

by

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Discussion Paper No. 15
Copyright 1983

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aboriginal agenda goes far beyond tying up a few loose ends. Profound

prepare this paper [redacted]
College of Law, University of Saskatchewan and their staffs for the
support they provided him.

Richard Simeon
Director
February 1983

Responsibility for opinions expressed in the paper is entirely my own.

I would also like to thank Ms. Denise Hergott at the College of Law, University of Saskatchewan for her assistance in the typing and production of the manuscript.

N.K.Z.

respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada."

responsive to modern conditions, and that many of the rights listed above would properly fall under the heading of treaty rights. Similarly, rights recognized or created in land claims settlements may become constitutionally entrenched at a future date; the range of such rights could be as broad as the settlements themselves.

Two procedural issues are likely to receive a great deal of attention at the conference: the future participation of aboriginal peoples in the constitutional amendment process; and their demand that their consent be required for any constitutional change affecting them directly.

It is essential that the constitutional conference lead to an eventual, successful resolution of outstanding issues between governments and

Finally, it should be noted that this paper is based on documents and information available at mid-December 1982. As the conference draws nearer, its agenda will be refined and its procedure determined. Some of the issues discussed in this paper may not be raised at the conference. They are nevertheless serious concerns of the aboriginal peoples, and will inevitably be raised at a later date or in a different forum.

While accurate population figures are not available, there are an estimated 275,000 status Indians,² 25,000 Inuit,³ and one million non-status Indians and Metis⁴ living in Canada today, making up a total

post-confederation treaty-making period (1870-76). When these treaties were signed, aboriginal peoples were given the option of taking collective "ownership" of reserve lands or of taking individual ownership of a certain

Individuals who chose collective ownership were registered as Indians while those who chose private ownership were not given Indian status. If Indians happened to be away hunting or fishing, or if their band was located in a remote area that was missed by the treaty party, they might not have been registered under the **Indian Act**.

services offered by the federal government to status Indians. The federal

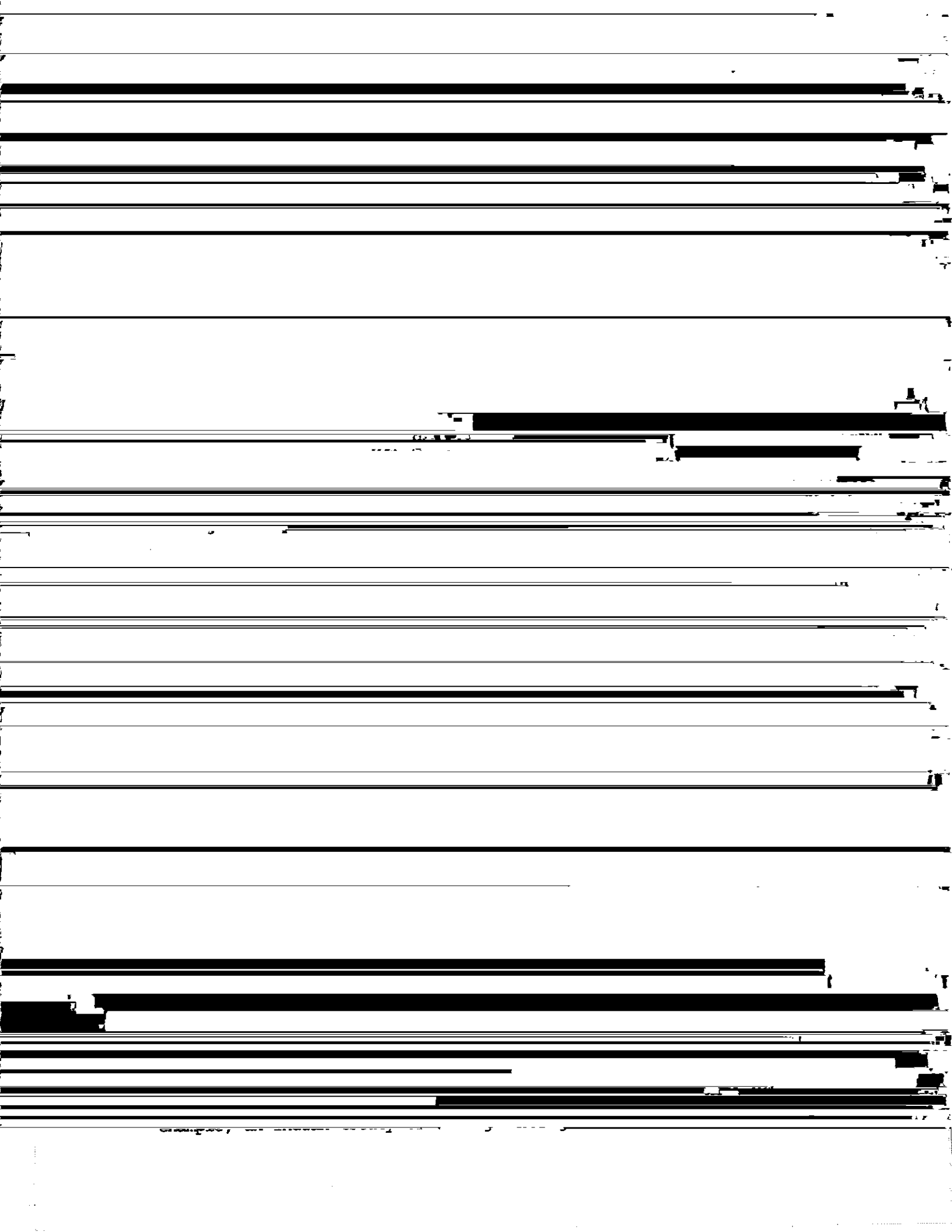
live throughout the ARCTIC NORTH OF THE GREAT LAKES, QUEBEC, and
Quebec. They have no reserves and have not signed treaties with the Crown.

