

THE SEARCH FOR ACCOMMODATION

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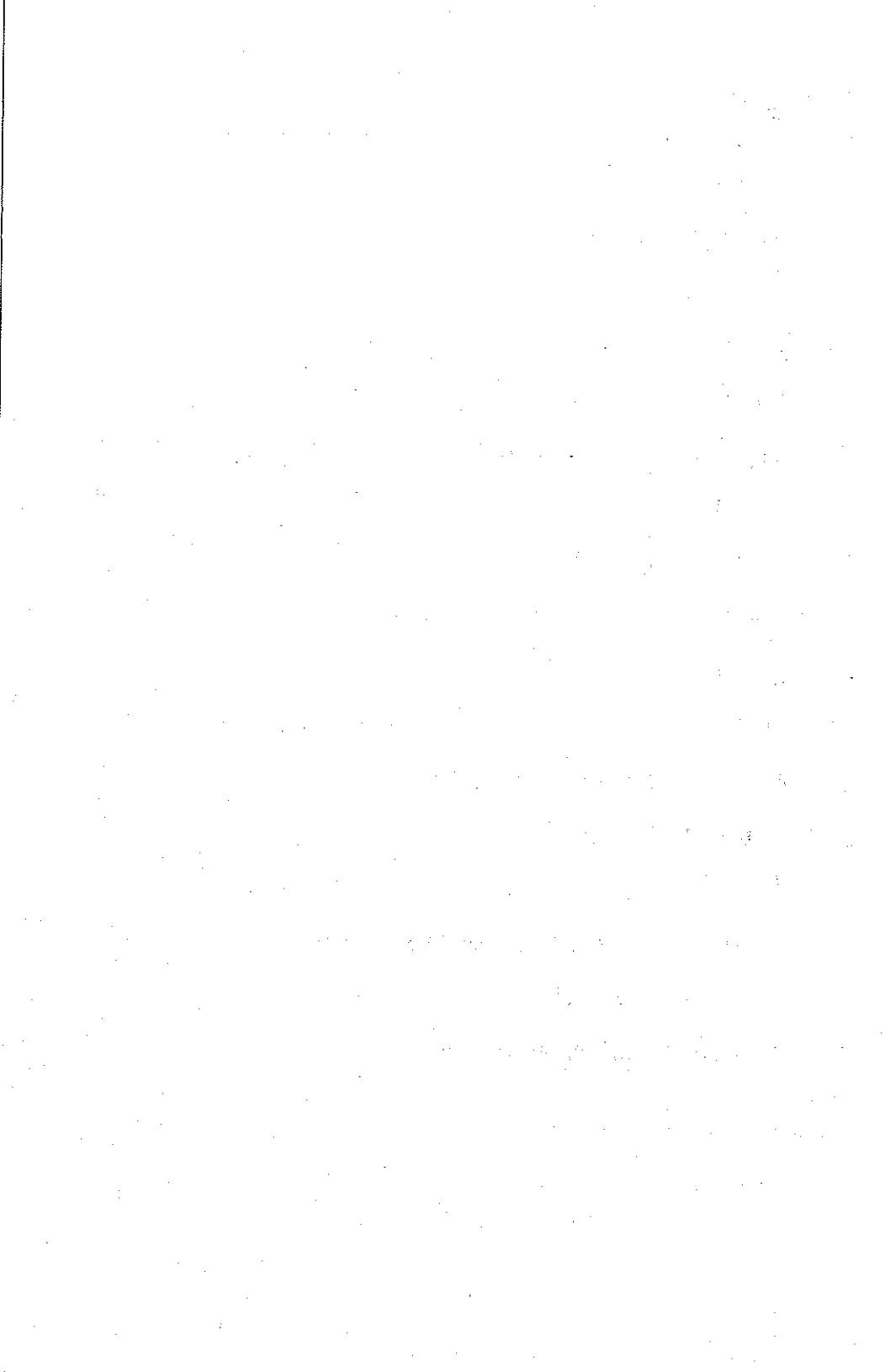
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Part I



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addition to multilateral negotiations at the national level, negotiations will

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ABSTRACT

Negotiations on aboriginal peoples and constitutional reform will come to a head at the First Ministers' Conference in March 1987, the last such conference mandated by the constitution. In examining the drive for agreement, the major issues before the parties to the negotiations are described, and their prospects for successful resolution analyzed. The possible forms of accommodation – involving various elements of a constitutional amendment and a political accord – are surveyed, as well as their likely levels of support. Based on interviews with officials from the parties to the constitutional negotiations, conclusions are drawn as to how the search for accommodation might end.

SOMMAIRE

Les négociations concernant les peuples autochtones et les réformes constitutionnelles prendront fin à la Conférence des Premiers Ministres en mars 1987.

PART I

1 INTRODUCTION

The 1987 First Ministers' Conference on Aboriginal Governance

Matters is the final one mandated by the *Constitution Act, 1982* (as amended). As such, it is seen by many observers as the last chance for

various issues surveyed. The interviews sought to tap officials' views on the question and issues facing first ministers and

