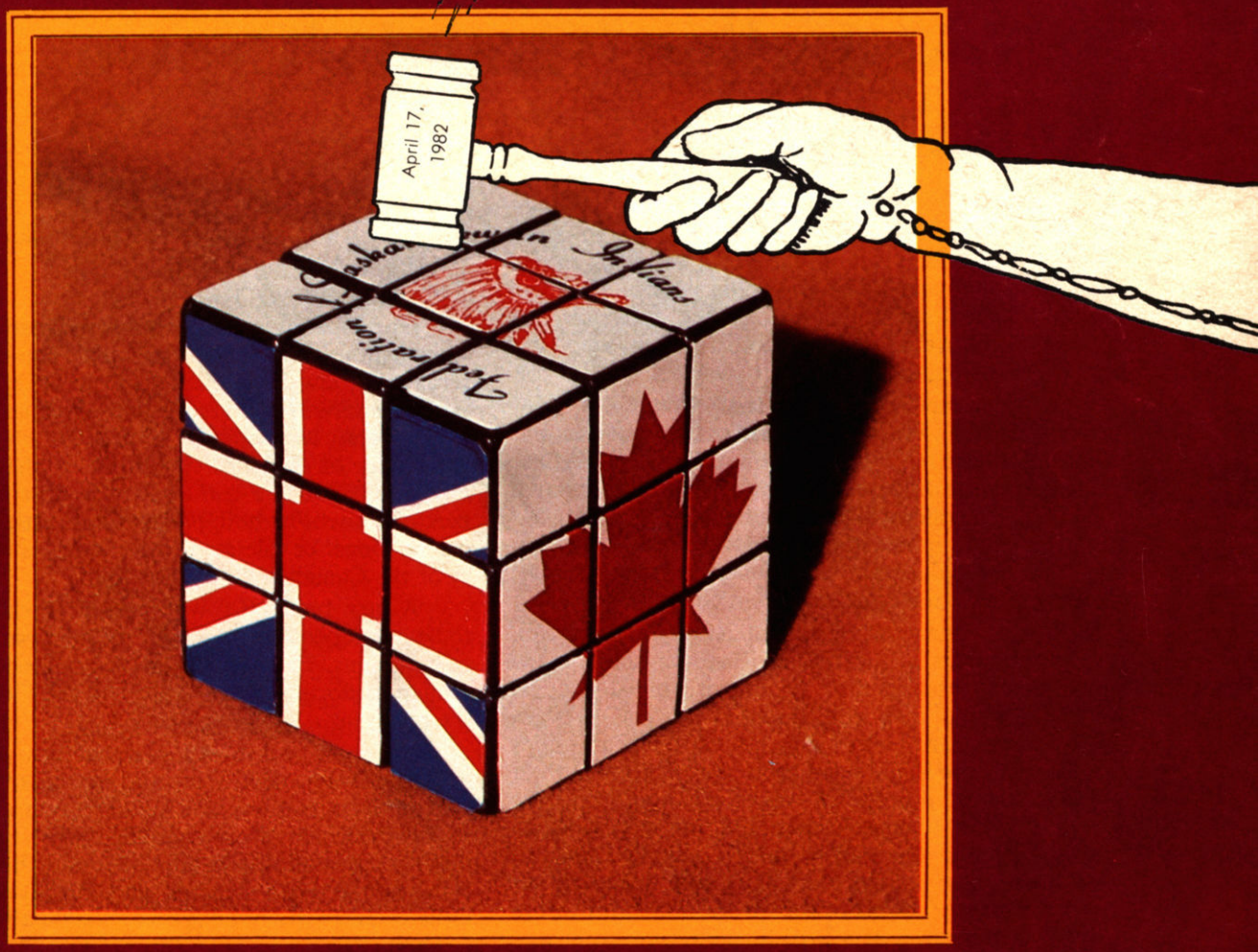
# SASKATCHEWAN INDIAN

April, 1982

The Official Monthly Publication of the Federation of Saskatchewan Indians




"For as long as the sun shines, and the rivers flow..."

## CONSTITUTION SPECIAL EDITION

# Living With Canada

## A New Indian/Canada/Crown Relationship

**by Chief Sol Sanderson**

The territories of North America once governed solely by the Indian Nations have been seriously eroded in a short 400 years. The governing powers of Indian Nations have been diminished by the agression, the greed and cultural arrogance of other nations who have sought to assimilate us into their societies.

We have experienced the colonization policy of the British Empire. We have experienced the continuous conflict of the French and English in Canada. We have experienced the disastrous effects of Canada's assimilation policy: a policy which was designed to eliminate our political institutions and to take away forever our control over our education, economics, religion, culture, lands and resources.

While reducing our political powers and control, the governments in the United Kingdom and Canada continued to expand their federal/provincial political boundaries and their constitutional powers. Between 1926 and 1931, the United Kingdom introduced a policy to dismantle the Empire and create a commonwealth of nations by a process of decolonization. But the decolonization of the Empire did not apply to all citizens equally. The Patriation of Canada's Constitution is the most glaring example of this failure to address the inherent rights of the sovereign nations within the political borders of a British colony.

The decolonization process of the United Kingdom and the member nations of the Commonwealth has been denied to the very Nations in North America whose assistance and alliance were crucial to the birth of Canada as a nation. Today Indian nations are still colonized by the anachronistic laws and policies of the government of Canada. Though Canada took a bold step and broke a psychological barrier when the Governments and parties formally recognized the Treaty and Aboroginal rights, their failure to address the legal and political concerns of the Indian nations before patriation will require much good will in order to overcome the widening breach between Indian nations and the Government of Canada now.

### The Treaties

Our Treaties are international Treaties made between nations and as such, require the conventions of international law be applied to their interpretation and implementation. The Treaties have been used as international Treaty instruments, domestic or social contracts depending on the time in history or the need of the governments in the United Kingdom or Canada. The lack of consent by both parties to alteration of Treaties can no longer be tolerated in the new post-colonial reality of the Canadian Confederation.

A new Indian/Crown/Canada relationship needs to be developed that addresses the inherent rights of the first Nations. These rights are clearly spelled out in the numerous documents developed by the First Nations in the past year.

Our people achieved a goal that most countries will never achieve by developing and ageeing to the Declaration of First Nations and the Treaty and Aboriginal Rights Principles, November 18, 1981. Negotiations on the implementation and application of these principles between the First Nations and the Government of Canada has been agreed upon by the First Nations Joint Council. The issues and the rights addressed by the Treaty and Aboriginal Rights Principles cross many boundaries. They cross all party lines and political governments as they impact on Canada. Likewise they cross all the boundaries that we as Indian Nations recognize. But to guarantee and safeguard the future in Canada, there are several fundamental issues we must formally institute.

### Jurisdiction - Indian

The history of legal acts in both the United Kingdom and Canada has created overlapping jurisdictions by the division of powers they enacted to the

*continued inside back cover*

| The Constitutional History | Aboriginal and Treaty Rights |
| --- | --- |
| The original constitutional proposals by Prime Minister Trudeau had no mention of Indians or Aboriginal and Treaty rights.<br>- October 2, 1980. | Indians were ignored and objected at being left out of original proposals and as full participants in Constitutional discussions. Indians believe that Government wanted to wipe-out Indian People, Indian Lands, Indian Rights. |
| The clause that "recognized and affirmed" Aboriginal and Treaty rights was inserted during the Joint Senate/Commons constitutional hearings.<br>- January 30, 1981, | The "recognition and affirmation" clause was a positive psychological and political breakthrough, but it did not go far enough in guaranteeing the protection of Aboriginal and Treaty rights. |
| The clause that "recognized and affirmed" Aboriginal and Treaty rights was dropped with the Federal/Provincial Accord<br>- November 5, 1981. | The "recognition and affirmation" clause was dropped at the insistence of the provinces. Prime Minister Trudeau gave in without protest. Indians wonder how to have faith and trust in the Federal and Provincial Governments to protect Aboriginal and Treaty rights in the future. |
| A different clause that recognized and affirmed " 'existing' Aboriginal and treaty rights" was inserted by the House of Commons.<br>- November 24, 1981. | A watered-down "recognition and affirmation" clause was put in after concerted national pressure from Indian and non-Indian groups. The word "existing" will have limiting and negative effects for Aboriginal and Treaty rights. |

*These are extraordinary times. Canada's Constitution is being patriated over Indian protest. Our Treaty and Aboriginal Rights are vulnerable. The right to govern ourselves and determine the future of the Indian presence in Canada is being undermined by the new Constitution.*

*The Federation can no longer exist as a non-profit society. The need to go further to put in place a structure that will validate Indian governing authority at the band, district and provincial levels of the Federation is crucial to our future.*

*Information about these issues, we thought was so important to our future direction that other news, sports and advertising was suspended for the April edition and will go into our May edition.*

*Producing a Special Edition on the Constitution is no easy job when the writers are busy executive members, lawyers and Indian Government workers who already put in 18 hour days travelling, meeting and working to protect our rights in these historic tense times.*

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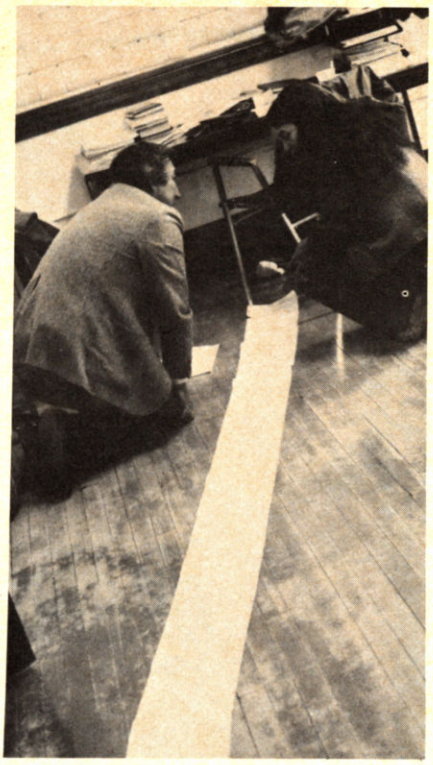


***"We're going to have to edit this, Clive."***

*But there are also the more humourous events which softened the grind, for example when Clive Linklater arrives in the office of the Saskatchewan Indian dragging twenty five feet of copy on just one week of the Constitutional history!*

*Somehow we all shared a sense that this magazine was a document of history. It was this understanding and the warm unfailing enthusiasms for the project from all the writers that made the job enjoyable and ultimately very exciting.*

**EDITOR**
Beth Cuthand

**PRODUCTION MANAGER**
Pauline Douglas

**TYPESETTING**
Adelle Prentice
Pam Denis

**GRAPHICS**
Bob Bedier

**CARTOONS**
Tom Maracle

**COVER PHOTO**
Ted Whitecalf

THE CONSTITUTIONAL JOURNEY

# The History

# The Constitution Story

*The oft-expressed intention to bring the Canadian Constitution home becomes a serious ambition for Pierre Elliot Trudeau in 1978. The founding Nations, the Indian and Inuit Nations, are shocked to learn they will be excluded from the entire process.*

## CHAPTER 1 The Constitutional Journey

**AUGUST 1978**
**New Brunswick**
At the Elders Meeting in Fredericton, New Brunswick, the Council of Elders endorse and adopt the idea of Chiefs and Elders going to England to press for inclusion of the Indians in Constitutional discussions. The General Assembly of the NIB passes the motion and Clive Linklater is appointed Co-ordinator of the Constitutional Journey.
He starts with a series of meetings with PTO's/
The Minister of Indian Affairs, Hugh Faulkner, calls the Constitutional Journey a "live circus" - little did he know how lively it would be!

**FEBRUARY 1979**
**Ottawa**
Dates for the Constitutional Journey are set for July 1-7th, to coincide with the "Secret Document" prepared by DIA surfaces. It virtually outlines a strategy to "neutralize and undermine" the Indian Constitutional position by emphasizing the Indian Act rather than the Constitutional Guarantees that we demand.

**MARCH 1979**
**Ottawa**
Noel Starblanket, President of the NIB, meets Governor-General Edward Shreyer about the possibility of meeting with the Queen.

**APRIL 1979**
**London**
Clive Linklater makes first visit to London to meet M.P.'s, Lords and support groups. He reports strong indications of potential support.

**MAY 1979**
**London**
His second visit is to schedule meetings, events and media interviews for the Chiefs and Elders.
Forty five Canadian organizations endorse and support the Chiefs and Elders Constitutional Journey to England and sixteen of them also make financial contributions.
They include many Labour Federations, Civil Liberties Associations, the Canadian Bar Association and provincial Bar Associations, Church Groups, Social and Educational Associations.

**JULY 2, 1979**
**London**
Historic First Meeting of All Canada Chiefs Assembly. The Chiefs and Elders represent all the provinces and territories with the exception only of Alberta. Chiefs and Elders meet daily.
Newspaper, radio and TV interviews with delegates and representatives also continue throughout the week. There is sustained and massive media coverage. Over 120 interviews from Journalists from all parts of the world, particularly Germany, France and Scandinavia. It is estimated that over two hundred million people view, listen to or read of the visit.

**JULY 3, 1979**
Reception and meeting at the House of Lords, hosted by Earl Grey. Lord Byers, leader of the Liberal Party in the House of Lords and six eminent peers are informed that the Imperial Parliament has the final say over the Canadian Constitution. Then we go to the House of Commons. Over 200 Indian Chiefs are present in the Grand Committee Room. Twenty four M.P.'s register for the lobby. The Rt. Hon. David Ennals, former Secretary of State for Health and Social Security and Minsiter of State for Foreign Affairs, in the Labour Government, receives a standing ovation for his strong statement of support for the Indian position.

**JULY 4, 1979**
Chiefs and Elders take a Petition to Buckingham Palace to Her Majesty. The Petition outlines the historical, legal and political relationship between the Indian people and the British Crown, and reminds Her Majesty of the promises and obligations to the Indian people of Canada as contained in the Royal Proclamation of 1763 and the sacred and binding Treaties signed between the Indian people and the British Crown. The Petition expresses the fear of Indian people that patriation of the BNA Act from Britian to Canada could terminate the special rights and status of Indian people as the Aboriginal and indigenous people of Canada.

There is a special presentation to the All-Party Committee: 18 M.P.'s are there. We meet with support groups and Human Rights groups. These groups pledge continuing support to publicize our position.

We make a presentation to the Commons Committee on Human Rights, a lively discussion follows. What was to have been a half-hour presentation turns into a full two hour discussion, and several private discussions with individual M.P.'s continue.

**JULY 5, 1979**
A meeting with the Archbishop of Canterbury results in his promise to thoroughly examine our position and make proper representations.

Indian Veterans conduct Laying of Wreath Ceremony at the Statue of the Unknown Soldier and also meet with the members of the British Legion.

We meet with the Rt. Hon. James Callaghan, former Prime Minister and leader of the Opposition. He expresses great interest in our positio and while he does not commit th Labour Party to support us officia ly, he says he will not stop M.P. who wish to do so. He encourag us to take our case to internatio forums.

Delegations visit the Embassies and High Commission offices of Denmark, Cyprus, Barbados and India.

**JULY 6, 1979**

At the final London All Chiefs Meeting, several motions are passed:

- to hold another All Canada Chiefs' meeting within one year;
- to establish a London office;
- to pursue an international lobby;
- to arrange to meet the Pope.

We meet with the Embassies and High Commissions of the Bahamas, Australia, Kenya and Tanzania.

We present letters and a petition at 10 Downing Street, the residence of the Prime Minister of England.

Finally there is a reception with senior officials of the Foreign and Commonwealth Office. They inform us that the question of Britain's residual responsibilities warrant an official response from the Imperial Government and such a reply will be made in due time upon careful study.

**The Constitutional journey is historic:**

*** It is the first time in Canadian history that Chiefs and Elders from all parts of Canada meet in a common front;**

*** It leads to the ultimate formation of the Assembly of First Nations;**

*** British Parliamentarians received a shock and education in their continuing responsibilities for Indian people. Many commit themselves to continuing support, and subsequent debates in Westminster will bear out the powerful and successful impact of the Chiefs and Elders' Constitutional Journey. We have met over 100 M.P.'s and Lords;**

*** Indian Nations have gained their first successful experience in world-wide attention and media coverage; as Chief Noel Starblanket states on Canada A.M., upon his return, "We had the world as a stage. The world learned of our existence and of our plight. The Constitutional Journey to England was a fantastic success".**

**APRIL 1980**
**Ottawa**

Historic Assembly of First Nations: the Constitutional issue dominates. A joint Council of Chiefs is elected.

**JUNE 1980**
**Saskatchewan**
**JULY 1980**

FSI sets up Constitution Commission. FSI application for court action on our constitutional position is rejected by Saskatchewan Attorney General, Roy Romanow.

**AUGUST 1980**
**Calgary**

National Indian Brotherhood Assembly and election reports on all fronts to confirm that Indian participation in the process of constitutional change is being stonewalled. NIB mandate to press our lobby in London becomes urgent.

**OCTOBER 1980**
**Ottawa**

NIB sends Indian Ambassador and secretary to London.

**NOVEMBER 1980**
**London**

FSI Constitution Commission asks Clive Linklater, Doug Cuthand and Victor O'Connell to review progress of London lobby and to arrange for FSI participation. They find the lobby in the hands of a recently elected M.P., Bruce George, who has set out his rules for an Indian lobby: he

will not hear of Indian Government or nationhood and he will only deal with one spokesman for the Aboriginal people of Canada. Office organization is minimal.

As the Constitution package is expected, at this time, to reach Westminster in March 1981, the FSI team stays ten days to prepare an intensive campaign to coincide with the arrival of the Resolution. Contacts are made with many Parliamentary Committees and pressure groups. Media contacts are renewed: they arrange a very positively stated article in the most influential British newspaper, The Times.

Clive Linklater's 1979 support group contacts are renewed. They find out that the eight Provinces who oppose the Resolution are also lobbying hard in Westminster.

The text of the Constitution Resolution is released. Massive protests from interest groups and private citizens all across Canada to the Charter of Rights and Freedoms leads to the establishment of a Joint Senate Commons Committee to hear submissions. The Hearings are set for nine weeks: few Indian applications are accepted.

**Rotterdam**
**Holland**

FSI addresses Fourth Russell Tribunal on the Rights of the Indians of North and Latin America. Other groups from Canada join them to present the violation of Aboriginal and Treaty Rights by the exclusion of Indian Nations from the constitution process. The Tribunal issues a damning condemnation of Canada.

**DECEMBER 1980**
**Ottawa**

Assembly of First Nations in Ottawa and again the issue of participation in Constitutional change predominates. Pressure from the two thousand strong Assembly extends the Constitutional Hearings for a further six weeks and presentations from many Indian Nations are accepted.

Inuit presentation takes place on December 2. The NIB makes a presentation. The presentation by the elders of the Nishga and Abenaki Nations makes a particularly deep impression on the Committee members.

The FSI position is presented by Senator John Tootoosis and Doug Cuthand with a legal team of Delia Opekokew, Rodney Soonias and Kirk Kickingbird.

**JANUARY 1981**

Chief Sol Sanderson returns to Ottawa to answer questions on the December presentation.

**FEBRUARY 1981**

Trudeau announces Clause 34, that recognizes and firms Aboriginal and Treaty Rights'. NIB reaction is confused until it is established that indeed under the terms of the Amending Formula, Clause 34 could be cancelled, without Indian consent, just as soon as the package returned to Canada.

**MARCH 1981**

FSI attempts to negotiate with the Federal Government for real and absolute entrenchment of principles contained in Clause 34. The results of court actions and enquiries into the constitutionality of the Canada Bill launched by the Manitoba, Newfoundland and Quebec Provincial Governments, and the continuing opposition to the Resolution of five additional Provinces lead to referral of the whole package to the Supreme Court of Canada.

**London**

The March campaign for London is allowed to lapse. NIB Ambassador to First Nations returns home.

**MAY 1981**
**Quebec City**

At the First Nations Assembly, Chiefs are assured that the London lobby is going well.