The Inuit were not affected by early versions of the **Indian Act**, and are explicitly excluded by section 4(1) of the present Act. As with the Metis, there is no legal definition of the Inuit. However, the federal government provides them with certain economic, health, and educational services.

royal proclamation of 7 October 1763

During the 1750s, Britain was preoccupied with two related military

questions in North America. It was fighting France in the Seven Years War, and facing discontent among the Indian tribes on the frontier over the western movement of settlers from British colonies on the Atlantic seaboard. Britain feared an Indian alliance with the French. To meet the Indian threat, the British followed a policy, from 1754, of recognizing Indian rights in the territory west of the colonies and forbidding settlement on Indian lands unless their surrender had been authorized by England.¹⁶



35(2) of the Constitution Act, 1982.

and has excluded non-status Indians and, by implication, Metis, from their benefits.³⁶

The Metis

Although the Metis were not given constitutional recognition at confederation in 1867, their role in Canada's formation cannot be ignored. In 1869, the Metis formed a provisional government under the presidency of Louis Riel, which negotiated Manitoba's entry into confederation on terms designed to protect the political, cultural, and land rights of the Metis. Through the **Manitoba Act, 1870,**³⁷ the federal government put into effect several key demands of the Metis. Manitoba was admitted as a province into confederation and given representation in Parliament. French and English

received or been allotted half-breed lands or money scrip (or his descendants) is not entitled to be registered as an Indian.

Through its inclusion in Schedule I to the **Constitution Act, 1982**, the **Manitoba Act, 1870** is also included in the constitution of Canada.

through the Indian Act.⁴⁰

formed or revitalized to oppose the implementation of the white paper and

to establish a commission to investigate the situation and to report to the

aboriginal rights before development and immigration was allowed to occur.

thousand other Indians. A resolution was passed calling for the eventual replacement of the NIB by the Assembly of First Nations. In April 1982, following a two-year transition period, David Ahenakew from Saskatchewan

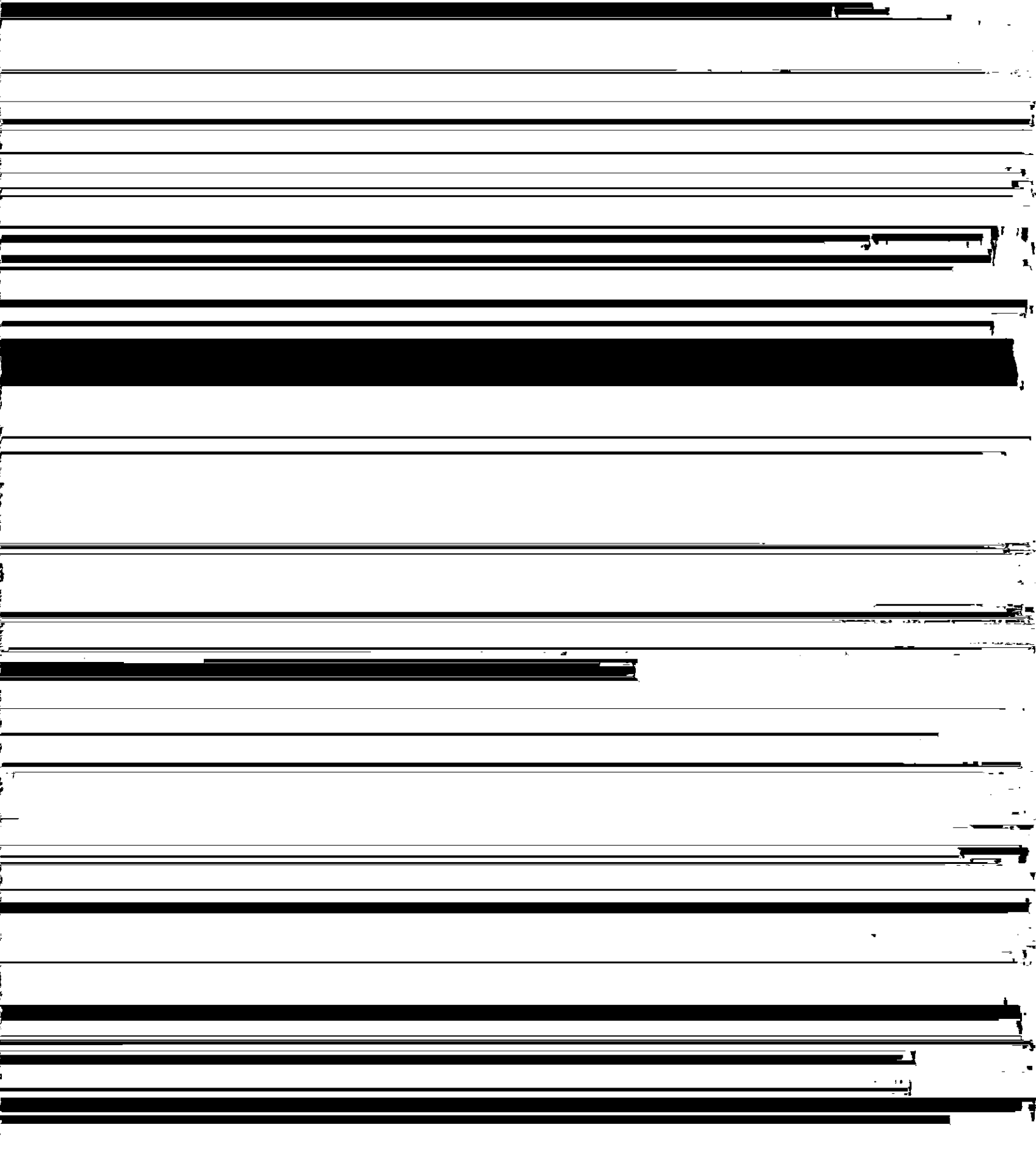
Arctic. COPE was very concerned about the pending decision regarding a northern pipeline, and wanted a settlement prior to development. Its proposal was presented to the federal government in May 1977 and, although an agreement in principle was signed in October 1978, a settlement has not yet been reached.