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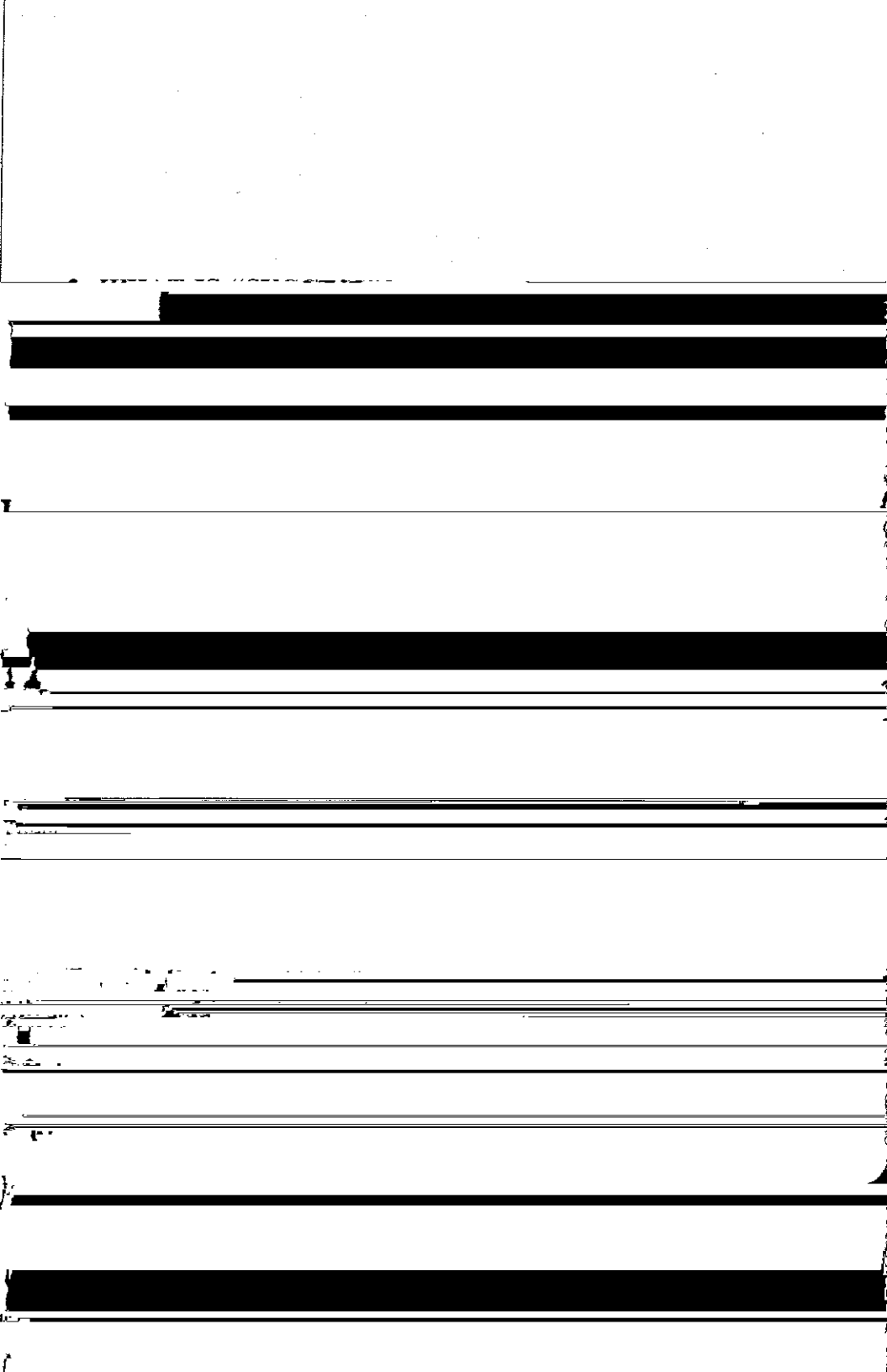
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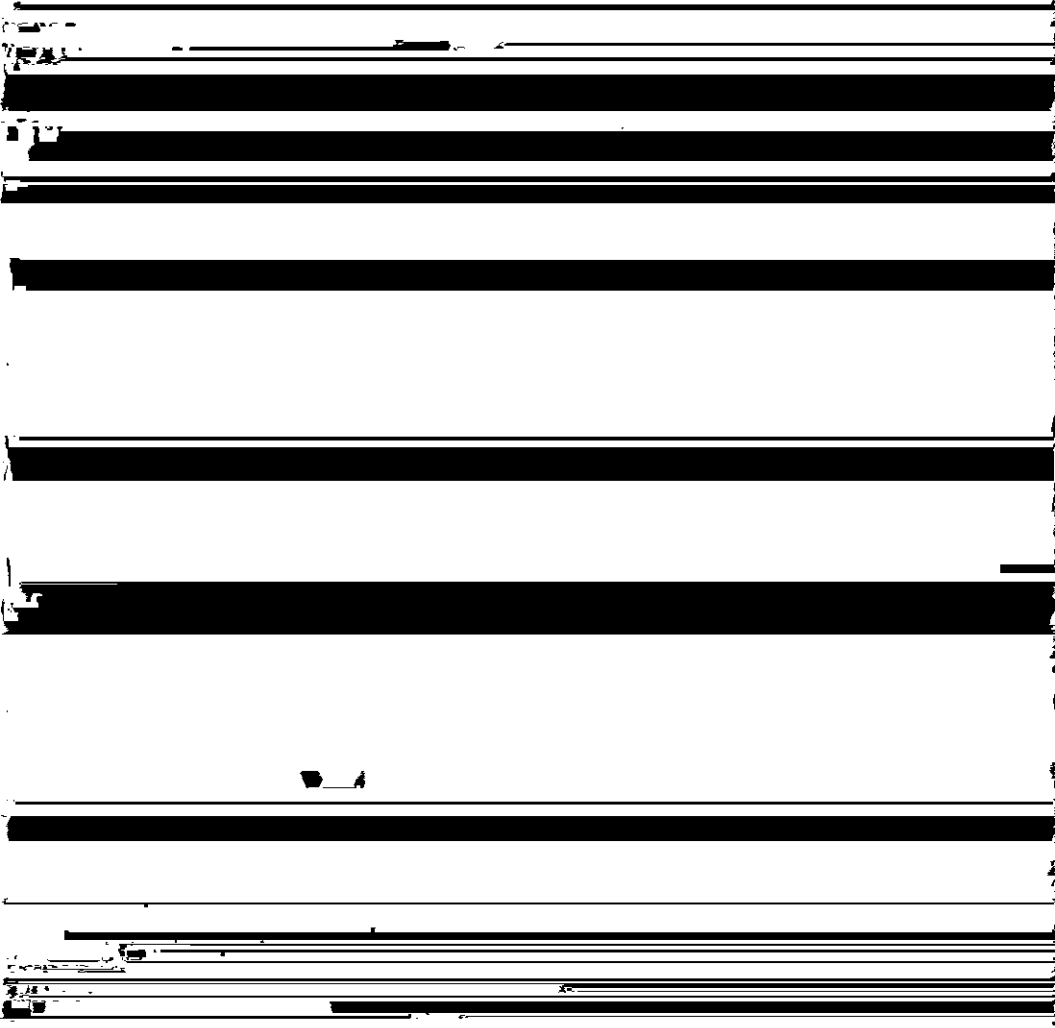