**JUNE 11, 1981**
**Saskatchewan**

Constitution Commission becomes uneasy at receiving no hard news from the Office of First Nations in London. They send over party to investigate: Senator John Tootoosis, Chief Melvin Isnanna, Vice-Presidents Doug Cuthand and Cy Standing, and Victor O'Connell, constitutional consultant.

**London**

They arrive as a party from IAA is winding up a similar enquiry. The NIB office is not operating, their "caretaker" has no mandate. The three groups meet to draw up recommendations to reinforce the lobby.

**JULY 1981**

UBCIC makes similar journey, and also makes similar recommendations to NIB.

**AUGUST 1981**

Constitution Commission asks Victor O'Connell to establish an organization in London, primarily for the FSI, but in complete coordination with the NIB and any other Indian group in London. The First Nations office has moved and is being maintained by UBCIC personnel who are in London to make advance preparation for a large Potlatch that the UBCIC would be holding in Westminster in November. NIB staffing is minimal and still unmandated. NIB are unsure whether they will maintain an office and O'Connell decides to maintain the FSI London office at the Park Lane Hotel.

In the absence of M.P.'s in London during the Summer recess, many of whom go abroad, he tries to develop a general awareness amongst the British public that the Indians have a complaint about the mistreatment of their Treaties. This follows the mandate received from the Chiefs, as a result of the observation by John Tootoosis and the group who had visited in June that there was a singular absence of any reference to the Treaties and Treaty obligations in the work of the NIB office. The public campaign consists of letters to newspapers, contact with the media and the arranging of a cultural tour to take place in late October.

**SEPTEMBER 1981**
**England**

The FSI is invited to the Labour Party's annual conference in Britain. Victor O'Connell organized a public meeting there under the title of "Britain's Treaty Obligations to the Indians of Canada." He is joined there by Clive Linklater. They distribute 3,000 pamphlets laying out Treaty position and in the process meet with many members of the Labour Party, both M.P.'s and Constituency workers.

**OCTOBER 1981**
**England**

Supreme Court hands down decision that constitution resolution is constitutional because parliament is sovereign but convention demands

provincial support.
London: Provincial lobbies intensify.

The next major event is the cultural tour which takes place in Liverpool, Blackpool, Birmingham and London, lasting ten days. We go to Blackpool on the first night of the Conservative Party Conference, at which the FSI has organized another public meeting. This is very well attended by members of the Conservative party and the press.

The cultural tour is a great success, starting in Liverpool to sell-out crowds. We are shown on northern television reaching over a million people and Ernest Tootoosis is featured on four or five radio programs. The front pages of the local newspapers cover the tour, explain its purpose as to remind the British people of the promises they made to the Indians.

In Birmingham, the group appears on a national TV program, and a shot of Clive Linklater is shown on the national news.

In London another film is made for a BBC national program, "Out of Court," and two pow-wows are held at the Park Lane Hotel.

Wherever we go we ask the British public to help the Indian cause by writing to members of Parliament, and indeed in subsequent weeks and months it is apparent that this is happening. MP's contact the FSI London office as they receive enquiries from their constituents.

At the end of October, the NIB staff are recalled. The UBCIC takes over the office of the First Nations; files are opened and records started.

**NOVEMBER 1981**

**London**

A very large group of Saskatchewan Indians arrive in London for two weeks, led by Chief Sol Sanderson; the entire Constitutional Commission and many Chiefs and elders. They are present at a series of meetings with influential groups. UBCIC Chiefs were in London lobbying the Aboriginal Rights position and are invited to these meetings.

**Ottawa**

Trudeau and Provincial Premiers announce, "Historic Accord" on Constitution. Their point of agreement is the elimination of aboriginal

*Saskatchewan Dancers*

*Venita Thompson, Arsene and Kim Tootoosis, Bill McNab, Brenda Brittain, Billy Brittain and Mary Ann Sokwaypnace. Singers Leslie Clarence, Frank Moosomin and Gerald Baptiste. They accompanied Ernest Tootoosis through Britain to remind the British of the treaties they made with the Indian Nations. The cultural tour made media headlines for the Indian lobby in Britain and Europe.*

*British Columbia Indians held a potlatch for 1,000 Britains, including M.P.'s, in London. (A potlatch, or give-away, is the highest form of government in B.C.) The purpose was to remind Britain of the 1763 Royal Proclamation promising protection of unceded Indian land and jurisdiction. The message reached millions through the national television.*

*FSI Chiefs, Elders, and Executives travelled the length of Britain to broaden the lobby. They found the Scottish liberals more ready to understand our fears for aboriginal rights than their English colleagues.*

*The Earl of Balfour invited Senator John Tootoosis to his Scotland estate.*

*Scottish conservatives too were more sympathetic to the importance of Indian Government in a Canadian Confederation.*

and treaty rights.

**Canada**
Indian groups all over Canada react forcefully. There are huge demonstrations in major cities. Telegrams, telexes, letters, and couriers fly from Indian Nations to the Prime Minister and Minister of Justice.

**Europe**
Telegrams and telexes fly to Canada as the 200-strong B.C. Indian Constitution express holds press conferences in Germany, Belgium, Holland and Scandinavia and the FSI team confirms the announcements in Paris.

**London**
Chief Sol Sanderson holds a press conference to inform the British Government and the public that the way is not now clear to patriation, as Federal and Provincial London lobbies have claimed.

**Ottawa**
Joint Council of Chiefs start gruelling two weeks of negotiations toward a consensus of political principles.

**London**
FSI meets in the Conservative Party central headquarters with their Foreign Affairs Committee. Sir Anthony Kershaw, Chariman of Foreign Affairs Committee on the Canadian Constitution is speaking and the FSI manages to virtually take over the meeting to put the Indian case very forcefully. They also make a presentation to the Bow group and receive promises of support from this very influential group within the Conservative Party. They speak to the Conservative Foreign Affairs Parliamentary Group. They hold a public meeting, they meet with a number of individual M.P.'s and also members of the National Executive of the Labour Party. They visit Scotland and appear on radio and television and on the front pages of all the major Scottish newspapers. They hold public meetings at the University of Edinburgh and they meetwith the executives of all the Scottish political parties, the Scottish Nationalist, the Scottish Conservative, the Scottish Labour and the Scottish Liberal parties; and they receive promises of support from each.

The FSI press team also attends

Press briefing sessions organized by the UBCIC.

A team led by Doug Cuthand meets the French Government to discuss France's obligations from early treaties. Del Anaquod is there to organize support for the World Assembly of First Nations.

Saskatchewan Indian veterans also participate in the Remembrance Day Parade in Whitehall, London, with veterans from the Union of Ontario Indians. Two veterans are invited by the B.C. Chiefs to join them at Flanders Field in Belgium for ceremonies there on November 11th.

Senator John B. Tootoosis stays on in London as a honoured guest at the Potlatch held by the B.C. Indian Constitution Express in Westminster on November 16th.

The FSI Constitution Commission asks Victor O'Connell to stay in London on a semi-permanent basis. The Canadian request is expected now at any time.

**Ottawa**

On November 18, a second historic accord is announced: this is the Declaration by the First Nations of Canada, the statement of treaty and aboriginal rights and principles. It is signed by virtually every Indian Nation.

**Moose Jaw**

FSI General Assembly ratifies the treaty and aboriginal rights principles.

**London**

The Parliamentary lobby continues with individual M.P.'s. From the start Victor O'Connell has worked in co-ordination with the First Nations office and any other groups in London who came to find out what was taking place. This has meant many evening meetings explaining the situation in Westminster, the lobby process, the FSI position and so forth. It has also meant working closely with the UBCIC-sponsored First Nations Office to ensure a co-ordinated parliamentary and press lobby. The FSI and UBCIC Treaty and Aboriginal Rights lobby positions are quite compatible and co-operation is easy.

**DECEMBER 1981**

**London**

Chief Sol Sanderson, John Tootoosis, Melvin Isnanna and others return to London as the Canadian request is sent over, December 9th, 1981. They interrupt the Press Conference held by Jean Chretien in Canada House to bring attention to the fact that the Treaties are not protected in the new Constitution. Chief Sol Sanderson presents Chretien with Declaration of First Nations. The following day the Plaintiff Chiefs from B.C.,

*The FSI Parliamentary Assault Team.*
*Chief Roy Bird, Doug Cuthand, John Tootoosis, Cy Standing and Victor O'Connell: kneeling Dutch Lerat, Wayne Ahenakew, Chief Sol Sanderson and Felix Musqua.*

*FSI Veterans John Tootoosis, Bob Bird, Ernest Crowe, Alan Bird and Miles Venne, march in the remembrance day parade in Whitehall to remind the British they hold the treaties so sacred they were willing to lay down their lives when their treaty partners were in need.*

Manitoba and Ontario lodge their court case asking British courts to declare that Indian consent is constitutionally required for a new Constitution. Soon after, the IAA lodges a case challenging the Kershaw Committee assertion that Crown obligation to the Indians are a Canadian responsibility. The FSI announces it will be asking the British Courts to declare that any novation in political arrangement of the Treaties requires mutual consent.

The British courts choose to react to the IAA case and a week later, Chancery Court Justice Wolfe examines their case but rejects it on the grounds that it is a matter for the Canadian courts. The IAA appeals.

**Saskatchewan**
Constitution Commission meets.

**Ottawa**
Joint Council meets to consider how the lobby will be affected.

**London**
On December 23rd, the Canada Bill is read for the first time in the House of Commons. Second Reading is expected as soon as Parliament re-opens on January 18th, 1982.

At the end of this session, between the two active lobby groups in London, over 120 members of Parliament and peers have been seen, and some five thousand letters sent out to them.

On December 24th, the IAA learns that their Appeal is successful and the hearing is scheduled for early February.

**JANUARY 1982**
**London**
The British Government lawyers successfully apply to have the Alberta case date brought forward to January 16th. The case is heard by Lord Denning, and by two other judges. It has been prepared in great haste by the British lawyer brought in by the British Consulting group whom the IAA hired for their lobby. He was unfamiliar with Indian history, Indian tradition and Indian law.

Second reading is postponed until the decision is handed down.

Parliament opens and the lobby of M.P.'s resumes more intensely than ever.

Lord Denning's decision at the end of January is, however, a definite set back to the lobby. A number of appointments are cancelled, but our persistance wins out.

**FEBRUARY 1982**
**London**
Chief Sol Sanderson, FSI executives Doug Cuthand, Cy Standing and Felix Musqua return to London to lead the lobby; the legal team of Delia Opekokew, Rodney Soonias and Treaty researcher Anita Gordon are here to work on the Statement of Claim for the Treaty case. The lobby steps up with the arrival of Chiefs and Grand Councillors from Manitoba, Treaty 9, B.C., and Hobbema Bands. Evenings are spent with those returning to London or coming here for the first time to up-date them on the lobby.

There are also many meetings with the FSI Parliamentary Agents to draft the Indian Rights Amendment Clause.

Victor O'Connell continues to spend time with the Press. Chris Schwartz, photo journalist, is sent to Saskatchewan on the strength of commitments to run major stories from two newspapers. Chief Sol Sanderson and Delia Opekokew go to Geneva to deliver a statement to the international court of Human Rights on a case of the violation of Treaty Hunting Rights. Del Anaquod is in Paris continuing to organize European support for the World Assembly of First Nations.

Second Reading is announced for February 17th. The Scottish Nationalist Party organizes a briefing session in Westminster. We present the Indian Rights Amendment Clause and a statement of the Indian legal positions.

**Ottawa**
The Joint Council meets in urgent session to work towards a political solution to the Canadian/Indian Constitution impasse. At this time they approve the Indian Rights Amendment clause.

# CHAPTER 2
# The Battle in Westminster

Second reading of the Canada bill, on February 17th is dominated by the Indian lobby: the British and Federal Governments and the press are shocked.

**Ottawa**
Joint Council lobbies Canadian parliamentarians. Leaders Ed Broadbent and Joe Clark agree to support moves toward a political solution with Canada before patriation.

**London** On February 23rd Chiefs Sol Sanderson and Robert Daniels give a press conference on the FSI Statement of Claim on the Treaty case; and the B.C., Manitoba and Treaty 9 Chiefs win in their application to have their court case brought forward on the grounds that it raises issues of law of grave constitutional importance.

That evening the Canada Bill is discussed in Committee in the House of Commons and once again the Indian lobby predominates...

Canada House holds a late night Press Conference with Jean Chretien for the Canadian press. Chief Sol Sanderson and his staff are refused entry and are turned out of Canada House.

Daily appointments with M.P.'s continue and we start to make appointments with peers. Victor O'Connell continues to spend considerable time with those M.P.'s who are supporting our lobby, coordinating their efforts so that we don't have twenty speeches on one topic and nothing on the others, sending out vast quantities of information, preparing briefing notes.

Chris Schwartz returns from his photo-journalism assignment in Canada: the British Press is suddenly coy and commitments fall through. He spends considerable time chasing picture and feature editors and everywhere meets half-promises.

At this time the UBCIC announced that its resources for sponsoring the First Nations office are now exhausted. The FSI hires the personnel responsible for setting up appointments; Manitoba takes over the financing of the office and B.C. Bands look after the secretary. Cooperation on the lobby between all these groups had already become so complete that it is in effect merely a financial re-arrangement.

**MARCH 1982**
**Ottawa**
Joint Council meets and sends

*Keeping the press informed and interested in the Indian lobby was hard work. Above, John Tootoosis, Chief Sol Sanderson and Melvin Isnanna expose the accord between the Federal and Provincial governments.*

*Below, Senator John Tootoosis, Chief Ray Hance of the UBCIC, Chief Sol Sanderson, and Les Healey of the IAA, hold a joint press conference on the effect of the newly inserted clause 35. November, 1980.*

memorandum of intent to the Prime Minister outlining the negotiating process and principles for negotiation before patriation.

**London**

Third Reading is scheduled for March 8th. The Indian lobby again predominates but the Canada Bill passes third reading. First reading in the House of Lords is rushed through the very next day and for the next ten days Victor O'Connell has a very intensive lobby with members of the House of Lords.

**Ottawa**

The Canadian lobby pushes for a political solution on the Canadian front.

**London**

On March 11th, five law Lords refuse the Alberta Indian Appeal. They follow the opinion and decision of Lord Denning. This is another set back for the lobby - it is seen as the definitive ruling on the Indian legal position. However, on March 15th, sixteen Conservative peers attend a meeting organized by Lord Drumalbyn. Victor O'Connell presents the case for Aboriginal and Treaty Rights, the legal issues of consent still outstanding in the British courts and introduces the Indian Rights Amendment Clause. The Lords have been told they cannot amend the Bill but they are interested in a clause that will not amend the text of the Bill. There are a flurry of last minute appointments over the next two days. Victor O'Connell spends considerable time working with the peers who have agreed to support us, answering their questions and supplying them with further information. On March 18th, the peers debate Second Reading of the Bill. The Indian issues are well presented. Committee stage is heard on March 23rd: this time many peers try to stop the debate. The process is relentless now - the Bill passes through Third Reading only a few days later. Again a group of peers make a concerted effort to drown and stop the Indian debate that continues to dominate. The day after the Bill goes through, the British lawyers announce their intention to strike out both the remaining legal cases. Argument is set for a few days after Easter . Royal Assent is duly and unquestioningly given on March 29th, 1982.

**Ottawa**

Joint council resolution on the celebrations for April 17th:

Joint council resolution on Indian participation in the Proclamation of Celebration on the Constitution.

Be it resolved that no Indian person, organization or association of the First Nations participate in the Proclamation of Celebration on the Patriation of the Constitution to be held in Ottawa or anywhere else in Canada to that day. Be it further resolved that any person, organization or association of the First Nations which are involved in the Proclamation Celebration shall be deemed to have committed a treasonous act, against the Indian Nations and their citizens and is in violation of the November 18, 1981, national position.

On March 31, the FSI London office is closed and Victor O'Connell brings home the files.

*What the FSI also brings home is 30 hours of tape and seven volumes of Hansard, recording the only complete debate on aboriginal and treaty rights since the Royal Proclamation. The record of the broken promises and Treaties is there for all the world to see. Canada can no longer freely perpetrate acts of genocide in her own backyard while posing as the protector of human rights in the Third World. Canada is unmasked and the eyes of the world will be on her as she now must negotiate a new relationship with the Indian nations.*

*Much energy and many resources have been spent on the FSI London lobby...Between November and March the Indian lobby teams in London met over 300 members of Parliament and 75 peers on an individual basis or in small committee groups. Over ten thousand letters had been sent to them setting out the Treaty and Aboriginal Rights positions. Well over 3000 telephone calls have been made to try and secure appointments in Westminster and with the Press. The Press list was five pages long and mailings were frequent. The FSI team travelled from Brighton on the south coast of England to the Earl of Balfour's estate in northern Scotland, from Liverpool and Blackpool on the west coast of England to London on the east coast. Their voice was heard in Europe, Paris and Geneva at the United Nations.*

*It was an intensive lobby and clearly impressed Parliament. It was a very determined lobby and the effect was clear in the debate. On the question of justice and injustice, the Indians categorically won the debate. We had done so against great odds. We were up against the inexorable forces of corporate interests in Indian land and resources and the government and corporate interests in the Canada/British economic, political and historic relationship. These forces had, however, been unprepared for the inexorable force of the Indian determination to safeguard the Treaties, and to safeguard Indian land and Indian Government, to take our rightful and distinct place in the Canadian Confederation.*

*The Canadian Indian nations have united with a singleness of purpose. The resolutions first proposed by the Council of Elders in 1978 have withstood the passage of four most tumultous and tense years. Indeed they have not only proved constant in our Lobby but brought the First Nations together for the first time: the protection of Indian land, Indian culture and values as well as Indian Government. The first two chapters of the Indian Constitutional journey have brought us the treaty and aboriginal principles, the basis of all action and negotiation; they have brought us renewed stature within Canada, they have brought us to the brink of a political solution in Canada.*

# CHAPTER 3
# The Battle in Canada

*The battle may have moved out of Westminster; at home it has only just begun.*

**from the files of Clive Linklater, Victor O'Connell, Beth Cuthand and Pauline Douglas.**

# The Constitution Commission

**By Felix Musqua**

In the summer of 1980, because of increasing constitutional pressures and the constant change in day to day activities of the patriation process. The FSI executive mandated a Commission be set up to monitor and advise on the on-going activities surrounding the Canadian Constitution.

The Constitution Commission is made up of Senators, Past Presidents, District representatives, Chiefs and Executive from the Saskatchewan Indian Government. They are:

Mr. Del Anaquod
Federation of Sask. Indians

Senator John B. Tootoosis
Poundmaker Band

Ms. Anita Gordon
Federation of Saskatchewan Indians

Chief David Knight
John Smith Band

Mr. Richard Poorman
Poorman Band Office

Chief Walter Lathlin
Shoal Lake Band

Chief J.B. Sandypoint
English River Band

Chief Denzil Ketchemonia
Keeseekoose Band

Mr. Walter Dieter
Past President

Mr. Lance Ahenakew
Sandy Lake Band

Chief Hilliard McNab
Gordon Band

Chief Leo Omani
Wahpeton Band

Delia Opekokew
Barrister & Solicitor

Mr. David Ahenakew
Past President

Mr. Andy Michael
Saskatoon District Representative

Chief Myles Venne
Lac La Ronge Band

Senator John Tootoosis
Muscowegan Band

Chief Andrew Paddy
Thunderchild Band

Chief Gordon Albert
Sweetgrass Band

Mr. Rodney Soonias
Barrister & Solicitor

Mr. Stewart Raby
Federation of Saskatchewan Indians

Senator Henry Langan

Chief Peter Crookedneck
Island Lake Band

Chief Sol Sanderson
Federation of Saskatchewan Indians

Mr. Doug Cuthand
FSI Executive Member

Mr. Steve Pooyak
FSI Executive Member

Mr. Ron Albert
FSI Executive Member

Mr. Ray Ahenakew
FSI Executive Member

Mr. Cy Standing
FSI Executive Member

Mr. Melvin Isnana
FSI Executive Member

Mr. Wayne Ahenakew
FSI Executive Member

Mr. Felix Musqua
Clerk to the Executive Council
Constitution Commission
Chairman

The objectives of the Constitution Commission are:

- To ensure that the legal, political, and indigenous position of Canadian Indian Nations are clearly defined and recognized in a new Canadian Constitution.
- To address the complete body of legislative and international arrangements which constitute Canada's confederate relationships. This includes Terms of the British North America Act and Treaties and International Accords, Conventions and Agreements.
- To constantly monitor and discuss the on-going overall activity of the Canadian Constitution; to come to some resolution as to the kind of approaches that could be used and implement the safeguards needed to be entrenched into the constitution for the protection of Treaties and Treaty Rights.
- To create a mechanism that will ensure input and full participation from all districts of the Indian governments of Saskatchewan.
- To address and advise on the kinds of lobby activities that should take place.
- To address and adopt in principle

the position papers before they are addressed at the provincial level.