On 26 November 1982 John Munro, Minister of Indian and Northern Affairs,

(non-status Indians). Its board of directors is composed of representatives of the various provincial Metis and non-status Indian associations.

Generally, the provincial associations are composed of several regional or community chapters to which Metis or non-status individuals belong.

assets. 51



to the sessions were given

to the meeting and provincial provinces

consideration of the provinces in recognizing and treaty
provinces for the recognition and protection of aboriginal and treaty

sovereign units of governance, native nations possess the inherent rights

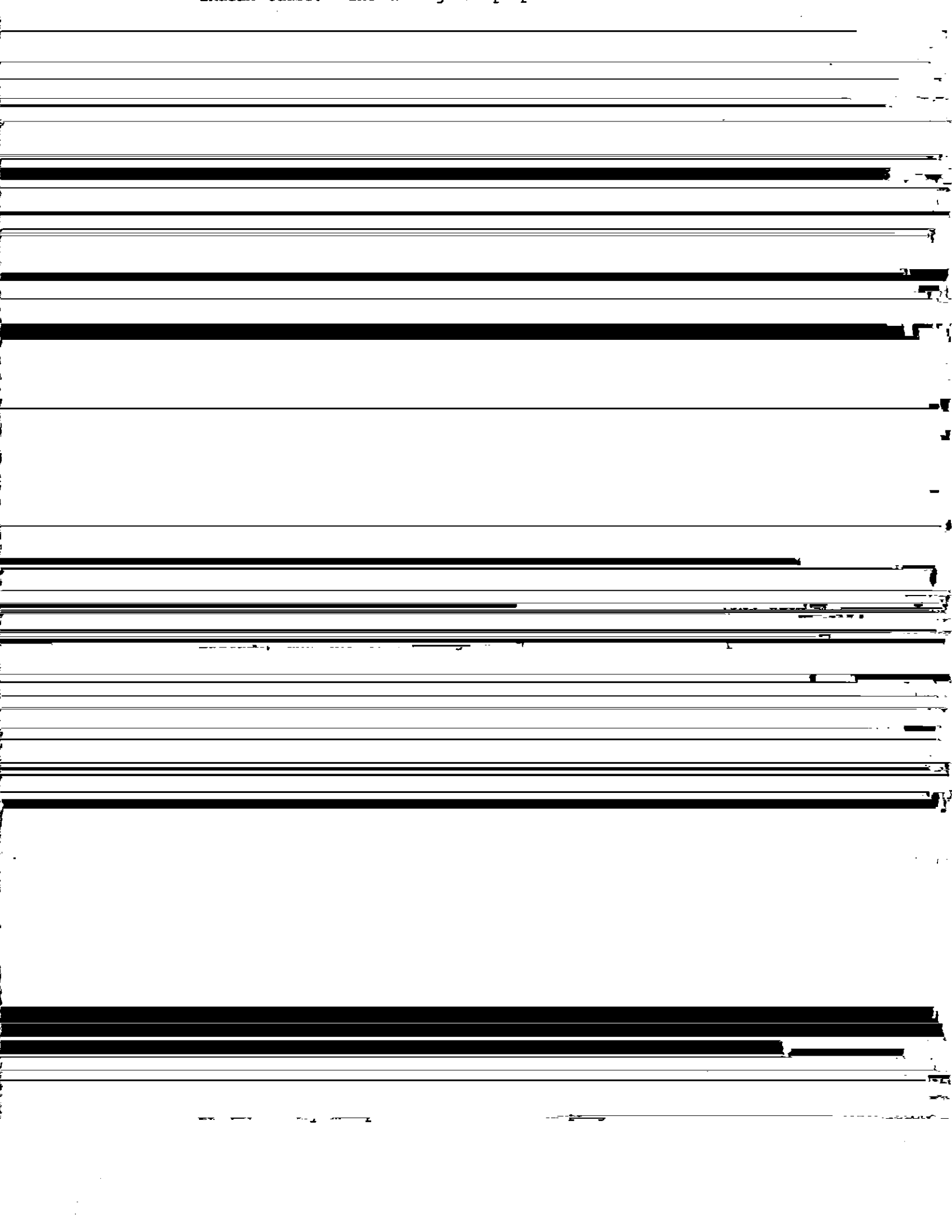
and consulted."