PART II



3 THE ISSUES

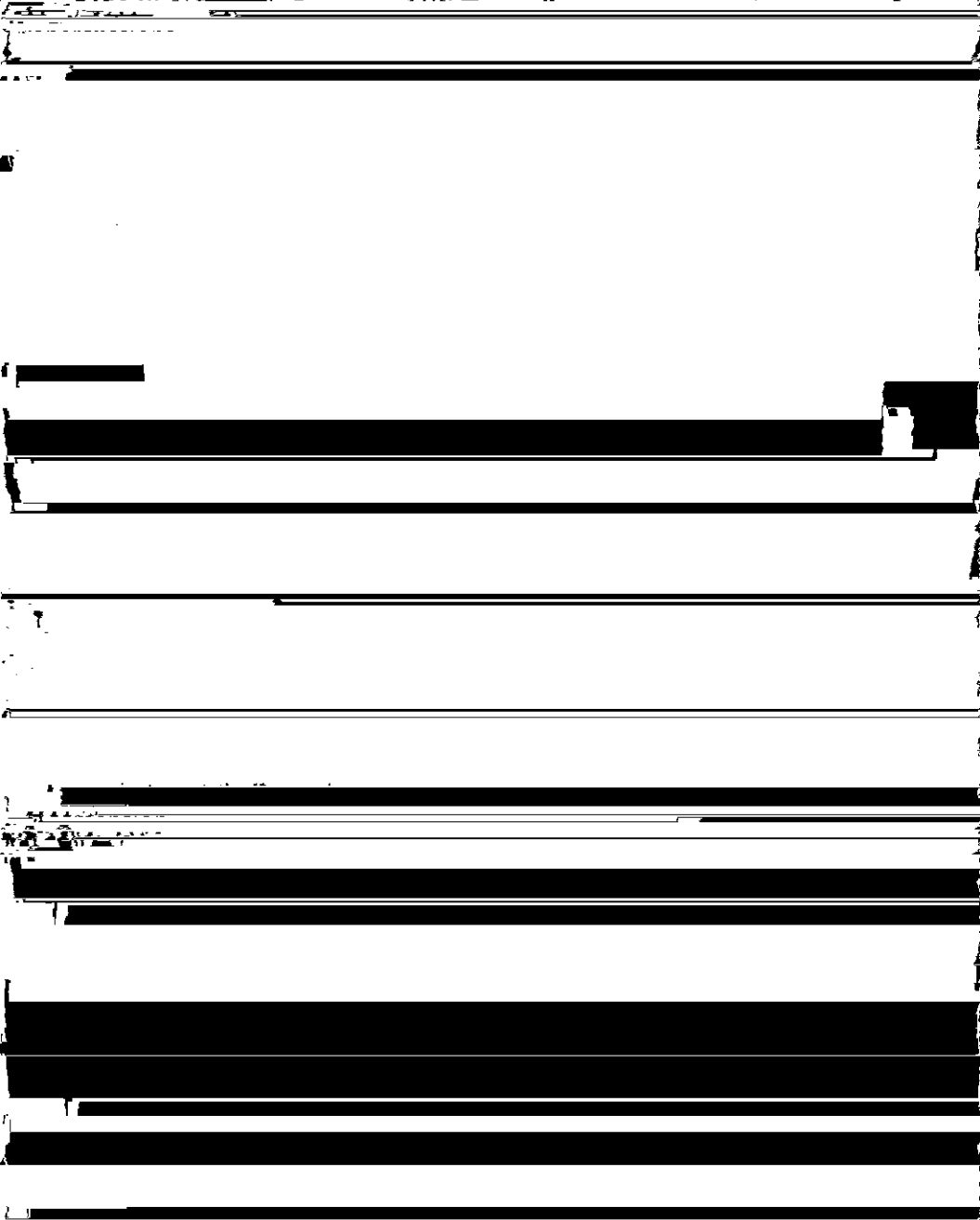
When respondents were asked what questions have to be addressed, or issues resolved, in order to make the section 37 process a success, over



provincial government programs and services. The order of government responsible is accountable for providing the appropriate programs and services.

It is interesting to note that the most "popular" issue has little to do

be involved in self-government negotiations affecting these peoples? Status Indians and Inuit want to be able to enter into bilateral self-government agreements with the federal government, while provincial governments are concerned that their absence from such



peoples could do to bring reluctant governments to the table. Since both the Saskatchewan and federal government draft accords tied the rights of self-government to the successful negotiation of agreements, one can understand that concern.

(7) jurisdiction of aboriginal governments

This is perhaps the vaguest and most far-reaching issue before the seventeen parties to the negotiations.² At issue is what range of jurisdiction aboriginal governments will occupy, what fields of jurisdiction federal and provincial governments will vacate (e.g., from sections 91 and 92 of the constitution) and matters related to the gains

and losses of government powers. Since each aboriginal government will wish to define its own sphere of jurisdiction, it is difficult to generalize concerning the potential impacts. Governments are anxious about the loss of jurisdiction that would accompany vacating and recognizing fields