• Mandate all legal action.

The Commission has lobbied provincially, nationally, and internationally taking every measure possible to ensure that Indian Sovereignty, lands, treaties and other unique elements of our original citizenship are fully protected, strengthened, and entrenched in any revised Canadian Constitution.

Though the constitution has been patriated, however, Indian Nation's protest the battle is not over. I suspect it will never be over as long as Indian people exist as citizens of Indian government.

During the pre-patriation phase, the Constitution Commission met monthly. The Commission mandated FSI executive and staff to research and document materials in preparation for the British court case, the proposed hearing in London by the International Commission of Jurists, and the presentation to the Human Rights Committee on Indigenous peoples of the United Nations.

In consideration of the serious threat to Indian sovereignty and self-determination the Constitution Commission unanimously recommended the Constitution lobby cover all fronts.

Though the chances of our success in the British courts were lessened by the British court of appeals confirmation of the doctrine of the divisibility of the Crown, Constitution members voted to go forward with the court case. Commission members thought it was important to go on record in Britain.

For future generations, there would be evidence in Britain of Saskatchewan Indian efforts to ensure that treaty rights were protected.

Senator Henry Langan said it best, "If we did drop the case, it would haunt us for the rest of our lives that we didn't do justice to our people."

The Constitution Commission mandates all legal action and ad-

vises on political strategy. Every participant is asked to give his or her opinion. The way decisions are made in meetings of this size is a long standing tradition in the FSI. The Commission is given all the available information on a subject requiring a decision from the people most directly involved in the preparation of the information and documentation. For example the decision to go forward in the Courts required that British lawyer Sir Geoffrey Bindman Q.C. journey to Saskatoon to meet the Commission and brief them on the work already completed on our case and outline the decisions required by the Commission in order that the case could be further developed if the Commission decided to go ahead with the case.

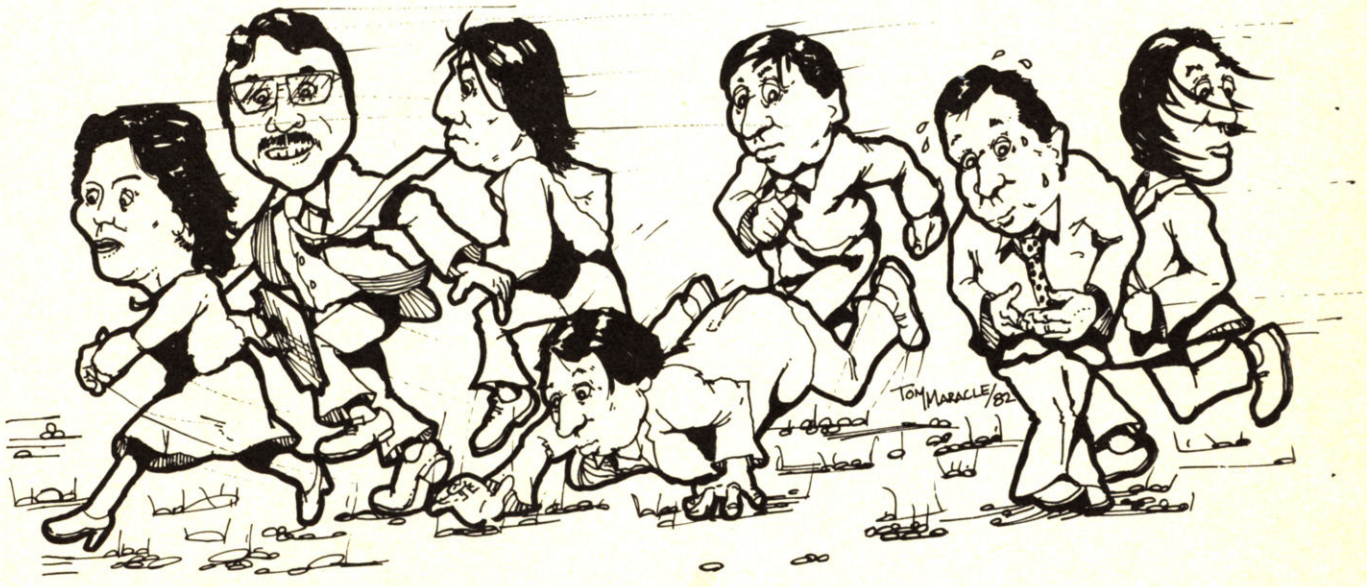
Once the Commission is fully briefed on the information available Commission members discuss the politics of the matter requiring a decision. As chairman it is my job that every member is consulted and that the subject is addressed.

Then a resolution is put forward, duly moved and seconded. The chair then asks each Commission member to speak to the resolution. By the time this process is complete the Commission more often than not has reached a consensus. We then vote on the resolution and the decision is made.

The Constitution Commission has worked diligently and effectively throughout the pre-patriation phase. Though patriation is complete our work continues.

The fight to protect, enhance and safeguard the treaties is not over by any means. The new Canadian Constitution makes the continued existence of the Constitution Commission and their carefully considered decisions even more vital now.

As chairman, I would like to personally thank Commission members for the kind advise and guidance given by them to the chair. I hope Commission members will all continue to participate in future Constitution Commission meetings.



# The Canada Bill In Westminster

**By Pauline Douglas**

In London this week, British M.P.'s and Peers declare with great relief "It's all over but the parade." But for some the passage of the Canada Bill has been more painful than for others. On the television news one peer likened the process to having a tooth drawn. And the extracted and rotten tooth to be sent over to Canada? It is tempting to continue the analogy.


The British Parliament has learned more about Canada in the last three years than it heard in the last two centuries. When the question of a new Canadian Constitution was first broached there in 1979, the British were shocked to learn that the Canadian Constitution was still in Westminster. Still reeling, they then learned that 350 Canadian Indian Chiefs were in London to ask some questions about their Treaties with Britain: they had forgotten the Treaties and thought the Indians had died out. The realities were embarassing in this post colonial era.

## SECOND READING: HOUSE OF COMMONS

From the Second Reading we had an indication of how the House of Commons would finally deal with the embarassment. The Government gratefully hid behind the advice of the Foreign and Commonwealth Office and Lord Denning that it had rid itself of responsibility over fifty years ago in rather vague circumstances, and equally grateful it hid behind Trudeau's assertions that the role of Westminster was simply to hold its nose and pass the Bill. The Opposition position was only a little more brave. One spokesman for Foreign and Commonwealth affairs would point out how vulnerable were Aboriginal and Treaty Rights under the proposed new Constitution. A second Labour spokesman would defend Canada. The main strength of the Liberal/SDP alliance comes from an international Liberal Party alliance and they weren't about to rock that boat.

However the determination of the Indian lobby had riven holes in these set positions. Members from all sides of the House, together with our natural allies, the Scottish and Welsh Nationalists, broke rank to support the Indian lobby, to follow their own conscience. An expected formality turned into a full and powerful debate.

At first the challenges were on procedural grounds. The Foreign Affairs Select Committee on the Canadian Constitution had, in its final Report, defined the Government's attitudes and it now maintained those stands. To the Quebec/Federal conflict it replied that the Bill would be debated and passed, though one Province yet disagreed, for Convention required only a majority of the Provinces' support in this case, and nine out of ten Provinces wasn't bad. The Select Committee had strenuously advised that there be little debate and Sir Anthony Kershaw, Conservative Chairman of the Committee adamantly repeated his contention that "What we cannot do is amend the Bill. We can pass it or reject it, but to amend it is something that Canada has not asked us to do."
However, the speaker saw no reason why they shouldn't amend it.

On the outstanding legal cases:

"Finally, I believe that Her Majesty's Government were right to proceed with the Bill, even if some court proceedings are still pending. It was surely correct to wait for the verdict of the Supreme Court of Canada, as a matter of good sense. Indeed, that verdict had a decisive effect upon the course of events. But in our system this sovereign House will not be bound by those court decisions. Further, it is the convention that we use all reasonable dispatch in dealing with a proper Canadian request once received." The Speaker of the House agreed on this point.

The Select Committee had consistently refused to meet with Indian representatives and its report was therefore unclouded by the legal and historical facts of our required consent to constitutional change and novation of Treaties:

"In regard to the representations of the Indian and other peoples, the Select Committee had the advantage of a large amount of written material from them. If we did not deal at any great length with their problems in our report, that is only because we were so clear in our minds that all their treaties were with the Crown of Canada. When those treaties were signed the Crown was undivided. When Canada became independent the Crown became divided as between the United Kingdom and Canada..."

Douglas Jay, former Colonial Secretary in the Labour Government, was only the first to challenge this point. He joined Donald Stewart to co-sign a motion to the House to that effect.

Kevin McNamara, a Labour member of the Foreign Affairs Committee disagreed with his Committee. "We should have respect for constitutional practice" he declared, but then prejudged all cases as already lost. What most angered the Indian representatives in the Gallery, however, was his following statement:

"It is not true to say that the Select Committee did not examine the position of the Indians. When the Foreign Office made its statement, in answer to the Chairman of the Select Committee I immediately asked whether this matter had ever been challenged in the English courts, and was told that it had not. It was only at the time of the introduction of this Bill that the Indian nations, for quite understandable reasons decided to have recourse to the courts. The Select Committee, the Government and the Canadian Government were, therefore, entitled to feel that if, after that long period, there had been no recourse to the courts, the Indian people had at least accepted that position."

Chiefs from the FSI, UBCIC, and Four Nations Confederacy challenged Mr. McNamara later in the Central Lobby: was the Committee so negligent as to be unaware that from 1927 to 1951 Indian political protest and access to court was prohibited? Mr. McNamara confessed himself indeed totally ignorant but did not subsequently correct his statement in the House.

A second member of the Select Committee, Jonathon Aitken, however went so far as to profess himself perturbed that Indian Rights were not protected, although he maintained the Committee stand that amendments were inadmissable, and it was Canada's problem.

Sir Bernard Braine, Conservative Champion of the international human rights codes, was the first to challenge the Committee's ruling that debate on Indian interests was outside the scope of Westminster.

"It told us that we should not even deliberate upon Indian rights and interests. This is a complete denial by the Government and the Select Committee that we have any right to exercise our powers as law makers to protect the native peoples of Canada.

Let us consider the implications. It is being asserted that we are tied hand and foot by a convention that we should do nothing to amend the Bill, even though by such washing of our hands our country may be in breach of an international human rights obligation. What sort of convention is that?"

"The Bill is immoral in its effect on the native peoples of Canada. It flies in the face of the concern that this House has always felt, thank God, for minorities. We should not pass the Bill in its present form."

Donald Stewart of the Scottish Nationalist Party was outraged at the Committee's coyness on amendments.

"We cannot like Pilate, wash our hands. It will be a conscious act if we make this agreement without any adjustment.

Treaties have been made in the past by British monarchs and Governments. If hon. Members wish to regard solemn agreements as scraps of paper, they must accept the responsibility for doing so. I know what it is like for people to be moved from their land. Therefore, I have a great feeling for the attitude of the Indian peoples.

Throughout the period of colonization, the Crown recognised the principle of bilateral negotiations with the Indians. That principle was formalised by the enactment of the Royal Proclamation in 1763. More than 80 treaties were concluded between the various Indian nations and the Crown. Although the terms of the treaties varied, all recognised the sovereignty of the Indian nations and the consensual nature of future negotiations. That relationship was intended to endure the passage of time and Governments."

Bruce George had championed the cause of the Aboriginal Nations from 1979. A well-intentioned and sincere man in the case he put forward, it is a matter of some regret that he would not discuss our definitions of Indian Government, sovereignty and self-determination. He would see no further than the British colonial definitions that meant total separatism and Independence. There are certainly troublesome differences between British and Indian Government terminology but we were able to work these out quite

amicably with other M.P.'s. Thoroughly alarmed at the thought of 576 independent sovereign Indian states separating from Canada, however, Bruce George cried out he "would not contribute to the break-up of Canada" and pushed hard for a minority rights argument. He was publically critical of those that didn't follow his line, which was everyone except the IAA and NIB representatives. If we didn't agree with his position, we must certainly appreciate the considerable work he put into his lobby and speeches.For Second Reading, his researchers dug deep to expose Federal and Provincial intentions and attitudes to Indian rights:

"What does the Federal Government say about these sacred treaties? I have read one of the many leaked documents emanating from the Federal Government which said, on the argument that the treaties gave aboriginal rights on the Indian claims to self-government,"

'This argument is based on Indian claims that British sovereignty over Indian lands resulted from Indian acceptance and consent. Britain, in fact, asserted sovereignty over the lands in question by conquest or cession from France or by discovery and settlement.'

"I have never heard such a brazen expression of dominance."

"The Indians' future will be in jeopardy without their securing a land base. The arguments on human rights have been dealt with. I believe that they will be raised again in Committee. We must not have double standards. We must not deny that human rights are being violated in Canada."

Second Reading had last five hours now and the vote was due in an hour. Many M.P.'s still wished to speak. What former Labour Minister David Ennals missed out for the sake of brevity, he made up for with the force of his presentation:

"The treaty rights of Indians are not properly protected in the Bill. I believe that that alone is enough of a reason for the Bill not to be passed at this stage.

It would be easier for all of us to wash our hands of the whole affair and let the Canadian Government have what they want. Although I have no doubt that the Bill will go through the House, I hope that what is said today and what will be said in Committee will be listened to with respect in Ottawa and throughout Canada. I hope also that a statement will be made by Prime Minister Trudeau and his Ministers to respond to the deeply held convictions that have been expressed by many hon. Members on both sides of the House."

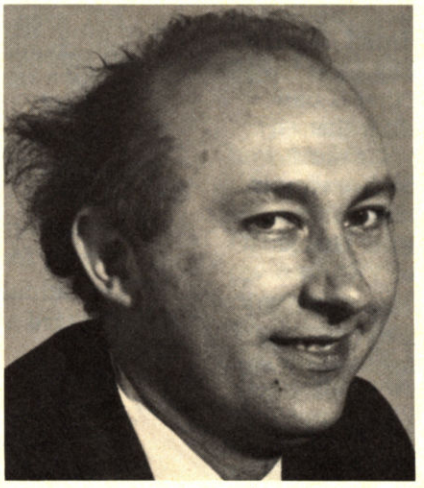
He had taken time to visit with us, to discuss and understand what we mean by Indian Government and sovereignty and the importance of these concepts in our lobby.

"When I have heard representations by Canadian Indians in London, I have heard none of them say that they want to break up the federation or that they do not want to be Canadian. However, I have heard everyone of them say that they want to be Indian and that they want to preserve their nationhood. It is difficult to understand why in the charter there is the requirement for a constitutional conference to be held within a year. I wonder why that has not been done before and why there has not already been a definition of the rights of the Indian nations that are to be preserved at the constitutional conference.

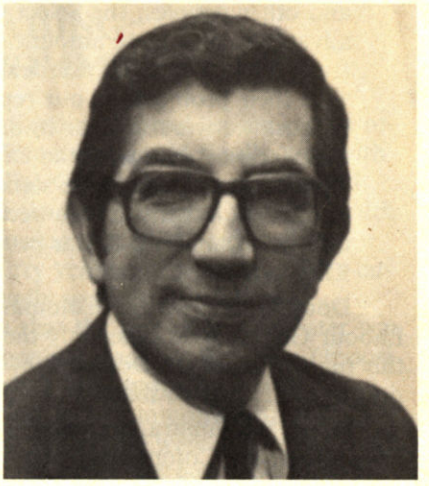
Why have men with great dignity presented their case proudly and sincerely to us over many months? It is because they feel and care for their own Indian nationhood, their traditions and their culture, not just their standard of living. Of course, they care about their standard of living, but it is for their nationhood, as a part of Canada, that they care most."

The Speaker now called Mark Wolfson, a modest Conservative backbencher, and the House stilled to

*Sir Bernard Braine: Tenacious defendant of international human and political rights.*



*Bruce George logged up many hours with a useful expose of federal/provincial/Indian Government relations.*



*Stanley Clinton Davis, opposition spokesman on Foreign Affairs, visited reserves in Canada last Christmas. He was able to substantiate many of the fears that M.P.'s expressed.*

hear the quiet conviction of a man who had lived on an Indian reserve:

> "When I stood for selection for a parliamentary seat, I included in my curriculum vitae the fact that I had been a teacher on a remote Indian reservation in British Columbia. Neither I nor my selectors ever expected that that experience would be so directly relevant to my work in the House.
>
> The time that I spent in Aiyansh on the Nass river in British Columbia among the Nishga Indians was happy and fulfilling. I can speak now with some authority, understanding and certain warmth not only for the Indians whom I knew, but for all those Canadians who are truly native born.

*Mark Wolfson had, as a young man, spent two years teaching on a Nishga reserve. The respect and admiration he had felt for the Indian nations then now obliged him to fight for their rights in his own country.*

> The House, in its discussions on the Bill, should give special consideration to how the rights of the Indian peoples can best be safeguarded. The Indians, the Inuit nations and Metis are minority groups still living uneasily with modern Canada. Consideration of their position today takes us back a quantum leap in time to the very root of British North America. In their eyes, their ties with the British Crown and Parliament have always been of a special kind. That is what the treaties mean to them.
>
> The House has a responsibility-it may be an uncomfortable one-to act with care before that link is broken. As has happened many times before, we debate and decide with history at our shoulder.
>
> I shall abstain in the Division tonight, not in anger against the Bill or in insult to the undoubted sovereignty of an old dominion, but in sympathetic hope for the future well-being of the Canadian Indians with whom I spent good days and whose way of life I still admire."

Stanley Clinton Davis delivered his first speech in his new position of Labour Foreign Affairs spokesman. His task was to sum up the debate and present his Party's arguments on the issues. He supported those who spoke for the Indian Nations. He had visited many Indian reserves and further substantiated the fears exposed.

> "If injustices have been perpetrated," he declared, "and if the Canadian Indians have a sense of grievance, I submit that we have a duty to consider them and to articulate their grievances as long as we are required to adjudicate on the Bill. If their voice has not been heard properly in Canada, as it is claimed by them, it is right that it should be heard in the House of Commons, as it has been today. However," he concluded, "whether it is right to divide the House on various amendments that may be tabled is a matter of political judgment. Our judgment now is that it would be preferable to discuss these matters, but not to divide the House."

The debate was more than we had hoped for. For the Chiefs who were there, from Saskatchewan, B.C., Manitoba, and Alberta, it was an emotional, and exhilerating experience to hear their lobby - their words, their history, their hopes and fears, their position -well articulated on the very floor of Westminster. So much time and energy, so many resources had been spent coming over to this largely lonely city of London, doggedly pursuing M.P.'s through the parliamentary corridors, waiting hours in the Central Lobby: they felt it had been worthwhile. The front benches of the Gallery had been filled with the Canadian Governments elite: Jean Chretien, the Canadian High Commissioner, all the provincial agent generals...and they had been forced to listen to an Indian debate such as had not even been heard in Canada.

Even the sudden emergence of hundreds of M.P.'s from the nooks and cranies of Westminster into the full light of the House to cast their votes blindly along Party lines was not enough to quell the feeling of a lobby well done. Forty four M.P.'s had broken Party ranks to vote against Second Reading and many had abstained.

Now we were set for the Committee stage, the discussion of the Amendments, on February 23rd.

## THE COMMITTEE STAGE: HOUSE OF COMMONS:

The Committee was open to the floor of Parliament. Stanley Clinton Davis opened the debate aggressively for the Opposition: "For the most part amendments were available to hon. Members only yesterday. It is outrageous that Members should have so little time to give due consideration...