(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.

that a first ministers' constitutional conference (to be convened within two years of the **Canada Act** coming into force) include in its agenda "an

organizations publicly supported the changes and stated that they would



Reassurances were given by federal cabinet ministers, including Jean Chrétien, up to and even during the first ministers' meeting.⁶⁶

Nishga, Haida, and Nootka Tribal Councils from British Columbia.⁶⁸ The

formally with the other groups; therefore, the NIB and most of its members refrained from joining the ARC, although they and the coalition held common positions on the issues and worked together informally.



future fiascos like November 5 went unfulfilled. The qualification of aboriginal rights by the word "existing" casts uncertainty on the main clause. The scope for opting-out of

native rights. The provincial power to help determine boundaries and possible provincial status in the northern territories is ominous and anomalous. But section 34 was restored and there can never again in Canada be doubt as to the principle of aboriginal rights.⁷⁵

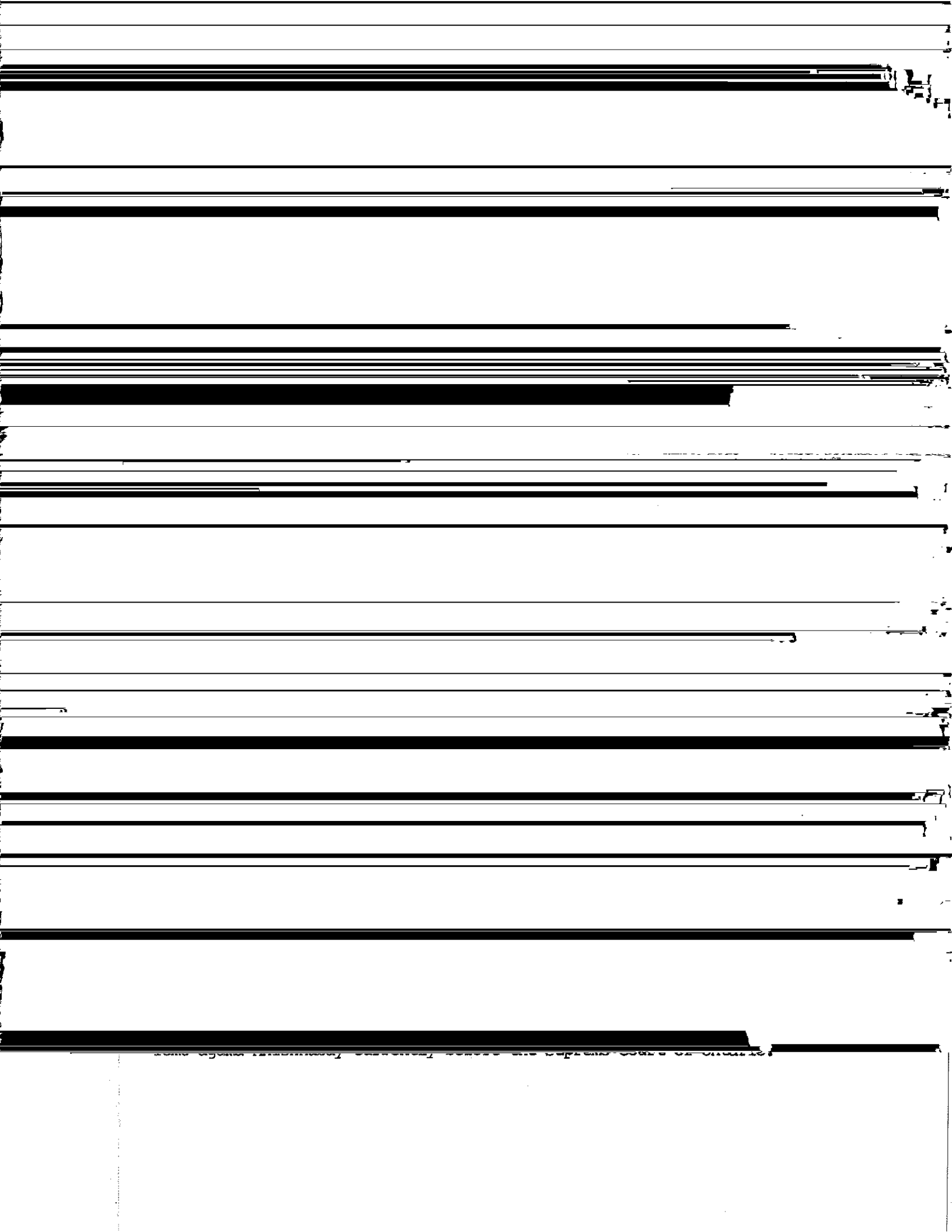
that the **Canada Act** deprived them of this protection. They sought a declaration to the effect that the British Parliament had no authority to amend the constitution of Canada to the prejudice of the Indian nations without their consent, and that the **Canada Act** was ultra vires.

will be addressed in the next chapter.