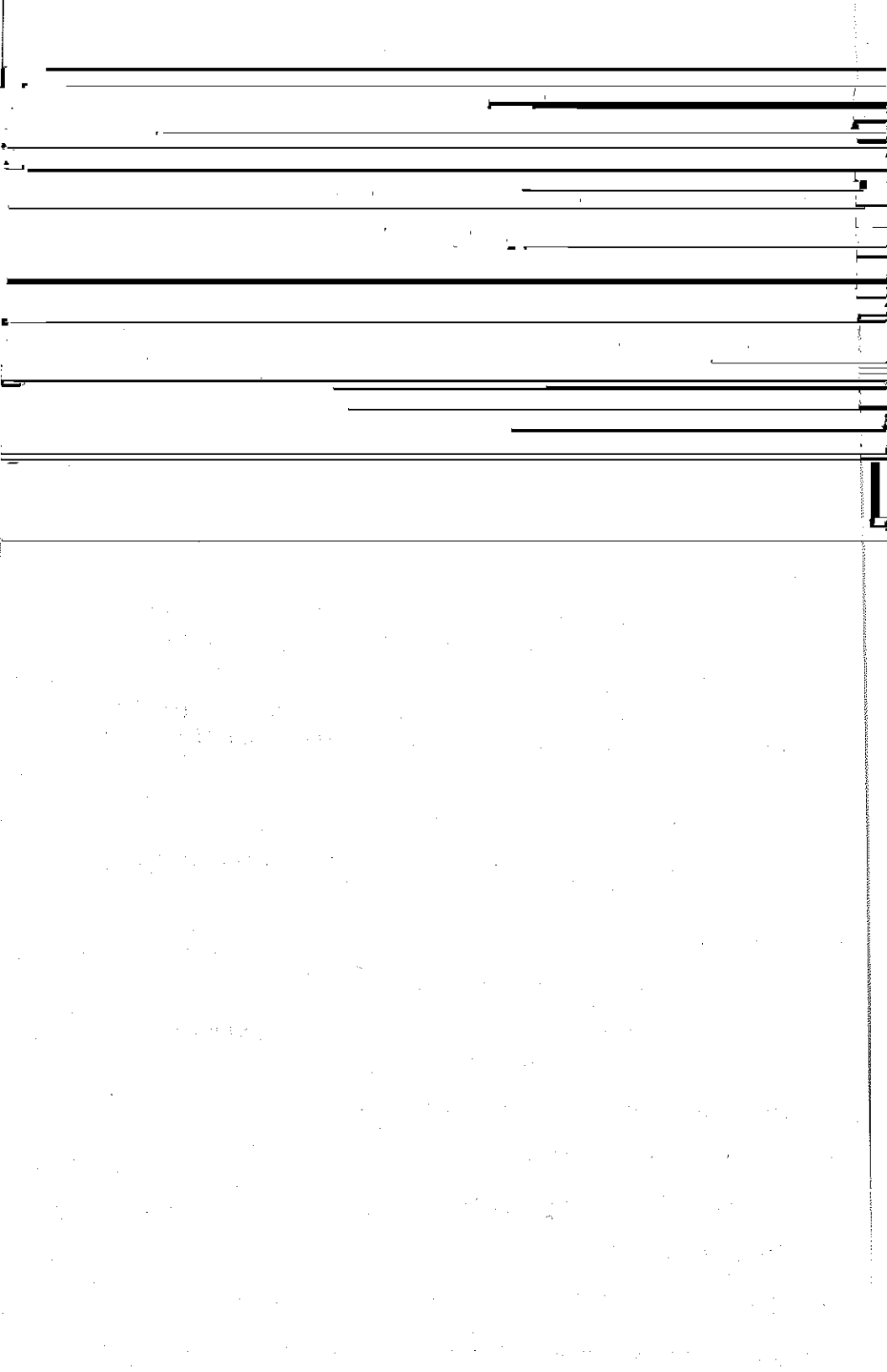
of aboriginal self-government jurisdiction, and of aboriginal government powers impinging upon federal and provincial jurisdiction (e.g., who would have jurisdiction over education for aboriginal peoples living in Winnipeg?). Aboriginal peoples express the opposite concern - one of the federal and provincial governments intruding in their areas of jurisdiction, and of the possible reluctance of those governments to vacate fields of jurisdiction and to recognize aboriginal jurisdiction. Related to this are matters of policy coordination among federal, provincial and aboriginal governments.

(8) Métis and Section 91(24)

A much more distinct, albeit no more tractable jurisdictional issue relates to whether Métis peoples are, or should be under federal jurisdiction in section 91(24) of the *Constitution Act, 1867*. Indians with Status under the

Métis Settlements Act).³ If Métis fall within the ambit of 91(24), the legislation could be found to be unconstitutional.

The positions of aboriginal peoples' organizations on this issue have



4 PROSPECTS FOR RESOLUTION

The prospects for resolving the questions and issues identified in the previous chapter change with time, as does the importance and currency of the issue themselves. The issues identified in this paper, as well as their prospects for resolution, are those which officials thought to be pertinent in the last few months of 1986. No doubt the situation will be

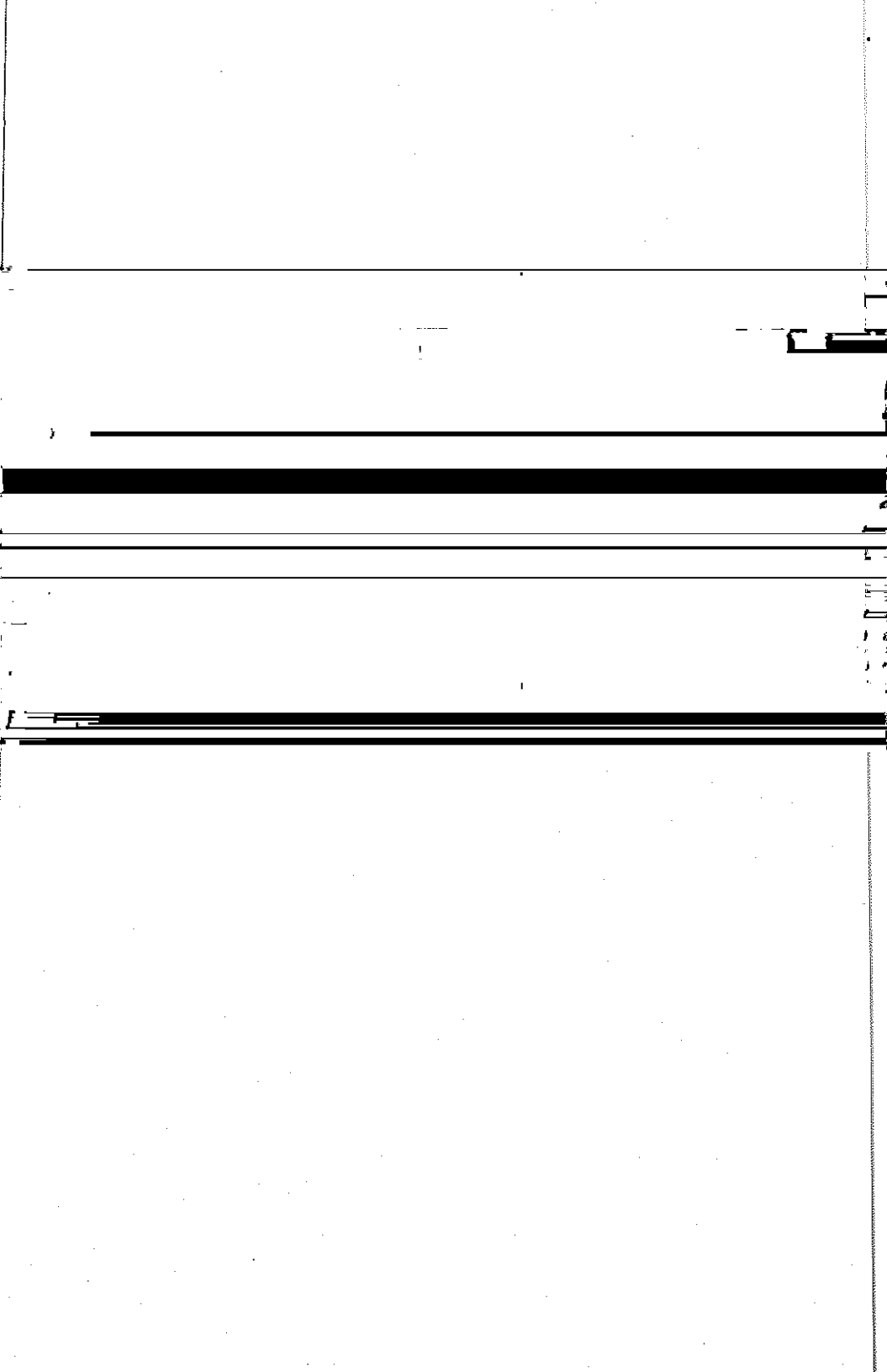
discussed at the First Ministers' Conference in March of 1987.

