through the most important constitutional threshold this country has ever faced without an adequate opportunity to study and debate what lies ahead. This is a moment when we must all rise to the responsibilities and challenges put upon us as founders of an emerging distinct nationality in the wider world community.

#### APPENDIX 1

##### 1987 CONSTITUTIONAL ACCORD:

9. [Section 41] of the Constitution Act, 1982 [is] repealed and the following substituted therefor:
  41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:
    - (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
    - (b) the powers of the Senate and the method of selecting Senators;
    - (c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;
    - (d) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;
    - (e) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;
    - (f) subject to section 43, the use of the English or the French language;
    - (g) the Supreme Court of Canada;
    - (h) the extension of existing provinces into the territories;
    - (i) notwithstanding any other law or practice, the establishment

- of new provinces; and
- (j) an amendment to this part.

## APPENDIX 2

### THE CONSTITUTION ACT, 1867

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for the greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, -

1. Repealed.
- 1a. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
- 2a. Unemployment insurance.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Services.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking. Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.

- 22. Patents of Invention and Discovery.
- 25. Copyrights.
- 24. Indians, and Lands reserved for the Indians.
- 25. Naturalizations and Aliens.
- 26. Marriage and Divorce.
- 27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but not including the Procedure in Criminal Matters.
- 28. The Establishment, Maintenance, and Management of Penitentiaries.
- 29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

APPENDIX 3

1987 CONSTITUTIONAL ACCORD:

- 7. The Constitution Act, 1867 is further amended by adding thereto, immediately after section 106 thereof, the following section:

106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

APPENDIX 4

1987 CONSTITUTIONAL ACCORD:

- 16. Nothing in section 2 of the *Constitution Act*, 1867 affects section 25 or 27 of the *Canadian Charter of Rights and Freedoms*, section 35 of the *Constitution Act*, 1982 or class 24 of section 91 of the *Constitution Act*, 1867.

## APPENDIX 5

## THE CONSTITUTION ACT, 1982; PART I, CANADIAN CHARTER OF RIGHTS AND FREEDOMS:

25. The guarantee in this Charter of certain rights and freedoms shall not be constructed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including
- (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
  - (b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

## APPENDIX 6

## THE CONSTITUTION ACT, 1982; PART II, RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

## APPENDIX 7

## 1987 CONSTITUTIONAL ACCORD:

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:
2. (1) The Constitution of Canada shall be interpreted in a manner consistent with
  - (a) the recognition that the existence of French-speaking Canadians, centered in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and
  - (b) the recognition that Quebec constitutes within Canada a distinct society.

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(a) is affirmed.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of the Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights, or privileges relating to language.

#### APPENDIX 8

#### THE CONSTITUTION ACT, 1982, PART I: CANADIAN CHARTER OF RIGHTS AND FREEDOMS:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of the conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion sex, age or mental or physical disability.