Other provisions of the **Constitution Act, 1982** directly affect aboriginal peoples: for example, section 6 (mobility rights), section 15 (equality

which it asserts aboriginal title;

societies; and



certain aboriginal rights while extinguishing others.

There are major differences between the treaties as written and the Indians' understanding of the agreements they signed. The written text of the treaties included the following rights and benefits to be retained by or given to Indians by treaty.

1. Reserves were to be established within the territories as follows:

Another outstanding issue of interpretation is the meaning of the word "treaty" in section 35(1). It refers to treaties made with aboriginal peoples in territories which are now part of Canada. But it is not clear

whether the term "treaty" includes international treaties.

with Indian nations inhabiting Canada (for example, by Britain prior to the American Revolution).

whether the term "treaty" includes international treaties.

international treaties such as the Jay Treaty or the Treaty of Ghent. The Supreme Court of Canada has limited the term "treaty" in section 88 of the

whether the term "treaty" includes international treaties. 103 A

legislation in force on that date; thus, the constitutional recognition of aboriginal and treaty rights would be further complicated.

Recognition and Affirmation

What is the constitutional status of existing aboriginal and treaty rights that are "recognized and affirmed?" Prior to 17 April 1982, aboriginal rights could be overridden by both federal¹⁰⁹ and provincial¹¹⁰ legislation, and treaty rights could be overridden by federal legislation¹¹¹ but not by provincial legislation.¹¹²

The term "guarantees" is used in section 1 of the **Constitution Act, 1982**,

"rights and freedoms set out in the Charter. Is a right

As section 35 is not part of the Charter, section 24(1) cannot be used to enforce aboriginal and treaty rights. However, section 52(1) provides that any law that is inconsistent with the constitution is ineffective:

52(1) The Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, inoperative.

SECTION 35(2): DEFINITION OF "ABORIGINAL PEOPLES OF CANADA"

~~35(2) In this Act "aboriginal peoples of Canada" for the purposes of~~

the Constitution Act, 1982:

~~35(2) In this Act "aboriginal peoples of Canada" includes the~~

Indian, Inuit and Metis peoples of Canada.

Although the terms "Indian," "Inuit," and "Metis" are not defined in the Act, it is important to distinguish between the three different aboriginal peoples. Each may have different aboriginal or treaty rights. Furthermore, a method is required for determining whether a specific individual is an aboriginal person and - if so - to which of the three categories he or she belongs. An individual's classification will

~~depend on the rights on which he or she can rely~~

Rights Granted Protection

The rights protected by section 25 are not limited to constitutionally protected rights, as neither rights recognized in the Royal Proclamation of 1763 nor rights acquired by way of land claims settlement are constitutionally entrenched in a direct manner. Nor are the rights protected by section 25 limited to

SECTION 6: MOBILITY RIGHTS

province. Some Indians fear that this section will permit non-Indians to reside on reserves. Section 25, which protects the rights of the aboriginal peoples from Charter-guaranteed rights, should ensure that **Indian Act** provisions limiting the rights of persons who are not band members to reside on reserves will be maintained. Furthermore, the right