cost-sharing, with the object being a fiscal framework rather than an

accept some risk in committing themselves to participating in negotiations designed to achieve those agreements.

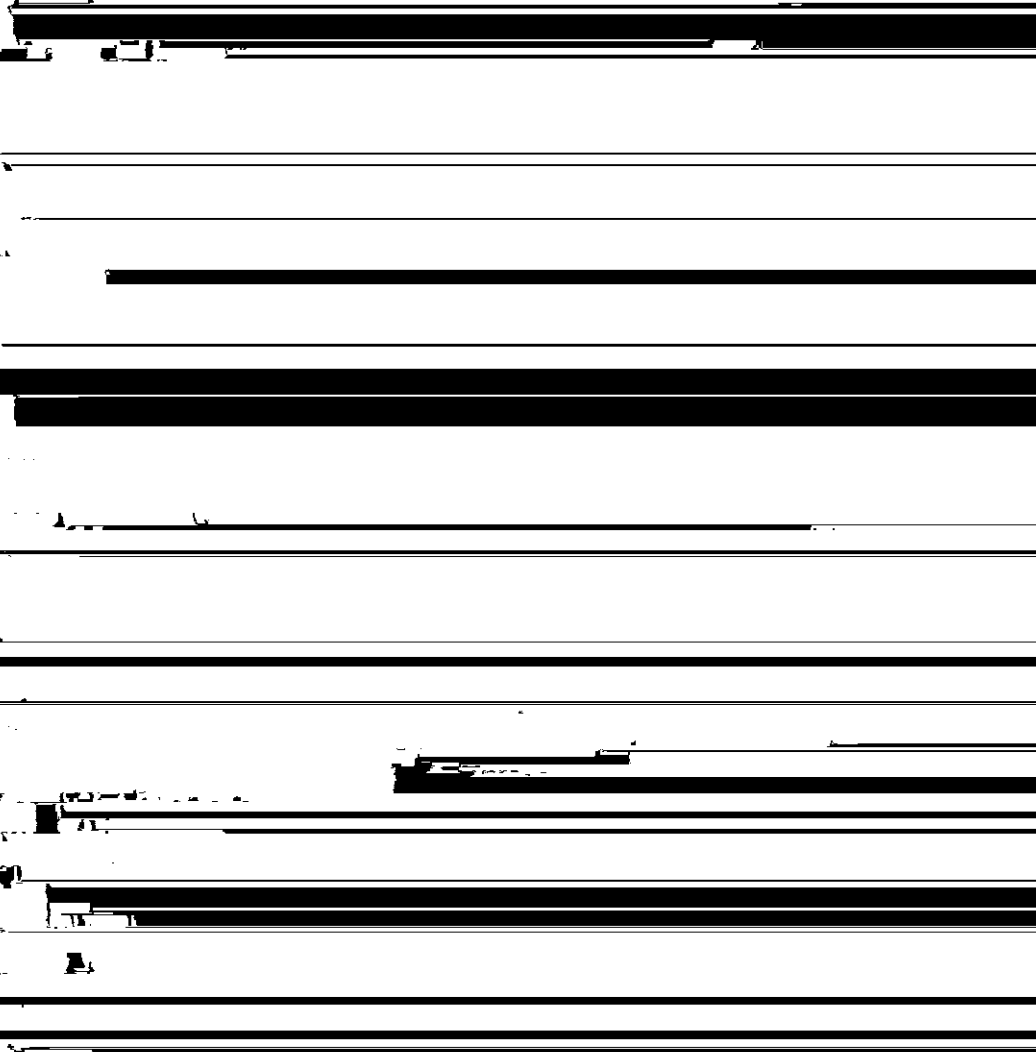
... is the "silent right" approach, wherein the