> "To proceed with the Committee so soon after Second Reading is to deny hon. Members the op-

portunity to research a number of matters that are germane to our consideration. For example, it came to my notice only a few hours ago that a Bill had been enacted in the Federal Parliament-Bill C 48-which could eradicate oil and gas rights on land that is subject to aboriginal claims."

David Ennals thought the news of a successful Indian legal application should also delay proceedings:

"I wish to raise an additional point, which has transpired only today and which is extremely relevant. On Second Reading we considered a number of legal actions which were awaiting. They included not only the petition to the House of Lords and the writ of the High Court from the

*David Ennals, former Minister of State for Foreign and Commonwealth Affairs and passionate defender of the treaties since 1979, took the time to understand the Indian Government position and its importance in our lobby.*

Indian nations of Saskatchewan seeking certain declaratory orders, but the submission in the Chancery Division of the High Court from the Indian nations of British Columbia, Manitoba and Ontario.

This morning, in the Chancery Court, those Indian nations asked Mr. Justice Vinelot to order a speedy trial of their action. The judge said that: "the case raised issues of law of great constitutional importance and that they should be clarified at the earliest moment."

He then directed that the case should be heard on 8 June 1982, or at the first available opportunity. It became clear during the course of the hearing that if the plaintiffs succeeded in their action, the Canada Bill would be declared unconstitutional and of no effect. That would have profound complications for the continuing controversy, and for Canada itself. That underlines my submission and the submissions already made to proceed with the Committee stage of the Bill would bring us into contempt."

Motions to delay were ignored and members looked at the amendments. There were a large number and they were grouped according to content. There were the complex procedural series advocated by Enoch Powell, of an exceptionally logical mind, where he dealt with the paradoxes and disparities within the Bill. When he had first submitted some written amendments calling for delays, we had contacted him and he had been quick to point out, albeit very courteously, that he had no interest in the Indian lobby, he was merely irritated by a sloppy Bill. However, he used our information and our lobby very effectively to point out the inconsistencies and contradictions of our Bill. In a very abstract way he was able to show that our fears that our Rights were not safeguarded were very well founded.

The Quebec amendments were only fielded at the last minute and were initially rejected by the Clerk for debate as they had not been properly drawn up. We heard no more of them.

Dale Campbell Savours, Labour, wished to present amendments on behalf of the Anti-Abortionist lobby in Canada. He was ruled out of order but he persisted in his attempts until he was asked to leave the House.

The other two main sets of amendments were those from the Indian lobby and they dominated the discussion. There were two trains of thought for the Indian amendments. The Indian Association of Alberta continued to work with Sir Bernard Braine and Bruce George to amend the Bill itself, through the omission or addition of words and phrases to clarify or strengthen the existing clauses in the Bill. The main addition was the mandate and terms of reference for an Aboriginal Rights Commission. They had no doubt spent considerable time with their Parliamentary Agents who advised this was the only acceptable procedure.

FSI Chiefs and representatives had also spent considerable time with their Parliamentary Agent. Representatives from the other active lobbyists in London, UBCIC and Four Nations Confederacy, were also present at these meetings. Our advice was that our own suggestion, an Indian Rights Amendment Clause to delay the coming into force of the Act until certain requirements were fulfilled, might have a better chance of being accepted. Chief Sol Sanderson also preferred this approach because it allowed clear and strong statement of our position. This new clause was to be introduced in a form that would invite maximum debate and understanding of the issues. The final Indian Rights Bill would be refined in future negotiations. Mark Wolfson tabled this amendment:

**Mr. Mark Wolfson:** ...The clause would delay the coming into operation of the Canada Act until certain steps had been taken, but it would not delay the passing of the Bill. Similar provisions allowing the Scotland and Wales Acts of 1978 to be brought into force or repealed by order, depending on the results of referendums in Scotland and Wales provide a precedent as they, too, concerned important constitutional proposals.

If new clause 2 and the new schedule in amendment No. 23 were included in the Bill, the sequence of events would be as follows. The Canada Bill would become an Act of Parliament, although not yet in operation either in the United Kingdom or Canada. The Canadian Government would then have to pass legislation and take other steps to satisfy the conditions set out in the new schedule. When those conditions appeared to have been satisfied, the British Secretary of State would lay a draft Order in Council before Parliament and there would be an opportunity for both Houses to discuss it. Until each House was satisfied, the Canada Act could not come into operation. That puts the effect of new clause 2 in plain English.

The new schedule seeks to establish an improved and more specific framework in Canadian law to protect the rights of the aboriginal people of Canada. I fully accept that it is for the Canadian Parliament to decide how this is to be achieved, but the new schedule provides a guideline on what has most concerned this House...

The Indians case is now confidently stated and the Indian people are speaking more clearly than ever with one voice....

I wish to demonstrate, in their own words, how the Indians have achieved a clarity in putting forward their arguement. I shall quote from a declaration of Indian rights. This document is signed by the Joint Council of the National Indian Brotherhood and is dated 18 November 1981. It was part of the catalytic effect of needing to put an arguement together before the debate took place in the House of Commons...

It is a declaration of their place in Canada today, directly linked to the wilderness Canada of long ago. It is a declaration of the place that they reasonably want to hold in the Canada of tomorrow. It reads:

"We the Original Peoples of this Land know that the Creator put us here.

The Creator gave us Laws that govern all our relationships to live in harmony with nature and mankind.

The Laws of the Creator defined our rights and responsibilities.

The Creator gave us our spiritual beliefs, our Languages, our culture, and a place on Mother Earth which provided us with all our needs.

The Creator has given the right to govern ourselves and the right to self-determination."

The declaration goes on to set out the principles on which the treaty and aboriginal rights are based. I shall not quote every detail, but three short paragraphs demonstrate the nub of the Indian point of view:

"Any amendments to the constitution of Canada in relation to any constitutional matters which affect the aboriginal peoples, including the identification or definition of the rights of any of those peoples, shall be made only with the consent of the governing Council, Grand Council or Assembly of the aboriginal peoples affected by such amendment, identification or definition."

Does that not make the point that has already been aired by several speakers today that, at present, the Indians have no system whereby they are adequately consulted about changes which affect them? They wish to be involved in such discussions and that seems to me a reasonable wish.

The declaration goes on:

"A Treaty and Aboriginal Rights Protection Office shall be established;

A declaration that Indian Governmental powers and responsibilities exist as a permanent, integral fact in the Canadian policy."

The first paragraph deals with treaty rights. It says: "Formal acceptance and confirmation of all Aboriginal, Treaty and other rights and freedoms recognized by the Royal Proclamation of the 7th of October, 1763 and recognized and confirmed by-

(a) the various treaties made between the Crown and nations or tribes of Indians; and
(b) the various settlements and agreements made or entered into by the Crown with Indian peoples, including declarations and judgements accepted by Indian peoples...

Indians believe that the proposals before Parliament fail to protect their rights under the treaties. What they are asking is that a patriated constitution should spell out in detail Indian rights, and should entrench them...

Only in this way can the Crown's obligations towards the Indians be fulfilled. This is all the more crucial if the patriated constitution causes a shift in balance between the provinces and the federal Parliament.

It is inequitable that only the views of one party to the treaties have been sought...

The second paragraph of my new schedule refers to

"Formal recognition of the inherent right to Indian government within the Canadian confederation".

This is concerned with ways in which the Indian people could be involved within the federation that would produce some opportunity for self-government. The question for many people is whether this proposal is realistic and whether there are examples to demonstrate how the idea could be

developed. My answer is "Yes". In Saskatchewan, there has been effective development of Indian self-government...

I turn now to the final paragraph of my new schedule that refers to the identification, definition and implementation of the rights referred to in the first two paragraphs. This boils down to the essential need for the Indian people to have a more positive involvement with the Canadian Government and the Canadian Parliament which affect their rights and their position.

At present, they are deeply concerned that the planned constitutional conference may not give them the opportunity to air their views and give them a proper standing at the conference. The federal Government will be there in the shape of the provincial Prime Ministers. But the other nation, in Canada, the first nation, will not, as things stand, have any direct representation. They wish for a place at the conference table.

It is up to Canada and the Canadian Government to decide how best this desire of the Indian people can be achieved. However, it seems to me correct and right that this House, through the new clause and the new schedule, should demonstrate clearly to Canada our concern about the situation as it now stands and our wish that improvements should be made.

We drew up a second amendment as a precaution. David Ennals liked it and tabled it; also a strong statement of the Indian Government position:

**Mr. Ennals:** (My New Clause) empowers the Secretary of State to lay an Order in Council for approval by both Houses before the Provisions of the Act come into operation. Therefore it seems that certain actions should be taken before the Bill is enacted. That is why in New Clause I, I propose: "The Secretary of State shall not lay before Parliament a draft of an Order in Council to be made under this section unless:

(a) it appears to him that a formal novation of Treaty obligations of the Crown of Great Britain and Ireland to the Indian Nations of Canada has been effected with the full and free consent of the Indian people as required by international law, and in fulfillment of the solemn and sacred nature of the promises contained in the Treaties, and

(b) it appears to him that a Constitutional Conference has been held for the purpose of obtaining the full and free consent of the Indian Nations to the Constitutional proposals directly affecting them."

I am concerned entirely with the position of the Indians. There is no doubt that the Bill, as pointed out by Sir Bernard Braine, has some grave weaknesses. Aboriginal and Treaty Rights are not guaraneteed, protected or entrenched.

What I do know from the Indians whom I have met and spoken to on many occasions was that they believed that they had a treaty relationship with the British Crown and that they regarded the Canadian Government as agents of the British Crown. If they believed that, even with all of the sophistication that exists behind me and in front of me, this Parliament has a right and obligation to see that the Indians, if there is to be any change in the treaties forged with them, must be part of the consultative processes.

Even Mr. Cunningham will not argue that the Indians agreed, accepted, were consulted on or signed a piece of paper which swore away the treaty rights that they had gained from negotiations with the British Government and the Crown. Of course they did not agree. My hon. Friend knows that they did not. That is why I say in the new clause that there should be agreement with the Indian peoples. Everyone recognizes that that has not happened.

The Joint Council of Chiefs representing all the registered Indians in Canada, have passed a resolution which fully supports the new clause that appears on the Paper in my name, as well as the new clause that appears on the Paper in the name of the hon. Member for Sevenoaks. We recognize that a small minority of people in Canada not only feel that they have been misled and that perhaps their rights have been eroded, but that we are passing through Parliament a Bill that does not protect them. Of course, many of the rights that are derived from the treaties include matters that are essential to their way of life.

There are Indian land rights and reserves, including mining and water rights, their own form of self-government, including the Indian judicial system and law, the protection of culture and language, hunting, fishing, trapping and gathering. There are so many rights that have been promised to the Indians but which they feel are in question.

Many hon. Members will have received individual or collective representations from Indian chiefs. They write in moving terms...

The Canada Bill adversely affects the Indian nations in two ways. First, it removes constitutional protections originally set in place as permanent guarantees by the Crown and Parliament. Secondly, it provides the federal and provincial Governments of Canada with a mechanism to extinguish Indian rights...

If I speak passionately today, it is because I believe that this Parliament has the right and the duty to ensure-this is our last chance to do so-that the rights of the minority Indian populations of Canada are guaranteed. That is the purpose of my new clause.

Formidable documentation was presented. Bruce George told the Press that he didn't expect to accomplish more than a couple of weeks delay so as to put maximum material on record. His researchers worked overtime and his voice was quite equal to the lengthy presentations. Sir Bernard Braine had also worked hard to achieve the same end. He returned to the International Covenant on Civil and Political Rights and the International Declaration of Human Rights, to which both Britain and Canada are signatories, as the yardstick by which to measure what rights Indian Nations have and how they have been eroded and will continue to be eroded through the provisions of the Canada Bill.

New speakers came to our support each session. Nicholas Winterton, Conservative, developed the anxiety that Stanley Clinton Davis had introduced with his mention of Bill C-48.

> "I believe that the whole argument revolves around the mineral rights that undoubtedly exist within territories and lands over which the Indians have rights. They believe that the rights to the land could easily be revoked under the Bill as it stands....My concern is that the Indian peoples and the aboriginal peoples of Canada could be deprived of valuable mineral resources on which they are sitting and over which they have rights. As my hon. Friend has indicated, the Bill appears to turn completely round the original agreement that was the basis of the treaty between the Indian peoples of Canada and the Crown of Great Britain..."

Towards the end of the evening, we had noticed considerable movement in the House, and especially so among those who had been speaking on our behalf. It turned out they were deciding among themselves which amendment they felt would collect the most votes. This was a tactic we were not expecting and we were fairly distressed to discover they had decided to vote on the one calling for the omission of "existing" from Clause 35. The Committee divided: 42 for and 154 against the amendment. We could see the point of their tactics but felt they had forgotten the point of our amendments: to give the Indian Nations a firmer base from which to negotiate our position within Canada. David Ennals and Mark Wolfson therefore agreed to push their two new clauses for the second session of the Committee State, now set for March 3rd. For after six and a half hours of complex and solid debate, the agenda was only half dealt with and the debate extended for another evening.

There were new speakers again in this session. It was especially gratifying to see Joe Grimond, former Leader of the Liberal Party, expressing his support for our amendments. He had been most reluctant to see our lobbyist. Dafyd Thomas, Plaid Cymru, expanded on the vulnerability of Indian resources in the Bill. The Welsh people have a particular understanding of the expropriation of natural resources and the effects of uncontrolled exploitation by Foreign interestson the native community. It had always been a pleasure to meet with the Plaid Cymru, speaking as one indigenous Nation to another.

On this second Committee evening, it was a matter of tying up all the loose ends, making sure that every detail of why the Canada Bill threatened our Aboriginal and Treaty Rights was on record, making sure that the history of Indian/Canadian relations was properly catalogued; of documenting the legal positions of the Indian Nations, of documenting our trail to secure our rights, through Canada, Britain, Europe and the United Nations. It was an evening of answering all the questions that were posed about the Indian position, like why had there been no Indian protest in 1931. It was a time to correct misinformation. David Ennals and Mark Wolfson used the occasion for a passionate examination of why the Indian Nations needed the support of the proposed new amendment clauses to strongly move towards useful negotiations with the Canadian Federal Government.

Bruce George continued to insist that a higher number of votes for an amendment was more important than the content of the amendment and forced the House to divide on his Amendment. Our vote diminished this evening: 28 for and 142 against. By this time it was long after 10 p.m. and most members had had enough of the Canada Bill and gone home. Rather than force a derisory vote among the very few members left in the House, we reluctantly withdrew the Indian Rights Amendment clause.

## HOUSE OF COMMONS: THIRD READING

The Third and Final Reading of the Canada Bill in the House of Commons took place on Commonwealth Day. Representatives for the Indian lobby were expecting that the Federal Government's lobby would make itself felt on this last evening.

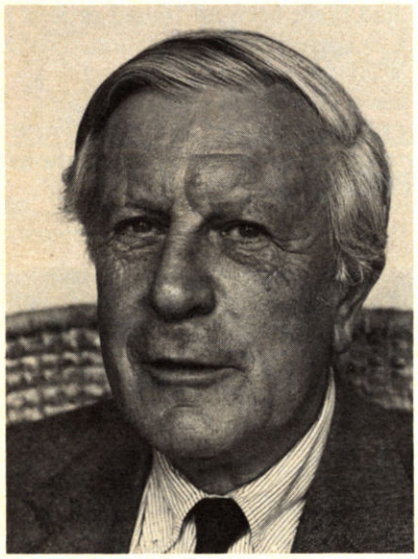
Certainly the opening speech of the Opposition front bench showed a weakening stand. While repeating doubts as to the adequate protection of Aboriginal and Treaty Rights, Stanley Clinton Davies felt that Canada had taken notice of the debate and "glaring ambiguities in the federal and provincial governments' attitudes and policies towards Treaty and Aboriginal Rights will be cleared up". Former

Opposition Leader and Prime Minister, James Callaghan, had been invited to Canada the previous week. He returned to express the view that Canadian matters brooked no criticism or interference from Britain.

The Liberal Party spokesman held to his notion of an international Liberal Party alliance that would brook no debate on the issue. However, at the same time, he described exactly the atmosphere of distrust and disquiet that pervaded the House:

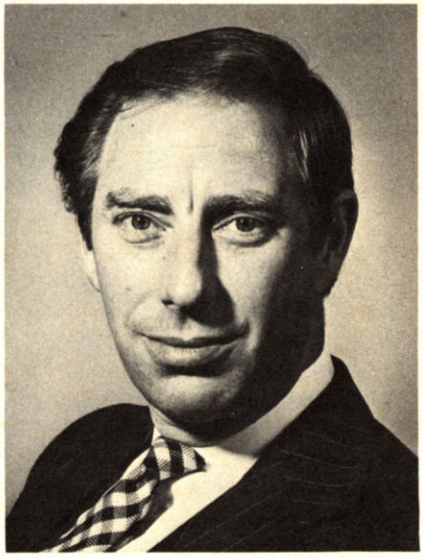
> "It is a matter of some sadness that, although on this occasion we should be exhibiting unanimous and undiluted pleasure at what is before us-the patriation of the constitution of a great country, we have seen the expression of great disquiet by many hon. Members about how this constitution might be applied and especially how it might affect the future of the aboriginal peoples. As Mr. Cunningham said, this has in a remarkable way dominated our debates."

And the celebration and accolades that Canada expected never came. Other M.P.'s stubbornly repeated the Indian concerns and the Indian position. They stubbornly held out for reassurances from Canada that the Indian fears were not justified. After



*Former leader of the Liberal party, Joe Grimond, was reluctant to meet us but then broke from his party to support the Indian amendments.*

*Dafyd Ellis Thomas of the Plaid Cymru, the Welsh Nationalists, could understand only too well the importance of protecting Indian resources against expropriation by a dominant society.*



*Ivan Lawrence, Conservative, maintained the British reputation for respecting the ideals of honour, justice and trust responsibilities.*

sixteen hours of debate on our position in the three previous weeks, the level of informed debate was high. M.P.'s backed up their apprehensions with impressive documentation.

> Mark Wolfson, Conservative: "There can now be no doubt that the issue has been and will continue to be central to the reservations that hon. Members have over the patriation of the Canadian constitution.
>
> Canada has to a degree so far failed in her own high ideals.
>
> It is still my view that the Canada Bill does not explain what Canada intends to do about the Crown's obligations to the Indians.
>
> We cannot assume that that lack of explicitness is an oversight. Nor, I believe, can the House necessarily assume that the intention of the federal and provincial Governments is benign. If we are to assume anything, we must assume that those sections will be interpreted in Canada in the light of Canada's past and present Indian policy.
>
> Since 1840, despite minor fluctuations, Canada has had only one policy for Indians. That policy is best summarized by the word "assimilation". Indians are to be assimilated. They are to become part of the mainstream. They may hang on to their feathered headdresses, they may make artifacts for the tourist trade and the remnants of their culture will be housed in museums, but they will not be allowed to lead their own way of life, to control their own communities, to shape their own economies or to develop the resources of their own lands.
>
> "I do not wish to deal with the detail of Canadian policy. I wish only to point to the broad sweep of assimilationist policies for Indians that Canada has practised since 1840. It remains my belief that the policy of assimilation is a direct breach of the Royal Proclamation of 1763 and of the treaties. The essence of the Crown's constitutional arrangements in relation to the Indians is that in exchange for their peaceful surrender of vast areas of their homeland, the Crown will respect and protect the Indian way of life forever.
>
> The policy of assimilation is wrong. It is also a failure..."

Many M.P.'s held out for a full examination of the legal issues involved. Others also pointed out the disrespect of dealing with a Bill that would be dealt with in the courts in just two day's time for the

Alberta Indian cases; two weeks of Quebec and three months for the UBCIC and FSI cases. Eric Cockeram, Conservative:

> "My criticism of the Government is not that at the last election we put the importance of respect for the rule of law high in our manifesto, but that they seek to legislate before the law has been ruled upon. The Government are behaving in a disrespectful manner to our courts and the courts in Canada, which is a sister country of the Commonwealth. That is unworthy of the Government..."