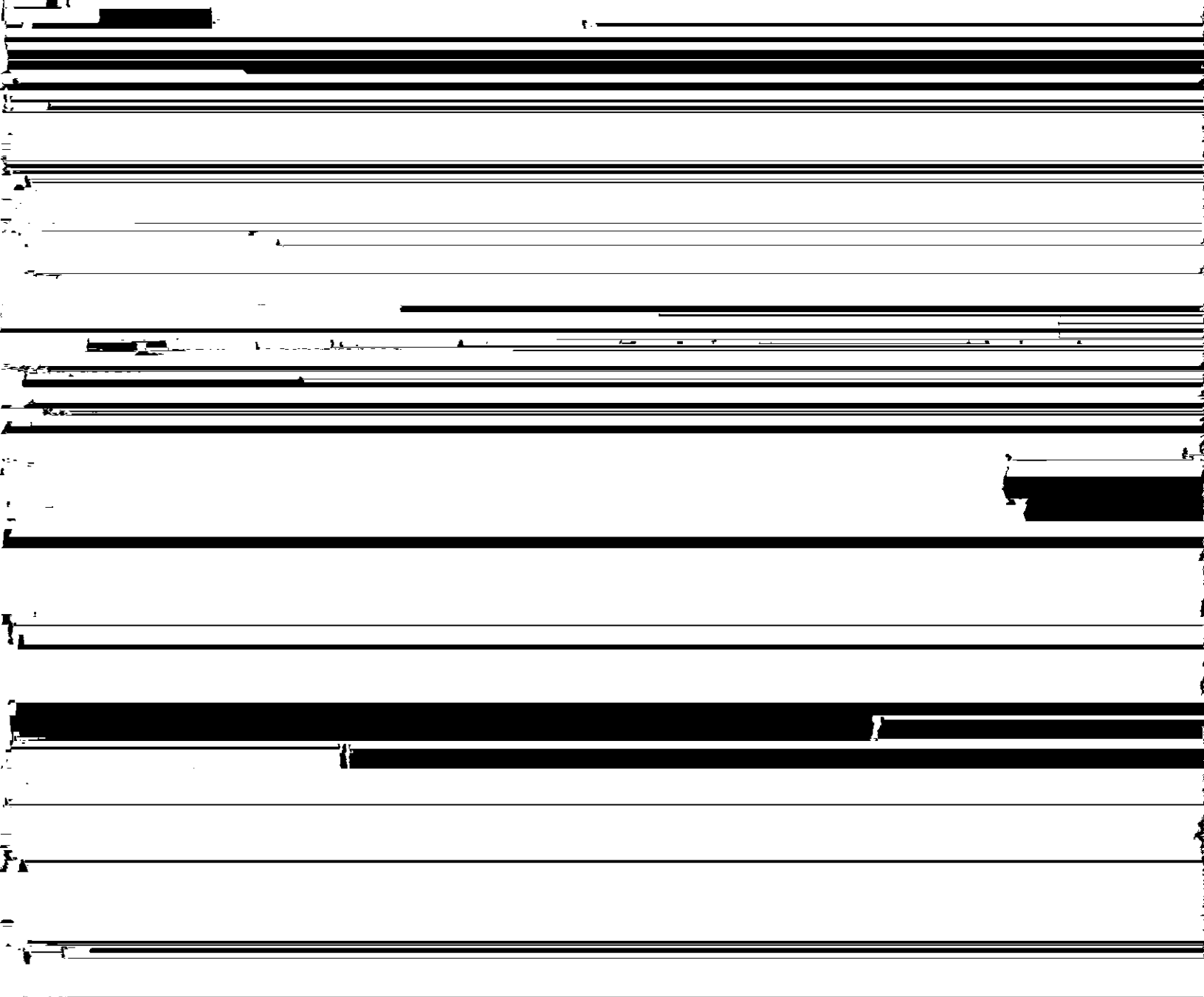
to "take up residence in any province" does not necessarily give the right to live anywhere in a province. Therefore, section 6(2) would likely be construed in a manner that does not abrogate or derogate from "other rights" pertaining to Indians.

SECTION 15(2): AFFIRMATIVE ACTION

Section 15(2) provides that affirmative action programs for individuals or groups disadvantaged because of race are not precluded because of the equality rights provisions of section 15(1).

PART V: AMENDING PROCEDURE

Part V (sections 38 to 49) of the **Constitution Act, 1982** sets out the procedure for amending the constitution. The requirements for federal



generally, if this interpretation is accepted, articles 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

applicable.

settlement require constitutional protection, aboriginal claimants right

participate in the discussions on any item which, in his opinion, directly affects the two territories.

Subsection (2) indicates that it

and Northwest Territories, the Prime Minister also invited elected territorial representatives to the conference

occur with or without their participation, and that the **Constitution Act, 1982** gives the provinces a defined role in constitutional amendment.

As for the bilateral process, these groups argue that it will not lead to constitutional change, pointing to the Prime Minister's letter of 12 October 1982 to David Ahenakew, National Chief of the AFN, in which the Prime Minister clearly stated that the provinces must be involved in constitutional amendment and that the federal government will not take on the role of "broker" on behalf of Indians.

At a meeting held in Vancouver between 16 and 17 October 1982

A

ATTEMPTS TO REACH AN AGENDA

As early as 29 April 1980, Prime Minister Trudeau, in a speech delivered

[REDACTED]

In his letter to the provincial premiers, the Prime Minister suggested that preparatory work on issues relating to aboriginal peoples be done ~~separately from work required on other agenda items~~. He also stated that

The working groups met consecutively rather than simultaneously. The meeting was, for the most part, a discussion of the objectives of the

For the aboriginal organizations there are two basic ways to proceed

different aboriginal nations with different interests and priorities. General constitutional principles could be applied in a flexible manner to

the various aboriginal peoples.

There are two serious problems with this approach. A statement of general principles may leave too many areas undefined, and may eventually require judicial interpretation. It is preferable for aboriginal peoples to negotiate constitutional interpretation than to leave it to the courts,

Minister Trudeau has agreed with the... ..

A fourth alternative would be to continue the section 37 constitutional conference until the outstanding issues are settled to the satisfaction of the participants. They could meet at fixed intervals - for example, once a year - until a consensus is reached. This approach has been used in international law-making conferences, such as the Third United Nations Conference on the Law of the Sea, the Law of the Sea Conference and

WELMOT

(1) Where there is a treaty or agreement, such as a land claims settlement, which is to be constitutionally entrenched, the constitutional provisions relating to it could only be amended in accordance with the

terms of the agreement. This requirement could exist along with any other mechanism for aboriginal constitutional consent.