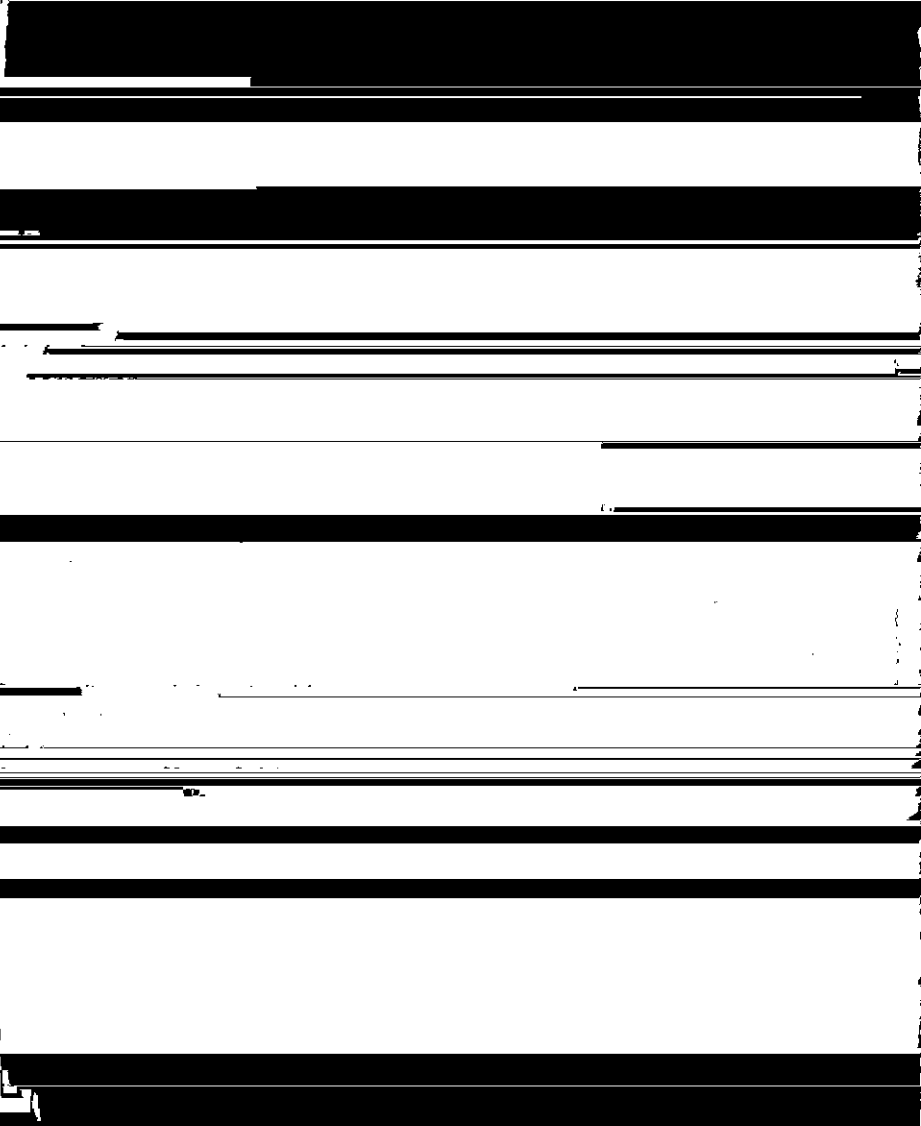
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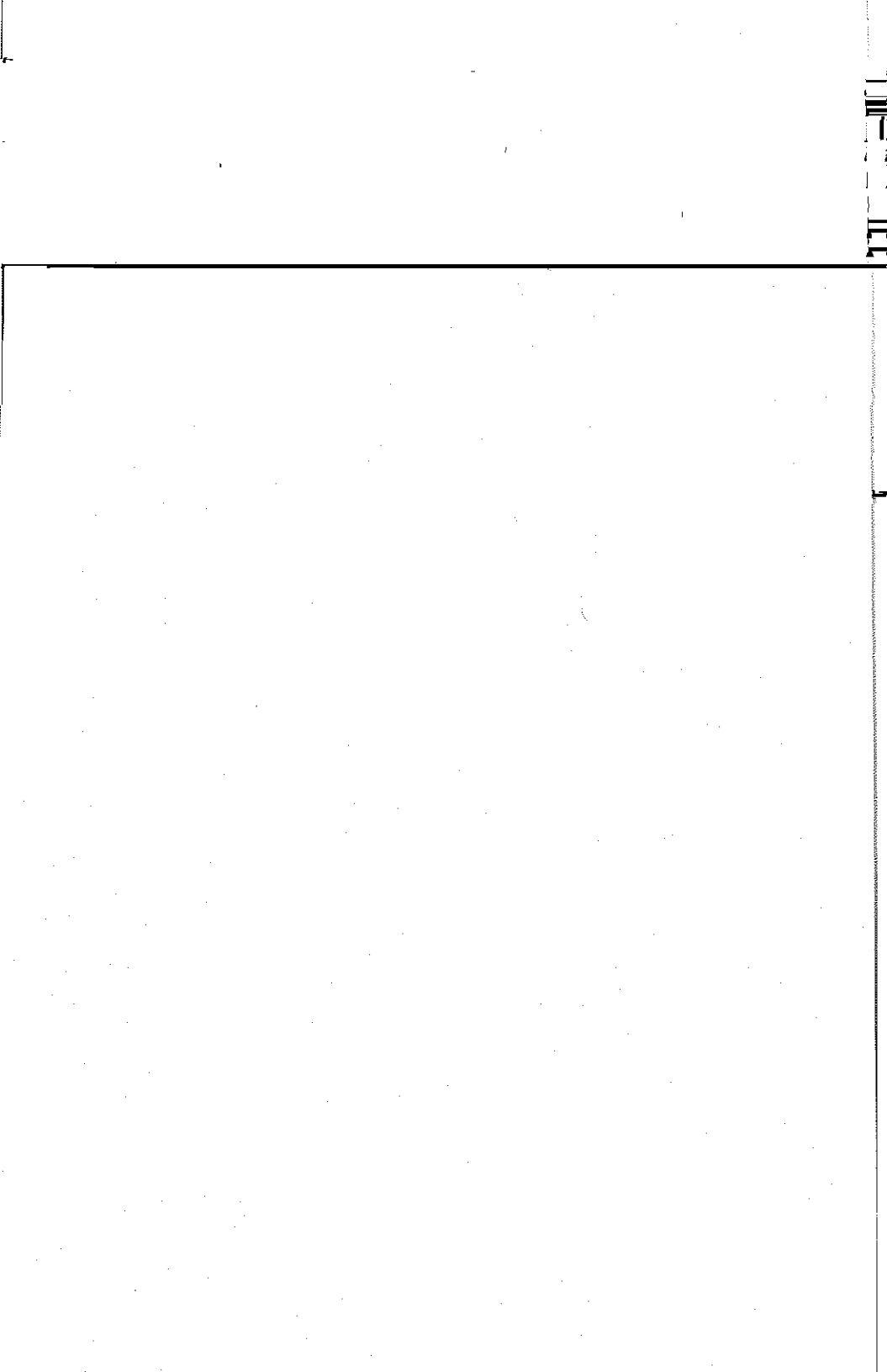
5 FORMS OF CONSTITUTIONAL ACCOMMODATION

The search for accommodation on these issues could yield many possible results and take an almost infinite variety of forms. These include a constitutional amendment, a political accord, an extension of the federal and provincial legislation or some



- a) recognizing and affirming the rights of aboriginal peoples to self-government within the Canadian federation, subject to agreements being negotiated;
 - b) committing governments to participating in negotiations directed toward concluding such agreements; and
 - c) providing constitutional protection for the rights defined in such
- 