Ivan Lawrence, Conservative, spoke for the first time to press the question further:

> "Surely we have a moral obligation to make certain that the treaties that a British Queen and a British Government negotiated with the aboriginal people of Canada are discharged with no vestige of dishonour.
>
> I do not think that it is a matter of presumption to delay the Bill. It is far more important than that. It is a matter of honour. In all honesty, I cannot see that our obligations have truly been honoured, and I cannot therefore in honour support the Bill..."

David Ennals, former Labour Minister of State for Foreign and Commonwealth Affairs, was seriously perturbed by the continuing silence of both the British and Canadian Federal Government toward the concern expressed during the previous three weeks:

> "I do not believe that we have any reason to be proud of the actions of either the British Government or the Canadian Government in relation to the Bill and the issues that lie behind it. We have before us a Bill and a Charter of Rights which, although it has been ruled we can amend, we know we cannot, and which the Government will neither justify nor explain.
>
> The Canadian Government also appear to have sworn some sort of vow of silence. Nor has the Government Front Bench-although our Front Bench has spoken openly, it has voted-said a word that can be helpful or reassuring about the problems that have been presented by hon. Members on both sides of the House in the debate. We have been required to put the rubber stamp of both Houses of Parliament and ultimately the seal of Her Majesty the Queen on the Bill, which does nothing to entrench the rights, traditions, nationhood and forms of self-government of the Indian peoples.
>
> The only people so far to come well out of this constitutional argument are the Indians themselves. Both here and in Canada the Indians have spoken with great clarity and unity-greater unity than any of us expected. If we go back to 1979, we saw a massive campaign. Three hundred and fifty chiefs came to London, led by Clive Linklater-a Saulteaux Indian-who had never been to Britain before. He and his friends awoke many of us to the issues that we are now facing. The Indians are not asking for material assistance from us or for money. They are asking us to ensure, as we promised, that their constitutional status is protected in the renewed Canadian Federation. In the absence of any response to all that has been said by the Indian leaders and right hon. and hon. Members-and there has been no response-I cannot vote for the Bill..."

This was a feeling that had been repeated time and time again, every evening of the debate. At the close of the Committee stage on March 3rd, the government was directly questioned on the Canadian response to the debate and could give no reassurance beyond that Minister Chretien had met with the British Government and assured them he had taken note of the matters raised. The Opposition had met with Chretien earlier and all he had been able to respond was that he really did have good will to the Indian people. M.P.s' fears were compounded by Canada's "blank wall" response. There had now been twenty-three hours of debate focussed on the Indian questions. And now at the closing of the debate, the Attorney General also would give no answers beyond the Government litany that had repeated at the end of every evening:

> "The Government has consistently taken the view that we must leave to Canadians to judge what is good for Canada."

And he ceremoniously washed his hands of every promise, agreement and Treaty ever made with the Indian Nations in order to take and make this country now called Canada.

As the division bells rang, M.P.'s who hadn't heard a word of the debate, trooped in to vote as they had each preceeding evening, regularly at 10:00 p.m. We lost the vote but we had categorically won the debate.

## HOUSE OF LORDS: SECOND READING:

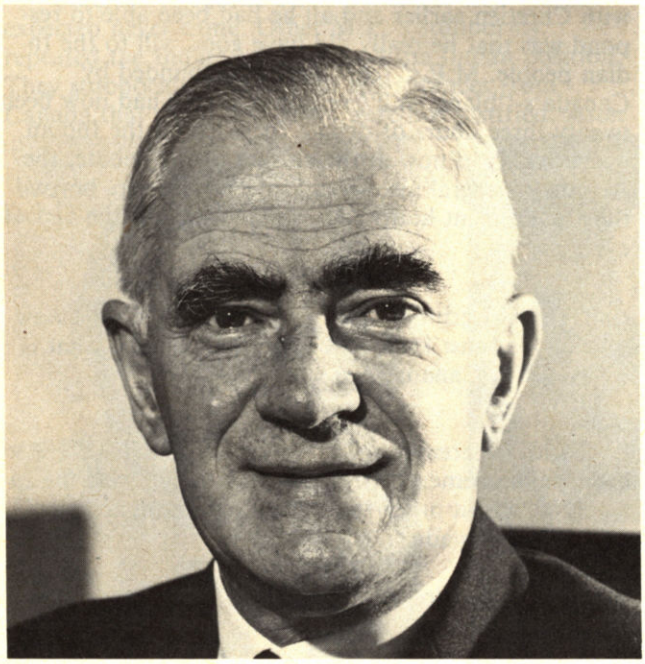
Notions of honour, of trust, of respecting solemn Treaty are generally held in higher regard in the House of Lords. That was what we had been led to expect from our lobby of the peers. There are nearly one thousand peers in Great Britain but only two hundred or so are active in Westminster. Many are hereditary peers, some of their families have been there for hundreds of years. And many have earned what is called a life peerage (their title dies with them). These peers have contributed greatly to their country. Our Elders who visited Westminster found that the House of Lords had a very similar role to the Council of Elders at home.

The First Reading of the Canada Bill in the House of Lords took place the very next day, March 9th. Second Reading was March 18th. Jean Chretien, the Canadian High Commissioner appeared now and again, wary after their experience in the Commons, and the full complement from Canada House were in the gallery to hear apparently selected speeches.

Foreign Secretary Lord Carrington opened the debate for the Government along predictable lines:

> "The Government believe that we should respond to this request by passing the Bill in the form in which it has been received..."

Lord Stewart of Fulham, spokesman for the Foreign and Commonwealth Affairs for the Labour peers, immediately opened fire and launched battle for the protection of Treaty and Aboriginal Rights. Labour peers felt they should try a different approach from the House of Commons, more subtle. They had been given a ruling from the House that no amendments to the Canada Bill were admissable in the



*The long parliamentary experience of Lord Stewart, former Labour Minister of State for Foreign and Commonwealth Affairs and now official spokesman in the House of Lords, made him a persistant and wily fighter for the Indian lobby.*

*Government Foreign Secretary, Lord Carrington, refused to meet Indian representatives. He set the conservative tone for the debate in the House of Lords. "Hear no evil, see no evil, speak no evil".*

Photo: Judah Passon, Network.

Lords. So they moved a Motion:

> "That this House, aware of the anxieties which have been expressed about the Canada Bill now before the House by representatives of the aboriginal peoples of Canada, is confident that the Government of Canada, in consultation with representatives of the aboriginal peoples, will use the provisions of the Bill to promote their welfare."

Lord Stewart was still worried by the fancy legal footwork by which Britain found it had divested itself of all responsibility for the Treaties.

> "We have heard a great deal in recent months about treaties made with many of those other Indian nations with successive British sovereigns from George III onwards. We are now told on the highest legal authority that responsibility for carrying out any duties we accepted under those treaties now belongs not to the Parliament and Government of the United Kingdom but to the Parliament and Government of Canada.
>
> We cannot dispute that legal decision, but I am bound to say that a number of laymen will still have this uneasy thought at the back of their minds: "A" makes an agreement with "B" and promises that he will do certain things for "B". Then "A" makes a further agreement with "C" and says, "My duties towards "B" are now handed over to "C" and he will fulfill them, and I do this without any consultation with "B". The
>
> Indians were not a party to the emergence of Canada into full independence. At the very least, we must accept that it must be difficult for the Indians themselves, whose forebearers made these treaties, to accept the proposition that our obligations to them under those treaties have now been handed over to Canada despite the fact that the Red Indians were never asked whether they wanted that transfer to be made."

The spokesman for the Liberal peers upheld the international Liberal party Alliance:

> "I know that a number of noble Lords are concerned that the rights of Canadian aboriginal

peoples may not be respected or protected. I can only say that Canada is a very responsible country. It has a government who have a fine record in human rights. I have every confidence that the future of these important minorities will be in safe hands. I do not think that it is for us to involve ourselves in these matters which are the responsibility of Canadians."

Two Canadian Lords had come over to Westminster for this debate. It was the first time either had ever done so and their words seemed to carry a lot of weight in the House of Lords this first evening. Neither had apparently met with Indian leaders. Lord Shaughnessy:

"Historically, Canada's record in its dealings with the native peoples has not been without blemish. Errors have been made in the past. But in comparison to other countries which have been faced with the complex responsibility of safeguarding the rights of minorities, I must assert that Canada's record has been better than most.

I should like to cite one or two instances to support this contention. The native peoples, numbering about 1.3 million in Canada, all have the franchise and thus have access to the normal expedients to make their case. Additionally, contrary to some assertions that have been made, the native peoples consult with the Federal Government at the ministerial and Cabinet committee level. In regard to native land claims of the northern people, a Royal Commission has examined carefully these claims and not long ago made strong recommendations in support of the native cause. I would just make one other observation in respect of the recognition of the status of the Indian population, and it is that the former Lieutenant Governor of my home province of Alberta, the honourable Ralph Steinhauer, is an Indian.

For a short time the debate swung away from our lobby as two peers who had served in the Commonwealth Relations office had their say. Both had refused to meet with us, but had obviously met with Canada House. What they said, Canada House had been propogating for the duration of our lobby in London. For example, Lord Alport:

"The Canadian Governments, either provincial or central, have largely, if not entirely, financed the campaign of the First People of Canada in relation to this Bill so that their case could properly be presented at Westminster and in the British courts. Nobody here or in Canada has the slightest grounds for alleging that in this respect they have not been fairly treated. Canada was the first Commonwealth country to set up a special department of Government to extend and administer aid to developing countries."

Lord Gifford had been through the Russell Tribunal. He had met many Indian leaders on different issues, among them the Canadian Constitution. He now intervened quite vehemently:

"I intervene only because of the conviction in my heart that the passage of this Bill is likely to be calamitous to the future welfare of the indigenous people of Canada; that we have an obligation to say and do what we can during the passage of this Bill of reference and to try and avert calamity."

"Yes, of course there must be patriation of the Canadian Constitution, but not yet, not before the litigation before the British Courts has been concluded; not before the indigenous peoples have at least been brought into the discussion about this constitution and not, as it were, put off with an invitation to a constitutional conference not before but after the constitution itself has been passed; not before this vague phrase "existing" has been in some way explained and defined. How we bring that about is very difficult. When I read the terms of the Motion I am bound to say to the House that I am not confident at present that "The Government of Canada, in consultation with representatives of the aboriginal peoples, will use the provisions of the Bill to promote their welfare". I am the reserve of confidence; I am apprehensive and sceptical. So, to judge from what he said, was my noble friend Lord Stewart."

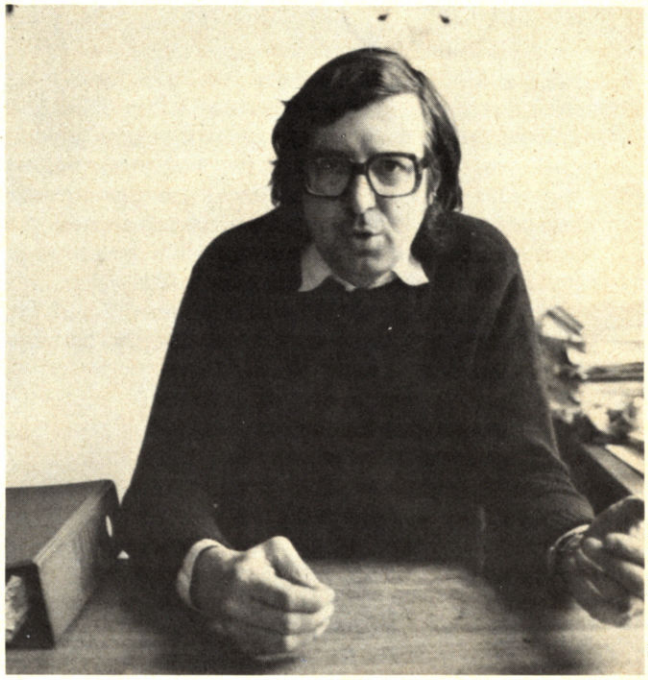


Photo: Chris Schwartz

*Lord Gifford became involved in Indian issues with the Russell Tribunal. Now he spoke vehemently to avert "a calamity".*

Indian Government representatives had met a few times with Lord Renton, a Conservative Q.C. He didn't think our fears were justified when he studied the Canada Bill. However, he was less confident when he studied the history of the Canadian Government's Indian policies and actions on the Indian vote:

> "Although the Act of our Parliament of 1867 gave them the right to vote, it was taken away from them, or rather their grandfathers or great-grandfathers, by the Canadian Parliament in 1880 and not restored by the Canadian Parliament until 1960. They were for many years denied the right of access to the Canadian courts for the assertion of their rights until 1950:"

He rested his case however: "what perhaps is most in (the Indians) favour is that in all this, the honour of Canada is at stake."

The Law Lords of Britain are the Lords of Appeal: they have the authority of the judges of the bench of the Supreme Court in Canada. As we had three legal cases pending in the British Courts we were not permitted to see any of the Law Lords: they considered that any such meeting would be considered prejudiciary to the cases. However, written submissions were made. Law Lord, Lord Diplock of reknown for his policy of treating Irish Republican Army defendants as criminal rather than political prisoners, and for refusing them trial by jury, thought Crown and Parliament retained no responsibility for Indian promises. Law Lord, Lord Scarman, was not convinced:

> "Our Parliament, until this Bill becomes law, retains a legislative responsibility...and it is not a responsibility that can be shelved by participating in a mere rubber stamping activity." He praised the Canada Bill but expressed one residual anxiety: "It is part V that creates my anxiety. The Indian peoples leaders fear that they do not have the safeguard that, for instance the provinces have, against amendment of the constitution without their consent...If something could be done there, I would suggest to our Canadian friends that much would be achieved in gaining the confidence of the Indian peoples."

In all the lobbying of the peers, this was the main problem: they understood what we were talking about, they sympathised, but they didn't know what they could do about it. The Government has a two thirds majority in the House, and the Government was clearly in a hurry to get rid of the Canada Bill, without any changes to it. Besides, Scottish Lords remembered well the part of England, and the Scottish aristocracy, in the expropriation of Scottish lands and rights. Irish Lords thought of the desparate struggle in northern Ireland. The British has little to be proud of in its treatment of the native people of Wales. Many hesitated to berate Canada for what amounted to very similar policies (for instance, for one hundred years the English banned the wearing of kilts and playing of bagpipes in Scotland).

However, there were those who were not crippled by their long memories of past wrongs. Lord Fenner Brockway was born in 1888. He was a Labour M.P. for many decades. He founded and directed the Centre for Colonial Freedom (now called Liberation) long before those concepts were understood or accepted by Colonial powers. His words and experience carried all the weight of the true elder in the Indian sense:

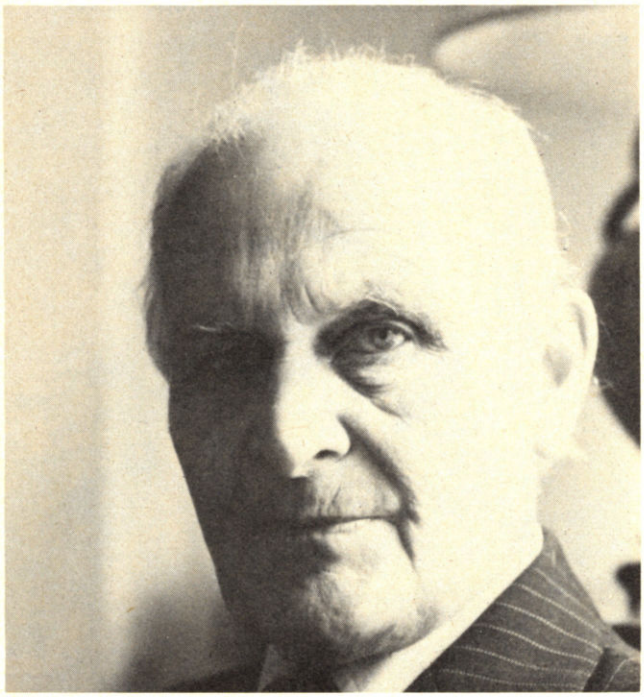


Photo: Chris Schwartz

*Lord Renton thought we were well protected in the Canada Bill. He was less confident when he looked at Canada's record of erosion of aboriginal and treaty rights.*

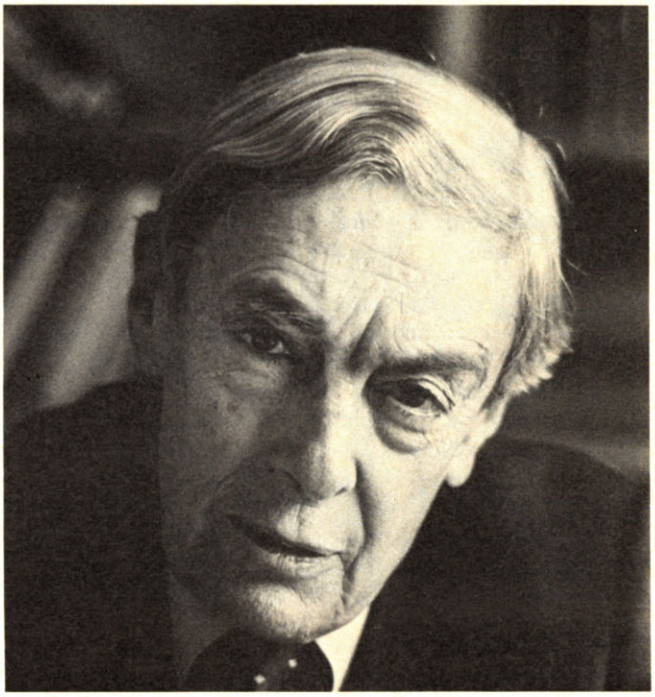


Photo: Mike Abrahams, Network

*Lord Scarman, Conservative Law Lord, could see no relief for Indian nations unless they could be guaranteed a consent clause in the amending formula where aboriginal and treaty rights are involved.*

**Lord Brockway:** My Lords, I should like to begin by telling a story; at least it will make my speech shorter. In 1930 I was called from the Chamber of the House of Commons to meet visitors in the Central Lobby. To my surprise they were three Indian chiefs from Canada. They were marvellously dressed with great head-dresses, spreading wide, and brilliant red robes. I had to take part in a debate, but I got them seats in the Public Gallery. I remember the sensation when they entered...

Afterwards I learnt that they had come here because their ancestors had supported the British in the war of independence in America. They showed me, written on parchment, the treaty which was signed by the King of this country, guaranteeing to them independence. And they came to claim those rights. They had such sympathy among Members of Parliament that we formed an all-party committee, which saw Mr. J.H. Thomas, who was then the Colonial Secretary. Mr. Thomas replied that the treaty no longer had force, that we had handed over to the Canadian Government all responsibility for the Indian people.

Since then I have tried to watch the scene in Canada closely. Like many Members of this House, I have relatives there, and my general impression has been as follows. During the period in question both the provincial governments and the central Government have sought in legislation and administration to assimilate the Indian population with the whites. They have done that by eradicating the Indian community life, by seeking to remove them from their reserved lands, and by destroying their spiritual and cultural character and institutions: in a word, by making them more like white people. In saying this, I am not specifically condemning the Canadian Government. It has been happening all over the world-the strong absorbing the weak...

I want to congratulate Lord Stewart of Fulham on the speech that he made. I am sorry to say that I do not feel that his Motion is justified in expressing confidence in the Canadian Government...

Quite frankly, if you look at the policy of Prime Minister Trudeau on this subject it will be seen that it is not so progressive and reassuring as it is in other ways.

I want to make only two points. The first is that whatever the legal niceties of our having handed over responsibility for the Indian community in Canada to the Canadian Government, a very great moral responsibility still rests with us. Ironically, the Indians in Canada, when they signed those treaties, deliberately asked that the King should sign them rather than the Government, because they believed the King had more constitutional authority. Those treaties were with us; we handed them over to the Canadian Government without any consultation with the other parties to the treaty, the Indian community. I urge that the moral responsibility for the condition of the Indians in Canada still rests with us.