(2) Consent could be given by the national representative bodies and/or governments of the aboriginal peoples at assemblies especially convened for this purpose or at their annual meetings. The consent mechanism could operate in two ways. If not specifically approved, a proposed amendment would not be effective.

mechanism, and less likely than those previously mentioned to lead to rejection of a proposed amendment. Aboriginal deputies would have to answer to their electorate, but aboriginal senators would have no direct responsibility to their communities. Aboriginal organizations would probably find that this model gives aboriginal peoples insufficient control

the authority of aboriginal governments

cultural, political, and legal affairs. They now demand that the right to establish their own forms of government be constitutionally recognized.

The demand for self-government or sovereignty has often been dismissed as a demand for separation. In 1975, then Minister of Indian and Northern Affairs Judd Buchanan characterized the Dene Declaration as "gobbledy-gook " Days before his announcement on 26 November 1975, "

There is a precedent within Canada for having more than one enactment dealing with aboriginal government. The James Bay and Northern Quebec

The Inuit support this proposal in a general way, although the ICNI has not decided whether there should be separate constituencies for the Inuit or whether present electoral boundaries should be redefined to make the Inuit the majority in their areas. For example, in northern Quebec the electoral boundaries run north and south, placing the Inuit in two ridings. As a result, they have relatively little influence on election results in either riding. The Inuit would also like representation in a separate

In spite of the many arguments against guaranteed native representation in Parliament, this item would likely be given serious consideration at the conference if it were to be placed on the agenda.

The NCC also proposes that aboriginal peoples be given the right to elect their own representatives to provincial legislatures. However, the NCC

groups in November 1982 in Ottawa, the NCC did not attempt to identify and define "aboriginal rights" directly. Instead, it proposed a Charter of

All three aboriginal organizations are in agreement that the term

If rights flowing from land claims settlements are constitutionally entrenched, the definitions used in the agreements may be indirectly

Principles for Negotiating Treaties or Agreements

Both the ICNI and AFN want a constitutional statement of principle that the federal government is committed to negotiating treaties or agreements (including land claims settlements) with the aboriginal peoples in

aboriginal and treaty rights, and non-constitutional matters. This office could be expanded to have attached to it a mechanism for dispute resolution by means other than litigation in the established court systems. This proposal might meet Indian demands for an ongoing process.

set the agenda before discussing procedure.

On the other hand, governments may believe that the procedure is implicit

aboriginal peoples may not always be given high priority on the agenda of

been no indication that any of the aboriginal organizations or any of the governments is prepared to give up part of their constitutional "sovereignty" to facilitate reaching an agreement.

If agreement on conference procedure is not reached at the ministerial-level meeting expected to be held in late January, there is a real danger that the constitutional conference will focus upon procedural

IMPLEMENTATION OF AN ACCORD

Section 37 does not set out a method of implementing any agreement or accord reached at the constitutional conference. The federal government and some of the provinces have indicated that the amending procedure established in Part V would have to be followed. In other words, an

federal and provincial unanimity and the requirement of aboriginal consent is placed in Part II rather than Part V.

The NCC's position is that the words "to be included in the Constitution of Canada" in section 37(2) mean that the provisions of an accord reached

Although it leaves many important questions unanswered (for example, How would the courts take judicial notice of the contents of an accord? Would the accord require confirmation by federal statute?), this innovative



7 CONCLUSION

Any predictions about the direction of the constitutional conference must, at the time of writing, remain tentative. Many observers expect that the conference will result in the establishment of an ongoing process to deal