This approach was considered by Prime Minister Trudeau when, at



6 SUPPORT FOR AGREEMENTS

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of aboriginal parties for the federal draft, some changes to it would be

peoples' organizations would prefer a constitutional amendment

The position of the Assembly of First Nations is perhaps the most

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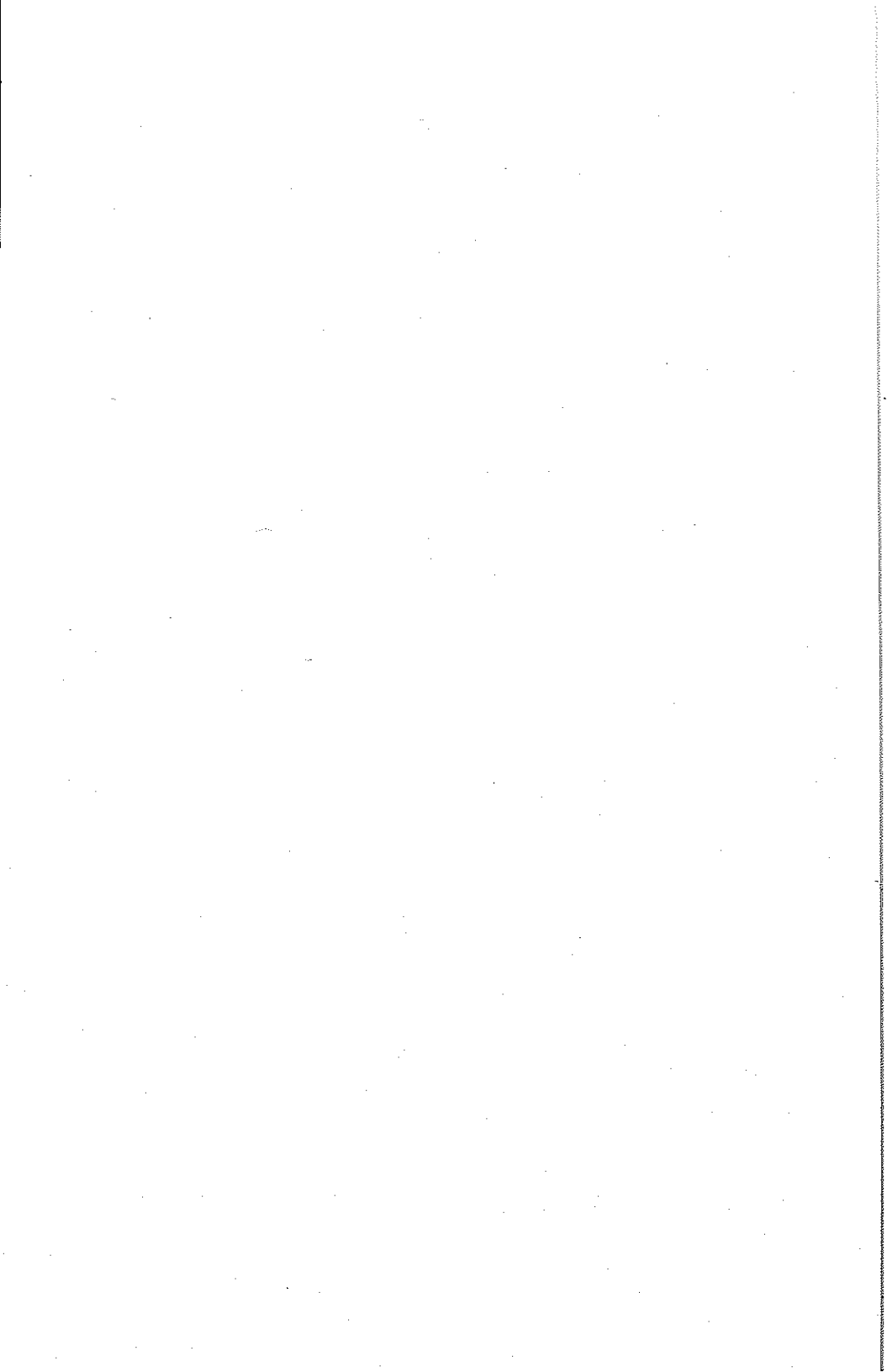
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attitude was most strongly held by officials from the aboriginal peoples' organizations.

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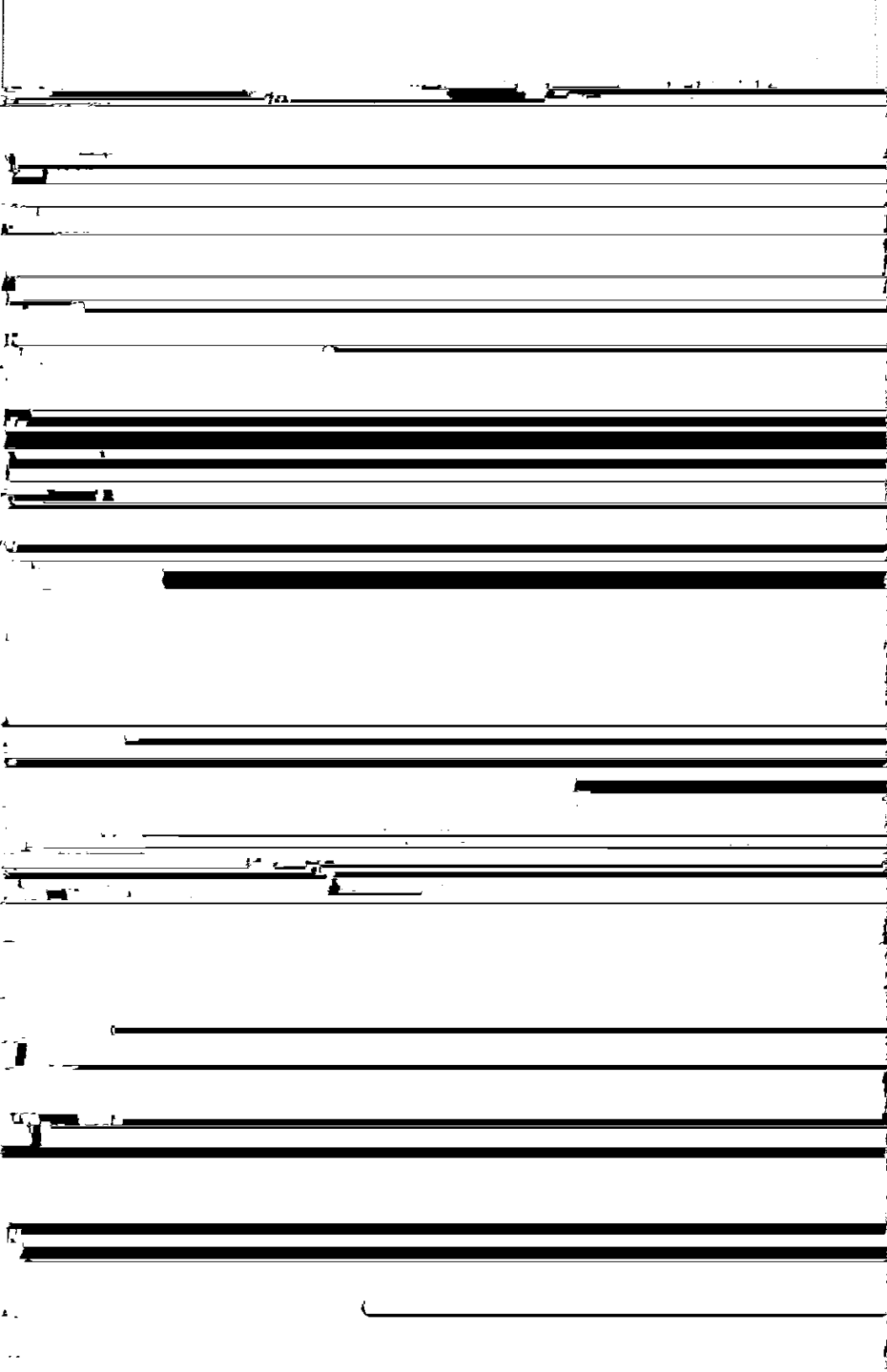
PART IV