Secondly, I want to say how disturbed many of us are at the speed with which this Bill has been introduced and is being passed through Parliament. At the present time there are legal proceedings in the courts which deal fundamentally with the legal right of the Canadian Government to pass this Bill for our decision without consultation with the Indian community, who were participants in the treaty. These are not frivolous proceedings. Mr. Justice Vinelott, who is presiding over one of the courts, says that the case raises issues of constitutional importance which must be clarified. They are not only not frivolous: the Indians themselves are seeking for early decisions. I want to urge that it would have been much better if the Government had delayed the introduction of this Bill and its passage through the House until decisions were reached by the court.

I would urge two things: first, that the Bill should be delayed until the court cases have concluded; and, secondly, because of our moral responsibility, the Government should meanwhile seek assurances from the Canadian Government that Indian rights will be observed. Prime Minister Trudeau has said that he will negotiate with the Indian community after the Bill has been passed. I suggest that our responsibility for the Indians in Canada is so great that we should urge him to enter into those negotiations before the Bill is passed. If we did those two things we would justify the confidence placed in Britain by the Indian community in Canada.

Earl Grey, Liberal, early challenged his Party's unquestioning alliance with the Canadian Liberals. He had followed the Indian lobby from the beginning:

> "The Indian Nations have strongly lobbied Parliament and the British people since 1979, when 350 chiefs came to London and impressed us by their sincerity, concern and honesty, and put forward the position of their treaty rights and our legal responsibility to honour those rights. It is imperative that their culture and ideals are retained and promoted. An important point is that the Indian nations have not been consulted in the drafting of this Bill, which can affect their future. Decisions have been made for them, but not by them. This has been the historical experience for countless generations.
>
> Canada is one of the strongest and closest

*(Continued on page 34)*

# The Political Deal

**By Chief Sol Sanderson**

To achieve patriation of the Canadian constitution, leading non-Indian statesmen of this country struck a political deal which will have far-reaching effects on the future of Canada/Indian relations.

By British parliamentary practice all means to delay, amend, investigate and make conditional patriation of Canada's Constitution existed and were not unprecedented. But Britain ultimately patriated an unamended, unconditional Constitution which could spell the end to Indian special status within 15 years.

Britain and Canada's refusal to act on Indian Constitutional concerns was determined by the economics of Britain/Canada relations and the economic necessity of exploiting Indian resources for non-Indian profit.

Britain acquiesed to the threat by Canada to declare independance and pull out of the commonwealth.

The threat would jeopardize Britain's economic alliance with Canada. So the deal was to pass the Canada Act and safeguard British economic interests.

Because of the political deal the doors to the democratic process were closed to the first Canadians in Canada and the United Kingdom at the most crucial time in modern day Indian history.

Yet Canada was accomplishing a feat that most countries go to war or make a revolution to achieve.

Canada became independant without any bloodshed. But that fact does not justify the political deal which had an impact in Canada and the United Kingdom. The political deal crossed all party lines and government boundaries in Canada and the United Kingdom. It resulted in members of the governing parties and other parties refusing to meet delegations from the First Nations. More seriously many would refuse to raise our issues and concerns in the assemblies for fear of being laughed out of parliament. Such was the extent of the power of the political deal that the bastions of democracy - the governing bodies in Canada and the United Kingdom closed their doors to the First Nations.

The leaders of government and leaders of all parties had a Party Whip requiring all members to vote in favour of the deal, not the constitution. I want to take this moment to thank the handful of M.P.'s, senators and Lords who expressed their democratic support for our cause in spite of the political deal and the party whip.

**The Political Deal and the Press**

The Theory of the Freedom of the Press was in obvious jeopardy, as a result of the deal. The larger newspaper empires are less than sympathetic to the Indian cause at the best of times, so we could hardly expect any support in the constitution. The largest government owned news media, the CBC, never attended our press conferences or if they appeared, nothing was reported except on the French network or locally in Saskatchewan. The Director of CBC and the CBC news director employed in London were actively lobbying the Deputy Speaker of the House, and providing misinformation on the position taken by Indians. One reporter who fed items to CBC's "Our Native Land" refused to interview an Indian leader unless there was a white person involved in the interview.

Our press conference reports were tainted by the obvious biases of the United Kingdom or Canadian press.

The reports were symbolic of the news reports that one receives and hears at the time of war.

The reporters in the United Kingdom and Eastern Canada are very ill-informed in the issues and never understand the presence of Indians in Ottawa or London.

At a press conference and reception held in Canada House in London, I and several others were locked out of the room by the organizer from Canada House and the press. The press conference was called, we understand, by the Honourable Jean Chretien. Afterwards the press was invited to enjoy a few drinks with him, all paid for by Canada House.

**The Political Deal and the Legal System**

The political deal impacted the very institution we have always been led to believe is above political manoeverings - the legal system.

The whole legal argument for Indian Special status was never heard in Canadian or British Courts.

In Saskatchewan, Attorney General Roy Romanow turned down our request to go to the courts in Canada for a ruling on the constitutionality of patriation.

The changes to our treaties would be substantial and as a result would require the consent of both parties to the treaties.

In Britain three Indian cases were put forward in the courts. Evidence of the political deal was seen in the way the British Courts dealt with the matter. The IAA case was heard first even though the UBCIC "dominions case" was filed first.

The IAA case challenged the Kershaw Committee's findings on a narrow point of law. The fact that the weakest Indian case was heard first, and then only partially heard, was mute testimony to the political deal. The Crown prosecutors and Judges were swayed by the political decision of the Kershaw Committee. The press on both sides of the ocean latched on to the lower court ruling on the IAA case as the final judgement of Britain's obligations. The public was misled to believe the IAA case had reached its final judgement and with that Britain's obligations to the First Canadians.

In every case where the IAA case was reviewed, it was a political decision not a "legal" one.

Even as we progress politically in the international arena, the necessity of international court action is more and more evident. The British government has announced it will

attempt to strike out the remaining Indian court actions in Britain.

It is evident that Britain wants to wash her hands of the Indian question once and for all. Further court action in Britain would, in their minds, only serve to undermine the political deal and embarass Britain and Canada.

**The Political Deal and the Funds**

Because of the deal, it was necessary to stop the Indian Constitution lobby on both sides of the ocean. The continued and effective opposition by the First Nations was a growing embarassment to Canada and the United Kingdom. Tactics were developed to re-direct funds previously committed to provincial and territorial organizations to the bands. We all realize the need for additional monies at the band level and do not begrudge the transfer of funds. But it left us all with cash flow problems which are only just being alleviated now that patriation is nearly complete.

The FSI was bluntly told by Chretien in November, 1981 that we would not receive any tax payer dollars to fight the Constitution.

In Britain, Canada House lobbied against the First Nations, using funding as a weapon. Their outright lies and misinformation were heard within the parliament itself. Lord Alport said during Second reading in the House of Lords:

> "The Canadian Governments, either provincial or central, have largely, if not entirely, financed the campaign of the First People of Canada in relation to this Bill so that their case could properly be presented at Westminster and in the British courts."

We heard that sentiment time and time again in Westminster and in the British and Canadian Press. CBC and the Toronto Globe and Mail worked hand in hand with Chretien and senior government bureaucrats to perpetuate the myth.

Here at home the fund-raising continues as it has throughout the Constitutional Battle. Many bands and individuals have made donations to the Treaty Rights Protection Fund. Gas tax rebates were signed over for short term investments so that interest on the investments could go toward paying the principle on a $500,000 loan to fund the Constitution lobby. No non-Indian government funding was ever used on the Constitution Lobby.

The fact that non-Indian governments and press used it to fight against us testifies to their colonial mentality — a 'mind-set' that will have to be expurgated in order to improve Canada/Indian relations in the coming years.

Recently, the federal government policy has begun to dismantle Indian political organizations by not providing funding to Indian-controlled institutions.

There is a growing narrow-minded sense amongst politicians and bureaucrats that funds are their private property to be released at their private discretion. Funds realized from Indian resources should be returned, unconditionally, to Indian nations. A major policy shift around funds has to be addressed by non-Indian governments so that the rights guaranteed by Treaty and Aboriginal rights may be implemented and developed by the First Canadians.

**The Political Deal and Party Politics**

In Canada we attended political rallies of the various parties to get our position heard.

It is amusing to attend the rallies of the Conservative, Liberal and New Democratic Parties. Two themes run through every one of them. The two founding nations spend time trying to convince themselves first that the French and English are the founding nations: then they immediately proceed to divide Canada up in their debate as if it were their own — by declaring verbal war on eastern Canada, then western Canada, and finally the rest of Canada.

Once they dispose of that emotional theme, they proceed to get somewhat sentimental, and humble themselves by announcing their gratitude to the people who in their minds really built Canada and made Canada what it is today. The Premier of Saskatchewan and the New Democratic Party thank homesteaders. The Prime Mininster and the Liberal Party thank the settlers. The leader of the opposition and the Conservatives thank the pioneers. That is when Canada became a country they say; and would have people believe that is when Canadian history started.

**None,** even acknowledge that there are Indians and that Canada was built from Indian resources and the settlers, pioneers and homesteaders thrived off of Indian lands (who, by the way, more often than not in Saskatchewan, were anything but of French or English origin). **None,** recognize that Canada's sovereignty in the Territories and Arctic was finally recongized by other countries only because the Inuit occupied their lands.

Finally, they end by stating we must be broad minded; Canada is a big country and demands greater understanding. All close their remarks without thanking the Indians or Inuit or Metis.

In the end, the Constitution was patriated because the political deal spanned an ocean and shut the doors to every avenue of democracy for the First Canadians. As a result, a Canada/Indian solution to the Constitution impass was not achieved and the celebrations in Canada will **not** include the First Nations.

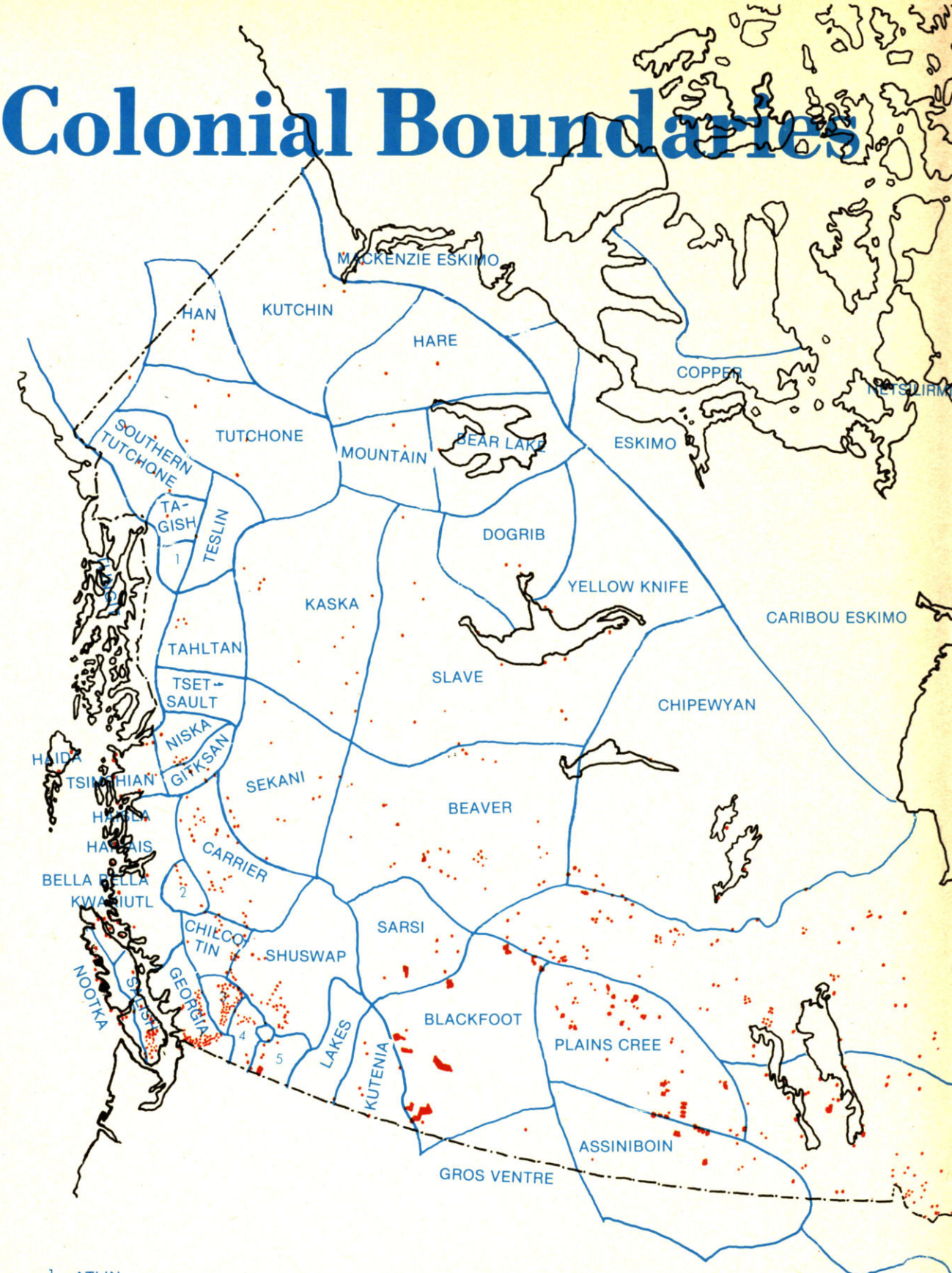
**Now,** we are expected to participate in the political institutions of Canada. The very rights that the Charter of Rights/Freedoms entrenched in the Canada Act were violated by parliamentarians and the press when it was needed most by **Indians.**

We must, as Indian leaders, continue to rise above these self-serving motives just as our forefathers have, by welcoming all Canadians not just the English and French, to share in our wealth. It is our duty to enforce more than ever before, a policy of co-existance, that will be reflected and replace all other policy — we owe it to our country.

We issue a challenge to all governments and parties to initiate policy action on the implementation of Treaty and aboriginal rights as guaranteed in the Constitution.

Treaty and aboriginal rights should be reflected in all governments and departments at every level including the municipal level.

# Pre-Colonial Boundaries

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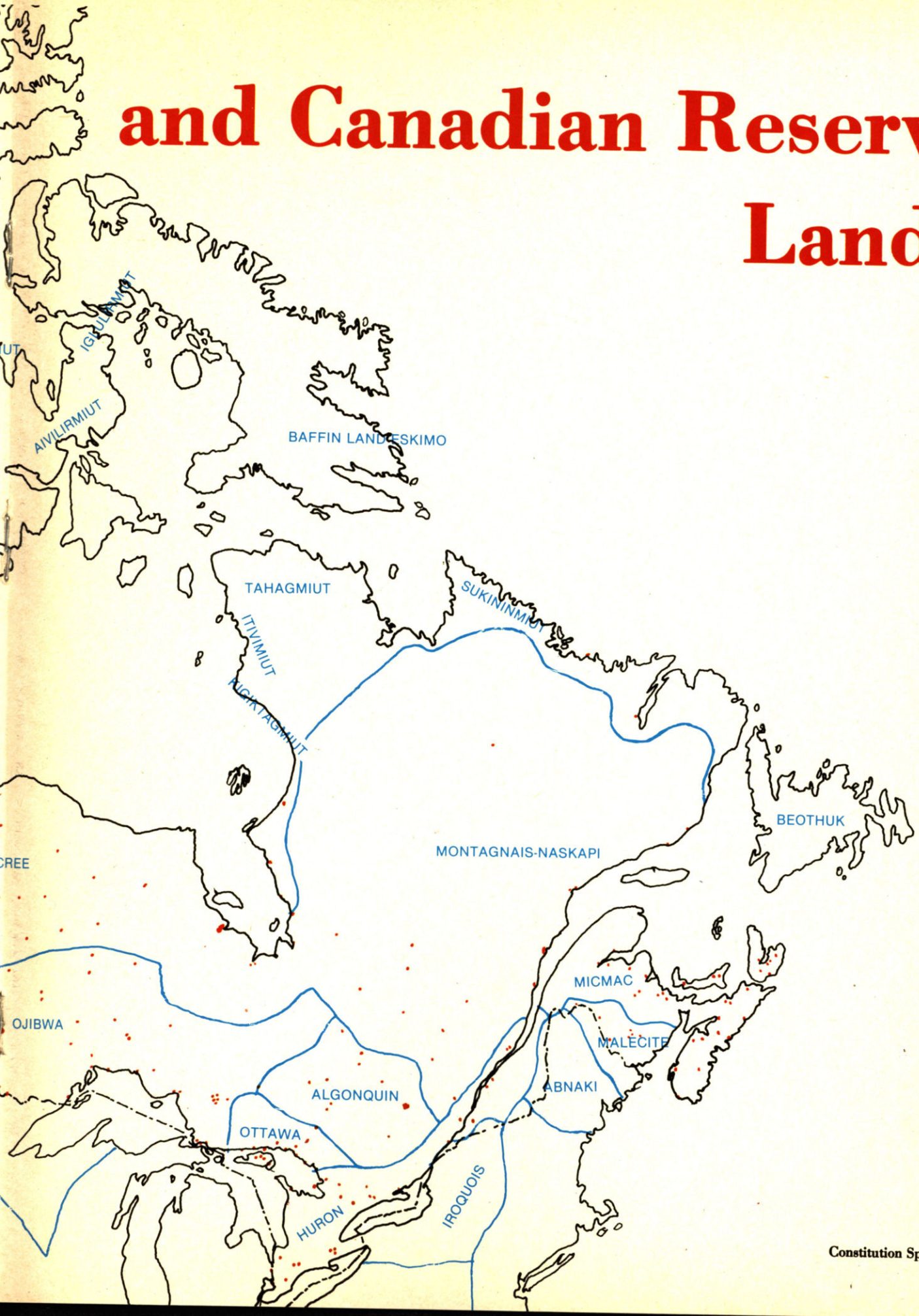
# and Canadian Reserve Lands



*(Continued from page 29)*

**Lord Soper:** ...I should like, in a very brief speech, to say something about the Indian problem and to confess that initially I knew very little about it...

What I have discovered I find nothing short of appalling and I will venture to categorize some of those things which belong to the real facts about this aborignal minority in Canada. They have a life expectancy of 10 years less than the life expectancy of other Canadians. Canadian Indians experience violent death at a rate more than three times the national average; suicide has increased among Indians by over 60 per cent, and by 85 per cent in young male Indians between the ages of 17 and 30. Infant mortality is four times that for other Canadian citizens: 60 per cent of Canadian Indians receive social assistance and only 32 per cent of them are employed. Sixty per cent of Indian homes are not properly serviced-and so one might go on.

I ask myself what explains this deplorable catalogue of comparative and, in some cases, absolute misery. I venture to ask your Lordships to entertain the belief that the primary reason is perhaps the so-called actual spiritual conditions of this group. They have been the victims of spiritual or (shall we say?) religious imperialism. They have been regarded as suitable for assimilation into cultures which were foreign to them and consequent upon the destruction of the cultures to which they were habituated. Many of those cultures can come under moral criticism, but nevertheless they instituted a kind of discipline which, when they were destroyed, did not give place to comparable discipline from the Christian churches, so-called. I stand as one who must accept a very considerable amount of blame for the persistence in the 19th century of missionary enthusiasm which in so many respects denied the virtues of primitive cultures and which led to the belief that outside our Christian faith, as some of our hymns said, "There is nothing better than total darkness". That is a monstrous piece of impudence and it has resulted in all kinds of calamities not only in America and Canada but in Australia, to some extent in New Zealand and certainly among the de-tribalized black groups in southern Africa. This is the background against which I believe the various perturbations and fears of the Indians have to be set.

First, on the question of assimilation, when Mr. Trudeau categorically asserts that assimilation and integration is the purpose of this particular programme of the present Government in Canada, I do not believe in assimilation or integration as being necessarily the way in which you improve the conditions of those who in some cases have cultural levels which are not so much lower than ours. In any case I believe that we should proceed with great caution to try to make people of such different cultures into, in many respects it seems to me, nothing more than caricatures of the prevailing civilization, if we are pleased so to call it, which is the dominant one in the northern hemisphere of Christian procedure and life.