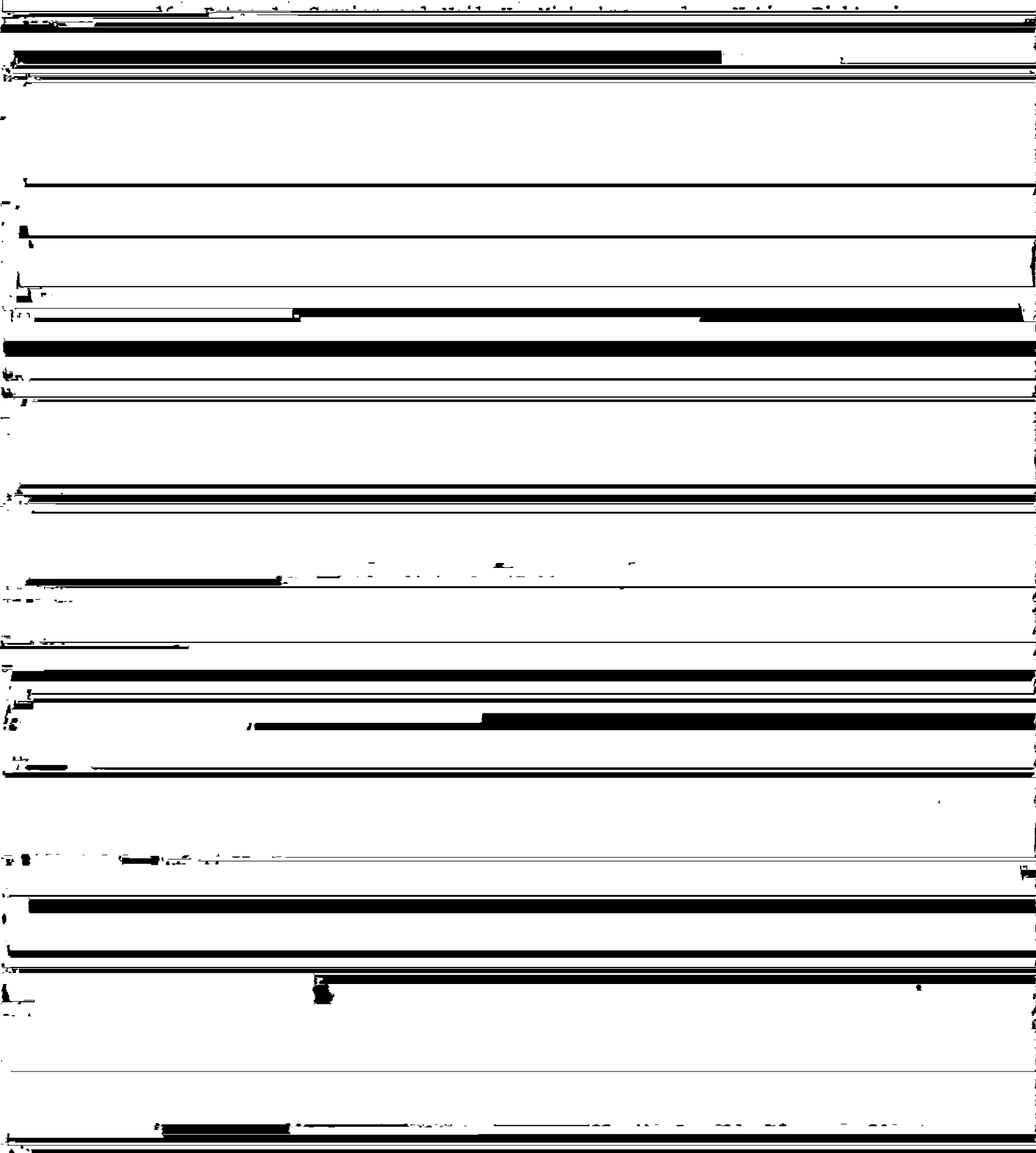
the further question as to whether it had been extinguished, and the force of the Royal Proclamation of 1763 - issues discussed in

It remains to be seen whether the first ministers of Canada are now prepared to treat aboriginal issues more seriously than they did on 5 November 1981, when constitutional recognition of aboriginal and treaty rights was unceremoniously dropped from the proposed constitution.¹³¹ The

events following the November accord revealed wide public support across Canada for constitutional recognition of the rights of aboriginal peoples. There is no reason to think that this support has evaporated in the last twelve months.

NOTES

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35. Para. 13 of the Canada-Manitoba Agreement, and para. 12 of the Canada-Alberta and Canada-Saskatchewan Agreements.
36. See note 23, above.
37. R.S.C. 1970, App. II, No. 8. The **Manitoba Act, 1870** was subsequently confirmed by the **Constitution Act, 1871**, R.S.C. 1970, App. II, No. 11.
38. S.C. 1872, c. 23.

55. C.B.A., Committee on the Constitution, **Towards a New Canada** (Ottawa, 1978), p. 11.

56. Resolution #31a, 28 August 1980.

57. Task Force on Canadian Unity, **A Future Together: Observations and Recommendations** (Ottawa: Minister of Supply and Services Canada,

70. Fleet Publishers, 1982.

71. As excerpted in the **Globe & Mail**, 13 November 1982, p. 10.

72. 10 November 1981, speech at Guelph University and article published in

89. Delia Opekokew, **The First Nations: Indian Governments in the Community of Man** (Daguna: Federation of Saskatchewan Indians, 1982), p. 28.

90. *Supra*, note 79, [1981] 4 C.N.L.R. 86, at 99.

91. **Hamlet of Baker Lake v. Minister of Indian Affairs and Northern Development** (No.2), [1980] 1 F.C. 518; [1979] 3 C.N.L.R. 17 (F.C.T.D.).

92. *Ibid.*, [1979] 3 C.N.L.R. 17, at 45.

93. **St. Catherine's Milling and Lumber Co. v. The Queen** (1888), 14 A.C. 46, at 58 (J.C.P.C.).

94. **Calder v. A.G. B.C.**, [1973] 4 W.W.R. 1; 34 D.L.R. (3d) 145.

95. *Ibid.*, per Judson J.

96. *Supra*, note 91.

97. **Kruger & Manuel v. The Queen**, [1978] 1 S.C.R. 104; 75 D.L.R. (3d) 434; 34 C.C.C. (2d) 377; [1977] 4 W.W.R. 300; 15 N.R. 495.

98. **A.C. Ont. v. Bear Island Foundation**. S.C.O. No. 25196/78. At the time

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109. R. v. Derriksan, *supra*, note 106.

110. Kruger & Manuel v. The Queen, *supra*, note 97.

111. Sikyea v. The Queen, [1964] S.C.R. 642; 50 D.L.R. (2d) 80; [1965] 2 C.C.C. 129; 44 C.R. 266; 49 W.W.R. 306; R. v. George, [1966] S.C.R. 267; 55 D.L.R. (2d) 386; [1966] 3 C.C.C. 137.

112. R. v. White & Bob (1965). 50 D.L.R. (2d) 613 (B.C.C.A.): *aff'd*.

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