to financing and resources for aboriginal self-government, and an ongoing

1997

1997



in individual self-government agreement negotiations. This commitment

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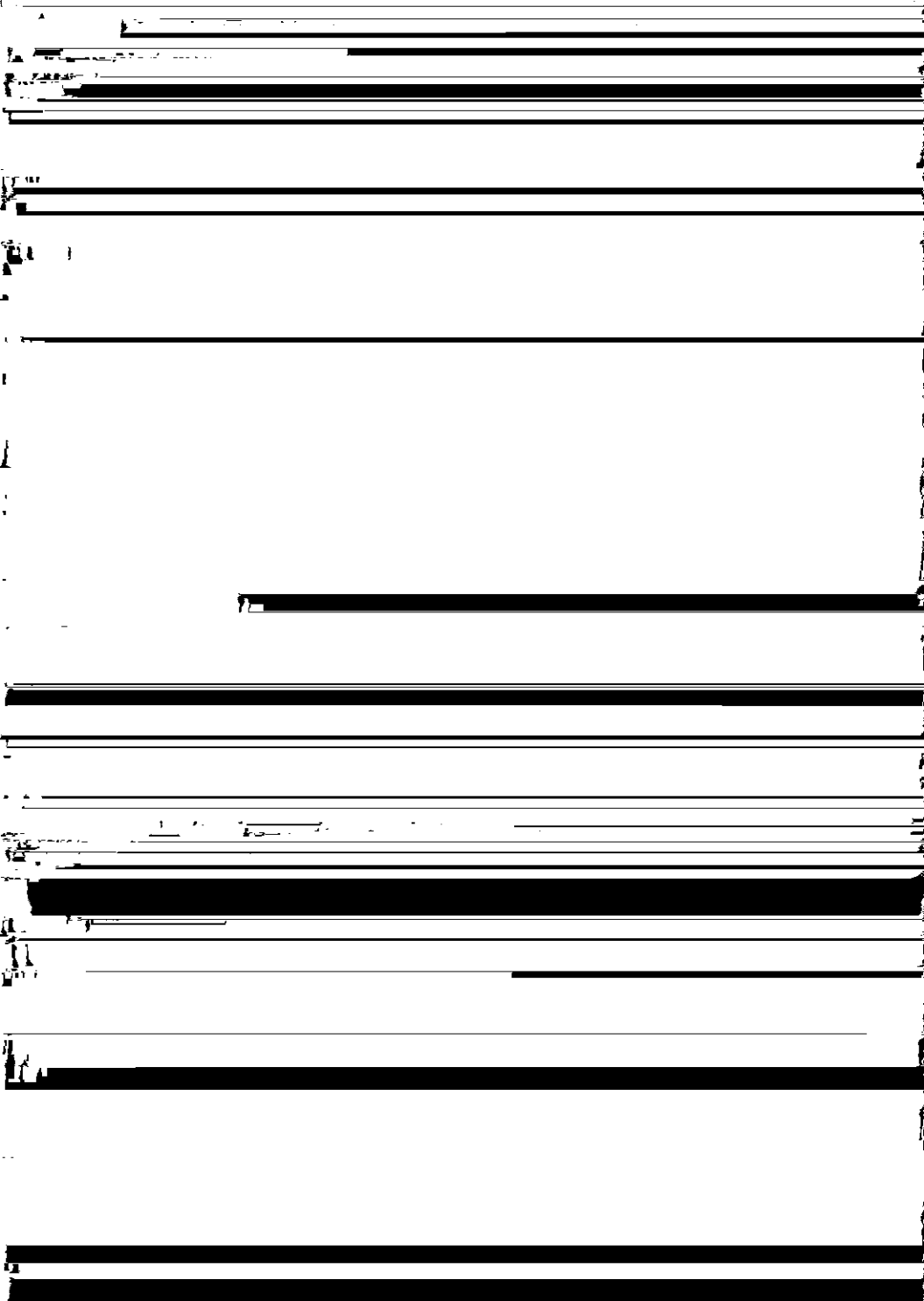
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idea of entrenching only the right to self-government, leaving the

VARIATION III



- not to "offload" their expenditures on aboriginal peoples on other levels of government

- to maintain their current expenditures on aboriginal peoples

- to provide additional, incremental financing, subject to individual self-government agreement negotiations

- to move toward long-term block funding arrangements with aboriginal peoples

negotiations (federal

(5) jurisdiction of aboriginal governments

Federal and provincial governments could commit themselves, in a political accord, to address matters of aboriginal law.

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Nations, have little to gain from the constitutional negotiations, but much to lose. If this is so, then the importance of a successful conclusion to

APPENDIX A

INTERVIEW QUESTIONS

Third and final phase of research – focus shifting to the search for a constitutional accommodation in 1987.

Questions

1. How do you consider to be a successful