Secondly, on the question of land, it is for an Indian, so I am given to understand, not merely a matter of property but of deep religious conviction. We ought not to be surprised at that when we reflect that the Fifth Commandment provides those who honour their father and mother-

"to live long in the land which the Lord their God has given to them".

The Indian believes most faithfully that the land is the gift of God, and in his case I think it is perhaps rather less dubious than the behaviour of the Israelites when they grabbed somebody else's land in Canaan and said that God meant them to have it.

However, I will not go into that in any detail except to make what seems to me a very pertinent comment, that you do not destroy the beliefs people hold by merely rearranging the economic conditions in which they live. Unless the Canadians can take the question of what land means to an Indian much more seriously than they have in the past, I do not believe that this quite dreadful catalogue of misery will be very much improved. The same is true, of course, of existing rights. The noble and learned Lord, Lord Diplock, did not mention that Clause 34 became Clause 35 when the word "existing" was interpolated and the "existing rights" closed the door to the improvement of what seemed to me in many respects to be very imperfect so-called rights which have hitherto existed.

My time is almost up; but I believe it is true to say that very largely the attitude of frequent administrations in Canada has, not with a malevolent intention but in principle, perpetuated the evil of the missionary enthusiasm not so much for the propogation of the Christian faith as for the institutions which have persuaded some people that the Kingdom of God and the British Empire were more or less synonymous...

I would plead with your Lordships to offer to the Canadian Government not only criticism-which, after all, is cheap and easy-but a constructive contemplation of some of the underlying problems with which they are confronted, and in particular those relating to this minority whom we call the Indians. I believe they have their own right to their own life within a multiracial society, and that should be the aim and intention of the Government to which we patriate the constitution.

members of the Commonwealth, and the relationship between our two countries has always had a strong bond of affection. I am speaking as one whose father was a Canadian. I am very proud of that and wish the bond to continue and to grow stronger. It is, therefore, of the utmost importance that proper care and consideration be given when discussing this Bill."

Lord Morris had visited many Indian reserves in a very intensive visit in September last year with former Union of Ontario Chiefs Executive, Joe Miskokomon. He was appalled. He had since spent considerable time studying the Canada Bill and Canadian history; and spoke most forcefully on our behalf.

Lord Elwyn-Jones, Lord High Chancellor of Great Britain from 1974 to 1979 under the Labour Government and a Lord of Appeal since 1979, summed up the opposition argument, concentrating on what has caused most anxiety and concern: the question whether the grievances of the Indian people are ade-

*Earl Grey, Liberal, was born in Canada. His father was Canadian. He was one of the first to endorse the Indian lobby in 1979.*

quately resolved by the terms of the Bill...

"The experience of Nazism and Fascism, and the suppression of minorities and indeed of individuals, which was part of their regime, led to a determination of the post-war world to take whatever steps could be taken to avoid a repetition of that course of events. Now the eyes of the world will be upon Canada to see how they deal with their minorities in the months and years that are to come. I hope that what has happened here, and the publicity we have given to the grievances of the aborigines, and what we expect to emerge, and hope to see emerging, hereafter, will have reached the world political map."

What had happened at Westminster had so far filled three hundred and thirty six pages of Hansard and thirty hours of audio tape. The world public has access to both.

Lord Trefgarne, for the Government, had no comment. As with his counterparts in the Commons, he rested the Government case on the initial and undocumented reply from the Foreign and Commonwealth Office to the Select Committee's initial enquiry as to the status of the Indian concerns in their enquiry into the Canadian Constitution.

Photo: Universal Pictorial Press and Agency Ltd.

*Baron Elwyn Jones experience at the Nurembourg trials after the Second World War made him adamant that rampant racism and facism should never be allowed to flourish again.*

He quoted Lord Denning's decision in the Alberta Indian case on Crown obligations lying in Canada. He carefully avoided all mention of the two outstanding Indian legal cases that question the constitutionality of those moves, made without Indian consent.

The Bill was duly referred to Committee for Tuesday, March 23rd.

## HOUSE OF LORDS: COMMITTEE STAGE

The Lords had decided to debate it "stand part" to go through each part rapidly and declare that each part stand. However, the Lord Stewart of Fulham stressed the length of discussion should not be curtailed and immediately opened fire with another attack on the Bill. Nowhere in the Bill, he declared, was there any statement on the protection of private property, Indian or non-Indian. The thirty hours of previous debate had given him reason to believe that both the Federal and Provincial Governments might be interested in taking over lands now belonging to Indian Nations. He found this an extraordinary omission. Didn't the British Government agree? He continued to pose such questions, framed to demonstrate the blind naked power of the operation. Lord Trefgarne kept getting up to reply that he couldn't comment, the Bill was made in Canada. The tactics of the former Minister of State for Foreign and Commonwealth Affairs exposed how ridiculous was the Government position. It came over as a put-up job: the British Government had made a deal with the Canadian Government. This prompted many more speeches. Unlike the Commons, they were short and sharp. Lord Somers said it was the most disgusting thing he had ever seen; that the fact that the Indian Nations were not consulted spelled trouble for the future of Canada. Lord Houghton of Sowerby was very frustrated, "we are all just chewing the air; he wanted to find a way through the Government resistance to do anything about the Indian concerns. Baroness Gaitkell's ringing statement on emerging neo-colonialism in Canada was repeated:

> "All the Canadians are getting their sovereignty from us now, except for the Indians, and they are going to be made into a colony, a colony within Canada."

Throughout the debate, three or four peers kept trying to get up to put the question to close the debate. The Government did not want any more debate. Lord Stewart sympathised with Lord Trefgarne: of course he wanted to stop the debate, the Government had put itself in an impossible position, how could he possibly answer the peers' questions. So he put his questions to those Canadian Lords who had had so much to say and had so impressed the House last week with the authority of their Canadian accents. Could they give any assurances? They were shamefaced, and neither rose.

At each attempt to stop the debate Lord Stewart would persist -no, you're not going to get away with it as easily as that, and he would pose another question. If the Government couldn't criticize the Bill, he asked, did it have anything good to say about it. Lord Trefgarne had nothing to say. Finally one of the cross-benchers got in the question and the Clerk leaped to his feet and called question. Third Reading was scheduled for the day after next, March 25th and the House adjourned.

## HOUSE OF LORDS: THIRD READING

On March 25th, the Government side of the House was packed and Third Reading was expected to be a mere formality. However, a young Peer rose and he spoke at length and with solid documentation on the concerns of the Indian Nations. We had seen him at all the debates in the House of Commons. He sat in the Peers Gallery and we couldn't find out who he was. Each evening, he had been there, alone, listening intently. Now the videoscreens identified the Earl of Gosford, whose Irish peerage dated back to the 1600's. As he continued to talk, Government members tried to interrupt and drown him by talking loudly among themselves. Then they asked him to stop. He continued, unperturbed. Finally the House actually decided to vote on whether he should be stopped and the vote of 75 to 15 eventually forced him to close. He offered his text to us. Peers were a little shocked. It was only the third time in their history that they'd ever voted to stop someone from talking. Immediately afterwards, however, Lord Morris, Conservative, also delivered a lengthy speech on behalf of the Indian Nations of Canada.

Lord Hailsham, Lord Hugh Chancellor of Great Britain, since 1979, then quickly rose to push the Bill through Third Reading.

But the drama was not over yet. Mark Wolf, a Canadian in the Strangers' Gallery was so insensed that he shouted out how Indian Rights and Treaties had been betrayed. The Sergeants on duty quickly muzzled him and dragged him from the Gallery. They also refused to let the Press talk to him.

## ROYAL ASSENT

Royal Assent was given on March 29 and the Queen of Canada is expected to bring the new Canadian Constitution to Ottawa after Easter. What are her feelings about this document that betrays every promise to the Indian Nations that her other self, the Queen of Britain, is entrusted to honour? She cannot say. The Crown has not only been expediently divided in the last half century, it has also been expediently silenced.

# The Law

# An Analysis of the Canada Act

by Rodney Soonias

1. The British North America Act, 1867, spelling out the respective powers and jurisdictions of the federal and provincial governments in Canada, was enacted by the Parliament of Great Britain. No provision was made for constitutional amendment without the assent of the British Parliament. Even though Canada has since assumed to all intents and purposes an independent sovereign position, amendments to the British North American Act have continued to require enactment by the British Parliament.

2. Practically speaking, this requirement of British assent has not hampered the independent status of the Canadian political system; however, several Canadian parliamentarians have felt this situation to be an anomaly and one requiring change. The process of giving Canada ultimate authority over its constitution has been called "patriating the constitution".

3. With patriation, Britain will be forever relieved of any input or responsibility to the governing of the Dominion of Canada. It also probably means that the special trust and protectorate relationship between Britain and the Indians, arising from treaty and aboriginal sources, could come to an end.

4. The Canada Act in Section 35 states that "existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed". The words "hereby recognized and affirmed" merely acknowledge the existence of aboriginal and treaty rights at the time the Canada Act is passed and the Constitution Act comes into effect. It further only provides for Courts to take judicial notice of such rights in the construction and interpretation with the other laws of Canada. However, section 35 does not confer any guarantees, protection or entrenchment whatever of aboriginal and treaty rights contrary to what the British and Canadian Governments would have us believe. Section 35 also uses the qualifying word "existing" which was put in at the insistance of the provincial premiers in late 1981.

5. Section 35 (2) states that "aboriginal peoples of Canada includes the Indian, Inuit, and Metis peoples of Canada". Lumping Indians and Metis into the same category further dilutes the special status enjoyed by Indian people today.

6. Part I of the Constitution Act, 1981, is entitled "Canadian Charter of Rights and Freedoms". It essentially guarantees equal opportunity to all people in Canada irrespective of who they are or where they live. How a court of law will view treaty and aboriginal rights vis a vis the equality provisions contained in the Charter is anybody's guess. Section 6 provides for equal opportunity of all citizens of Canada "to pursue the gaining of a livelihood in any province" and prohibits affirmative action employment programs for disadvantaged groups except where "the rate of employment in that province is below the rate of employment in Canada". Even though the overall rate of employment is higher than the national rate, Indian employment remains far below the national rate, and it is therefore unlikely that Indian groups will be able to take advantage of the affirmative action employment programs contemplated.

7. Section 25 declares that "the guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada...". The language in section 25 is not as strong as section 2 of the Canadian Bill of Rights S.C. 1960 C. 44 which provides that "every law of Canada shall not be so construed and applied as not to abrogate, abridge or infringe...".The effect of the omission of these words is presently uncertain. Even if section 25 precludes the Charter from interpretation so as to alter Indian rights,


*". . . and the Great White Mother shall honor this treaty for as long as the river runs, the mountain stands, and the buffalo roams . . . or as under subsection Q (para. 2) until a duly elected politician chooses to ram through patriation of the BNA Act, see section H, subsection 16 (paras. 6 through 81)."*

it does not prevent the federal or the provincial governments from continuing to abrogate treaty and aboriginal rights. It should also be noted that the language of section 25 is distinguishable from sections 21, 22 and 50 (82A(6) which expressly bar abrogation or derogation. Section 25 merely declares that the guarantee shall not be "construed" so as to do so.

8. Nor is there a requirement for Indian consent to the diminishment of aboriginal and treaty rights by amendment or otherwise in all of Part V. For constitutional amendment all that is required is strict compliance with the provisions in sections 38 to 47. These sections do not require Indian consent of agreement.

9. The First Minister's Conference in section 37(2) to be convened within one year of the Constitution Act coming into effect "shall have included in its agenda an item 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". The Prime Minister shall "invite representatives of those peoples to participate in the discussion on that item". However, the item on the aboriginal people of Canada will be considered in isolation of other items which will have a significant impact on treaty and aboriginal rights. It is therefore unlikely that these rights were satisfactorily considered at that time. Even if discussions on a particular item are favourable towards Indian people, only the Prime Minister and the First Ministers of the province are allowed to vote on the issue. Furthermore, if a favourable decision is made, there is no provision for legislative action to protect and implement these rights.

10. The right to a share of the off-reserve natural resources of the province, long asserted by Indian people, has been gutted by section 50 which provides that only the provinces can make laws over the exploration, development, management and conservation of non-renewable natural resources, forestry resources and electrical energy.

11. Section 52 (2) which sets out those instruments which are to be considered as part of the constitution of Canada does not mention Indian treaties.

## The Divisible Crown

At the time of the signing of the "numbered" or Prairie Treaties between the Indian Nations and the British Crown, both sides fully appreciated the nature and duration of the pact they had made. That the Treaties were to last as long as the sun shines and the river flows has since been told and re-told by Indian elders from different tribes. That the Indians signed as Nations is also consistent with the elders' accounts and also with the writings of Alexander Morris, treaty commissioner. Until recently, there was also agreement on the identity of the other signatory, the "Crown".

However, in the case of The Queen v. The Indian Association of Alberta, The Union of New Brunswick Indians, Union of Nova Scotian Indians, of January 25, 1982, a decision of the Court of Appeal in England, the idea of the existence of only one Crown was judicially laid to rest forever. The relief sought by the Indians was for declarations that:

(a) the decision of the Secretary of State for Foreign Commonwealth Affairs -- that all treaty obligations entered with by the Crown with the Indian peoples of Canada came the responsibility of the Government of Canada with the attainment of independence, and at the latest with the Statute of Westminster 1931 -- is wrong in law; and

(b)Treaty obligations entered into by the Crown to the Indian peoples of the Canada are still owed by Her Majesty in right of Her Majesty in right of Her Government in the United Kingdom.

The Master of the Rolls, Lord Denning, ruled that even though in the past, constitutionally, the Crown was single and indivisible, the law had been changed in the first half of this century, not by statute, but by constitutional usage and practice. The Crown had become separate and divisible according to the particular territory in which it was sovereign. That the Crown was divisible was first recognized by the Imperial Conference of 1926. This Conference framed the historic definition of the status of Great Britain and the Dominions as:

"autonomous Communities within the British Empire equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations".

"the Governor-General in a Dominion is the representative of the Crown holding in all essential respects the same position in relation to the administration of public affairs in a Dominion as is held by His Majesty the King in Great Britain and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government".

The Conference determined that even though the various communities or Dominions were united by a common loyalty to the Crown and were all members of the British Commonwealth of Nations, each Dominion was equal in status and was free to make its own domestic and foreign policies. The loyalty to the Crown was symbolized in each Dominion by the Governor-General who would act in the capacity of the British Monarch for that Dominion, although it could not represent nor act on behalf of the British Monarch in any way.

# The Dividing Crown:

**by Victor O'Connell**

We went to Britain with our eyes open. The British Crown was and still is obliged to Indians by the Royal Proclamation of 1763, many Treaties and international law. But we knew that the British Government had either forgotten about the Crown obligations of Indians or was rather hopeful that we had forgotten. Compared to Canada, Britain is a poor country; indeed, it is doubtful that the British land mass is larger than the combined total of Indian reserve lands in Canada. Britain's powers in Canada have long since gone and it has lost both the ability and the will to honour its obligations to the Indians...

Had Britain told us this openly and honourably, we might have been willing to accept a formal transfer of Britain's obligations to Canada. But Britain did not notify us. What is worse, it tried to justify the failure by reference to a theory of the "Divisible Crown", by which Britain's obligations to Indians are said to have been transferred to Canada no later than 1931. It is an interesting theory, created by Britain to rationalize, and make possible the decolonization of the Dominions. The theory arose as an afterthought to a whole series of political events between 1867 and 1931.

### The Statute of Westminster

In 1867, the British Parliament passed the British North America Act which gave wide ranging powers of jurisdiction to the Federal and Provincial Governments of the dominions of Canada. Between 1926 and 1930, there were a number of Dominion conferences at which the British Foreign Office and members of the Dominion Government participated. The purpose of the conferences was to plan how Britain would rid itself of its dominion in Australia, New Zealand and Canada. The results are reflected in the Statute of Westminster which was passed in the British Parliament in 1931. This Statute, Britain undertook to treat the Dominions as though they were self-governing. The Dominions could become legally self-governing when they requested full sovereignty from Britain. Meanwhile Britain promised not to pass any more legislation for the Dominions unless the Dominions requested such legislation.

This was a matter for Britain and white settlers. The arrangements between Britain and the Indian Nations were fully contained in the Royal Proclamation and in the Treaties. The Indians were not discussed when the BNA Act was

As a result of that definition, treaty obligations which were previously binding on the Crown would now only bind the Crown representing the new territories or Dominions. Similarily, Crown obligations flowing from the Royal Proclamation of 1763 would now only bind the Crown in respect of those particular territories. In other words rights arising from treaties and the Royal Proclamation would now be the sole responsibility of the Dominion governments, in our case Canada.

The divisibility of the Crown concept was only one of three arguments used by the British Court of Appeal to show Britain has been relieved of her Indian responsibilities. Lord Justice Kerr reasoned that responsibility was transferred as soon as Canada established its own government which he said took place in 1867 at the time of Confederation. Lord Justice May, on the other hand, was of the opinion that the process of transferring sovereignty from Britain to Canada was gradual and that it was probably completed around 1931, coincidental with the enactment of the Statute of Westminster.

Therefore, even if the divisibility of the Crown could be successfully refuted, the courts have through different arguments demonstrated to their satisfaction an apparent resolve to support the contentions of the Canadian and British governments that Britain no longer carries responsibility for the well-being of Indian people in Canada.

Politically, Indian nations must now deal solely with the Crown in the right of Canada or for all practical purposes, the Canadian political system, for fullfillment of all rights flowing from treaty and aboriginal sources. As of the date of patriation, the Crown in the right of Britain will no longer accept responsibility as a legal or political trustee nor in any other capacity.

# The Dishonourable Way Out

passed in 1867. They were not invited to the Dominion conferences, and the Statute of Westminster of 1931 was silent on the matter of Indian Nations.

This could be evidence that even in the 1920's the British and Canadian Governments were in collusion to squeeze Indians out of the Constitution. But this is not likely. After all, between 1870 and 1929 the British Crown - and Lord Denning said it was the British Crown -- went on to sign all the Number Treaties with the Indian Nations. It is much more likely assumed that the outstanding question of Indian and Aboriginal and Treaty Rights would be dealt with when Canada sought full independence from Britain. Nobody could know that it would take Canada more than 50 years to seek Independence. Unfortunately for us, memories grow dim and in those fifty years Britain forgot us.

**In 1979, when Indians went to Britain to remind them, it was only then that they began to develop their theory of the Divisible Crown.**

But we should take some comfort from the theory. The theory was necessary because Britain recognized that the Crown, the British Crown, as it then was, did undoubtedly undertake the most solemn and permanent obligations to the Indians. How then were these obligations to be honoured when Britain no longer had the freedom or the power to operate within Canadian territory?

According to the theory of the "Divisible Crown", the Crown acts only through and with the advice of its Government. The British Crown used to act in Canada on the advice of the British Government, as when it signed Treaties; but as Canada effectively became a self-governing country, the Crown began to act on the advice of its Canadian Government. In this way the British Crown became the Canadian Crown or the Crown in the right of Canada: and because jurisdiction (or sovereignty) is divided in Canada between the Federal and Provincial Governments, it became the Crown in right of the Federal and/or the Crown in the rights of the Provincial Governments. There is as yet no accomodation in this theory for the concept of a Crown in right the Indian Government.

**Politicians, international lawyers and British judges, disagree as to how and when the Crown became divisible, though the British Government has said that it was no later than 1931.**

According to the British therefore, the Government of Canada had exclusive responsibility for honouring the Royal Proclamation since at least 1931.

**Surprise...!**

If this is news to Indians, it must certainly be news to Canadians. Since 1931, we have had innumerable restrictions on our most basic aspects of our way of life. And the central promise of the Treaties that our way of life would not be disturbed has been repeatedly dishonoured by successive Canadian governments. Since that time A Plan to Liquidate the Indian Problem in 25 years (1947) has been enthusiastically adopted:

The struggle has been long and difficult. But let us give credit to our opponents when we see them moving in our direction. Let us be generous. If they, like us, look at a new political process in which the which the Crowns obligations to the Indians will be fully honoured in a new political process in which the Indian people will be full participants - we now must patiently present once again the constitutional political proposals we have presented before.

# Indian Nations and International Law

**By Delia Opekokew**

Indian aspirations for the proper safeguards of treaty or aboriginal rights including the right of self-determination have been disregarded by the new Canadian Constitution. Canada is, therefore, in breach of the paramount human right that vouchsafes to Indians their right to survive as an identifiable political, cultural, racial and economic unit of self-determination in international law. This fundamental human right is based on the principles of equality and nondiscrimination.

The Permanent Court of International Justice has stated that equality in law precludes discrimination of any kind to individual whereas equality of fact involves different treatment for special groups in order to attain a result which establishes an equillibrium between different situations. International principles accord the right of equality of fact to only certain communities of people who must have formerly constituted an independant nation with its own State or more or less independant tribal organization on the territory now controlled by a new State, and additionally this group must perceive itself as a unit empowered to act as one. In other words, this right does not accrue to immigrants who have voluntarily entrusted themselves to the new State.

International law recognizes the French Canadians as a national minority with a right to self-determination because they were included within the national border of the Canadian state against their will. Indian people were also an independant state prior to the creation of Canada and, furthermore, their aboriginal rights from time immemorial in Canada, as confirmed by treaties, places them in a stronger position as a people with the analogous right to self-determination.

The equality between a group such as indigenous peoples who meet the above two standards and the new majority, must be an effective, genuine equality, and the old community of people cannot be deprived of the institutions appropriate to their needs. Collective or community equality, based on the perservation and advancement of the group's cultural identity, would have to become manifest in two important areas: economic life and political life.

Canada (in the past) has recognized that there must exist equality between cultural groups as groups for the realization of the full "equal partnership" objective as to apply only to the two "founding" nations. Indians assert that the two founding nation's concept is racist and the Canadian confederation must be developed to include Indians as equal partners.

The November 5th accord signed by the nine provinces and the Government of Canada to agree to patriation without the consent of Quebec and the indigenous peoples is in serious breach of the basic human rights of Quebec and the indigenous peoples of Canada.

## HUMAN RIGHTS AND THEIR APPLICATION TO INDIANS:

The Indians of Saskatchewan are a people entitled to three fundamental human rights under modern international law: the right to physical existence, the right to self-determination, and the right to use their own natural resources.

(a) Right to Physical Existence

The right to physical existence corresponds to the prohibition against genocide. The definition of genocide includes "causing serious bodily or mental harm to members of the group" and "inflicting conditions of life calculated to bring about its physical destruction in whole or in part", two means of genocide which have found expression in the Canada of today.

Because the European powers in the 18th and 19th Centuries confiscated the land of the Saskatchewan Indians and re-arranged their life style contrary to their needs and wishes, the majority of Indians in Saskatchewan today do not live on their aboriginal lands, nor are they able to pursue a traditional lifestyle fully as could be envisioned. Compared to the national population, Indians remain disadvantaged.

Perhaps in the long run the Indian population is better off uneducated, then educated in a non-Indian atmosphere. But the education of youth, the use of natural resources, the choice of an overall lifestyle is an Indian decision.

(b) The Right of Self-Determination

The right of self-determination is a right of a people under colonial and alien domination to choose the path of its own destiny. It is a peremptary norm of international law which possesses political, economic, racial and cultural aspects. Indian people have been left out of this principal because classical colonialism involved the "salt water" theory,

"according to which geographical separateness in the form of overseas colonies, regionally, and indeed continentally, distant from the metropolitan areas of Belgium, France, etc, was a necessary condition of colonialism and therefore of the existence of units of self-determination."[3]

However, all people who suffer unwanted political domination may exercise their right to self-determination. Whether this domination occurs in traditional circumstances (trust territories) or in non-traditional circumstances (indigenous populations), the right still obtains.

(i) Political Aspects - People have the right to choose their own forms of government. This is perhaps the single most important element in the right of self-determination. The choice is not pre-determined and is wide-open, ranging from a modest regime of local autonomy, through forms of federal association, to full fledged separate international personality, i.e., statehood and independance. In other words, the principle of self-determination embraces the possibility of a range of options. It is an ongoing right that remains as long as the people remain integral.

In some cases, national identity most often has a racial and/or ethnic focus. In fact only a separate Indian politic will insure a state of equality, i.e., equality in fact, the corollary to the principle of racial non-discrimination.

(ii) Social Aspects - The social aspect of self-determination lies in the right to choose the social system under which a people is to live, in accordance with its free will and with due respect for its traditions and special characteristics. The elimination of malnutrition, poverty, illiteracy and inadequate housing is one of the goals to which states should aspire.

Spiritual expression is one aspect of social freedom and development that cannot be overlooked. Perhaps legislation similar to the American Indian Religious Freedom Act [4] would be helpful to the Canadian indigenous people. This act guarantees the Native American the right to practice his own traditional religion and to implement measures by which sacred sites and objects will be preserved or restored.

(iii) Cultural Aspects - A people has the right to struggle to preserve its heritage, values and cultural identity from being destroyed, and one means of perpetuating one's culture is through education. If need be, special education may be required to meet the requisite standard of equality in fact.

(c) Economic Aspects and the Rights to Use Natural Resources

The economic aspect of the right of self-determination is the right to use one's natural resources. The underlying concept here is that the aera of colonialism, economic as well as political, has come to an end. One people must not enrich itself while impoverishing and polluting the resources belonging to another.

Indian peoples' rights to the different aspects of self-determination has two other sources: treaties and aboriginal rights.

**INDIAN TREATIES AND ABORIGINAL RIGHTS IN THE INTERNATIONAL FORUM:**

The view of the treaties in the international law sense stems from the Crown dealing with the Indians as separate entities having territorial rights which could only be ceded by their full consent. It is the status of the Indian at the time of the conclusion of treaties that is relevant to their status. The treaties mark consensual entry into a relationship of protection. This protection is analagous to the trust relationships some nations have entered into with more powerful nations, but which relationship is only a stepping stone to the eventual full development of the nation being protected. Because of Indian understanding of this relationship at the time, no written clause was included protecting their Indian governments. They were repeatedly promised that their tribal autonomy would be respected and that they would suffer no direct or indirect compulsion to alter their traditional ways of life. Included in both oral and written promises were guarantees to respect their homelands and resources, culture, the right to education, and right to social protection. Canada still argues that treaties were not intended to have international effect but the emerging doctrine of intertemporal laws applies. The core of this doctrine is based on the fact that when the legal system by virtue of which rights have been validly created disappears, these rights can no longer be claimed. Therefore the doctrine of discovery, an obsolete concept employed by a colonial power to justify mistreatment of the Indians is no longer applicable in light of the new legal principle of self-determination. The treaties must now be reviewed as having been negotiated by free, sovereign parties.

In addition to treaty rights, aboriginal rights obtain. Aboriginal rights encompass both the right to property and to self-government. These rights enure to Indian peoples by virtue of their occupation upon certain lands from time immemorial and by virtue of their traditional political independence. The inhabitants were there prior to any colonial power. The idea that people had fundamental rights to their land by possession can be traced to Vitoria through European colonial practices.

**INTERNATIONAL MONITORING AND ENFORCEMENT:**

It is often argued that a State is not bound by an International document that it has not ratified. However, there is a good authority in modern international law that certain basic rights generate obligations erga omnes. This means that they have become a part of customary international law and are therefore unabridgeable; accountability for these obligations not depending on treaty ratification. This principle is somewhat akin to the distinction in domestic law between the common law and statutory rights. Therefore, although Canada has ratified nearly all the international instruments on human rights, her accountability does not depend on this official act.

In addition to having erga omnes, human rights are considered jus cogens i.e. a "peremptary norm of general international law." More specifically, jus cogens is a...

> "norm accepted...by the international community of states...as a norm from which no derogation is permitted and can be modified only by a subsequent norm."[9]

A principle of international law assumes this quality when it is so fundamental to the well-being of a people that no subsequent relinquishment has any legal effect. The right of a people to physical existence, to self-determination and to use natural resources are examples of jus cogens i.e. they are unabridgeable.

Nevertheless, there exists a strong tension between the right of self-determination and the preservation of a state's stability. An essential consequence of recognition of the right of peoples under colonial and alien domination is the rejection and condemnation of colonialism in all its forms and manifestations. Therefore colonialism has come to be characterized as a crime under customary international law. The right to self-determination implies the right of peoples to struggle by every means available to them, including both peaceful and forceful measures. An act of secession is not included in such a political struggle.

However, the express acceptance of the principles of national unity and territorial integrity of states implies non-recognition of secession. Nevertheless, if national unity and territorial integrity are mere legal fictions employed to veil real domination, no secession obtains, only a free act of self-determination.

States in general under a positive mandate to help people achieve their full development. Humanitarian intervention has long been recognized. For example, the United Nations has paid special attention to the activities of various national liberation movements in a number of resolutions passed in the 1970's. Many of these movements from Africa have been invited to participate as observers in the works of the General Assembly and other United Nations bodies. This invitation has the effect of recognizing these movements as the authentic representatives of a subject people and of according them special status.

The continued concern of the UN General Assembly with the rights of peoples to self-determination can be seen in the continuing support it has given to the self-determination of the United Nations dated 23 November 1979, entitled, "Importance of the Universal Realization to the Right of Peoples to Self-Determination and of the Speedy Granting of Independance to Colonial Countries and Peoples for the Effective Guarantees and Observance of Human Rights", the General Assembly by a vote of 105-20-16 reaffirmed the legitimacy of the struggle of peoples for independance and liberation from colonial domination. In provision number 4 of this resolution the General Assembly set forth the following condemnation:

Strongly condemns all partial agreements and separate treaties which constitute a flagrant violation of the rights of the Palestinian people, the principles of the Charter of the UN and the resolutions adopted in various international forums on the Palestinian issue, and which prevent the realization of the Palestinian peoples' aspiration to return to their homeland, to achieve self-determination and to exercise full soveriegnty over their territories.

This resolution embodied the General Assembly's concern with the lack of recognition given to the PLO in the Camp David Peace Negotiations. By analogy to the Canadian situation by failing to include the direct participation of Canadian Indians in the Constitution drafting process the proposed Canadian Constitution can be viewed as a "separate agreement" undermining a peoples (the Canadian Indians) right to self-determination. Canada voted against the above quoted resolution. However, the resolution embodies a sensitivity on the part of the General Assembly toward peoples' self-determination struggles and a condemnation of negotiations between member states to the UN which do not heed the right to self-determination of peoples.

Indians are not accorded the status of a liberation movement at the United Nations, and the Economic and Social Council's Commission on Human Rights has passed a resolution at its recent 38th session held between February 1 to March 12, 1982 recommending that the Economic and Social Council establish a Working Group on Indigenous Populations to review developments on the human rights and fundamental freedoms of indigenous peoples and further, to give special attention to the evolution of standards concerning the plight of indigenous populations.

The way indigenous people perceive land ownership and self-determination was mentioned among the elements which differentiate them from ethnic, linguistic and religious minority groups. Minority rights protection does not include the right to self-determination nor the right to land ownership. Self-determination, it was stressed, was an important matter for indigenous populations.

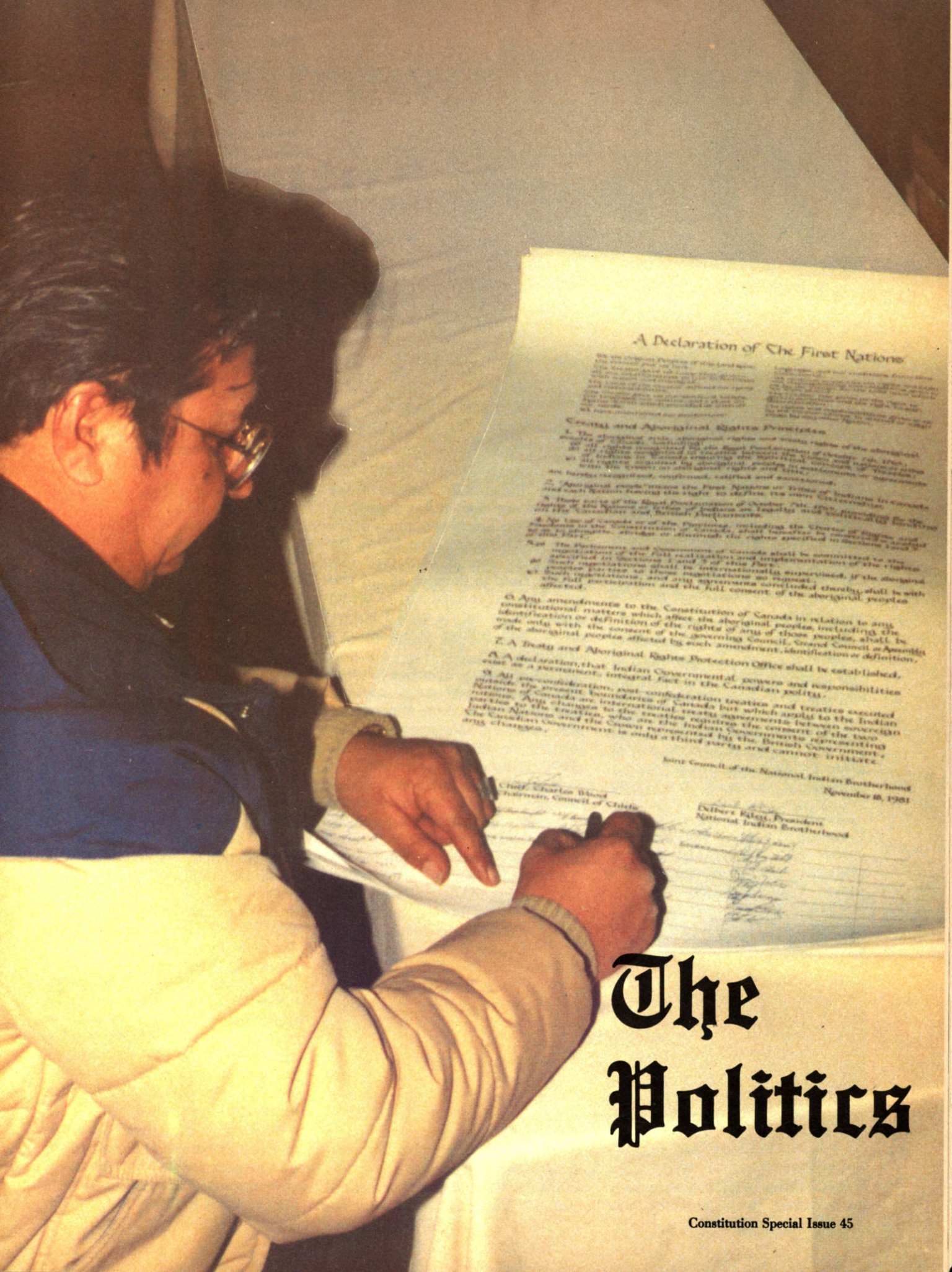
Because classical international law has restricted the application of the right of self-determination to non-self-governing territories which are geographically separate, indigenous populations are caught in limbo and are in a gap between the International law definitions of a "peoples" and a "minority". The United Nations political decision to develop a Working Group on Indigenous populations should assist. More importantly, Indian peoples perception of themselves as a liberation group leading to their recognition for observer status at the United Nations will develop. Their right to self-determination is the fundamental aspiration.

No court has fully dealt with the treaties as international in nature although the English Court of Appeal in the Indian Association of Alberta on January 27, 1982 touched on it. It may be opened to Canadian Indians to pursue the matter through an international tribunal.

On July 30, 1981 pursuant to the Protocol of the International Covenant of Civil and Political Rights to which Canada is a signatory, the Human Rights Committee [10] publicly entered its decision in favor of the legitimacy of an individual Indian's human rights complaint against the Canadian Government in re the Matter of Sandra Lovelace.

Regardless of the merits of this decision, the procedure through which the complaint was lodged can be used by an individual Saskatchewan Indian on behalf of other Saskatchewan Indians to assert a violation of the right of self-determination of Indian people in the Canadian Constitution.

Indian people are ultimately responsible for preserving and protecting their rights. Their self-determination as a cohesive group with the right to determine their government, to enjoy their spiritual and material heritage within the Canadian Confederation is the key to their survival.




# The Politics

# Indian Government and the Future Within Confederation

by Doug Cuthand

A century ago our Chiefs signed Treaties with the Crown. Their Treaties were meant to last and build the Indian Nation and Canadian Nation simultaneously, at least this was the impression given to our Chiefs. The Treaties have never been implemented properly, they have sat dormant for a century, alive only in the hearts and minds of our people.

We are now being told the same story by the same people: "Trust us and it will be all right". The Constitution is home and the Canada Act is in place. We have been denied access to Confederation at every step and now we are expected to sit helplessly while the Prime Minister and the Premier determine the terms of our surrender.

We are at a time of fundamental change for Canada. The Government has picked up a page from the Indian Affairs strategy manual, "When in doubt recognize". Canada is facing social and economic chaos with the breakup of Canada a probable scenario. Future historians may look at this part of Canadian history as the time we reorganized the crew of the Titanic. The organization may be there but the direction is off.

So where do we stand on Indian people and Indian Governments within Canada? The key is "Indian Government". If we think of ourselves as anything less then we might as well give up and let the federal and provincial governments have their way and become assimilated brown Canadians remembered only in Museums and the Calagary Stampede parade.

The Indian Government Movement is not new. It has existed for years in the hearts and minds of our people. The Elders, the Chiefs and the Councillors all have their roles firmly fixed in the eyes of our people. This has formed part of the unwritten constitution of our governments and follows from our oral tradition.

Under our Treaties Indian Governments were supposed to be part of Confederation. We provided the land for Confederation but reciprocal support guaranteed by Treaty never came.

In politics, as in sport, the best defence is a good offence. If we continue to appear to oppose government policies, it becomes apparent that we may have none of our own. The press aided by governments has succeeded in building a negative image of Indian leaders and Indian governments. The time has come for us to take the offence and assert our rightful place within Confederation.

In the United States the courts have ruled that Indian Governments enjoy status of dependant sovereignty. "While it may appear to be a contradiction in terms, it nevertheless sums up our status under Treaty. We are dependant in the sense that the Treaty guarantees lies with the federal government and a state of "trust" exists between the two governments. We are sovereign in the sense that Indian Government was not bargained away with the signing of the Treaty. Only nations can make Treaties. Treaties do not make nations.

And therein lies the crux of our arguement. We are not minorities, disadvantaged groups or municipalities. We Are Nations. Canada has a mental block when it comes to recognizing nations within its border so the first step is clearly ours, we must put Indian Government in place. Martin Luther King once stated, "There is nothing so powerful as an idea whose time has come". Indian Government's time has come.

Nationhood is a state of mind. While Canadians are unsure about their own nationhood, we must be certain of ours.

What is fundamental to our future developments and the implementation of Indian Government is Indian political control. Both Federal and Provincial Governments exercise control over their areas of jurisdiction so Indian Government cannot expect to settle for less. Specific areas of jurisdiction will be dealt with later but basically Indian jurisdiction refers to all those areas that a province enjoys, jurisdiction areas as outlined in the BNA Act plus any areas of jurisdiction the federal government has that would be advantageous to an Indian Government.

There are also areas of shared jurisdiction between Indian Governments and federal or provincial governments. Take for example Indian Hunting Rights. This is an area

that the province has tried to control without Indian Government involvement. If Indian Government jurisdiction in this field was recognized, many of the problems the province thinks they are having with regard to Indian hunting rights would disappear.

There are also areas of total federal jurisdiction. I doubt that Indian Governments would care to handle their own postal system, mint their own money or maintain a standing army, although when we talk of Indian Sovereigny and Indian Nationhood many people assume the extreme. We fully realize that Indian Government could not be totally sovereign, but then again no government in the world is totally sovereign.

The Indian Political system is a model for democracy. The power comes from the people and is delegated outward. In the Canadian and western democracies political power comes from the top down, jurisdiction and the right to govern is handed down from the federal government to the provinces and from the provinces to the municipalities. To best describe Indian Government it would be necessary to take the Canadian system and turn it upside down.

Under the Canadian system,government is imposed from above and federal and provincial governments become competing empires. Indian Government has traditionally been a system whereby the power was granted to the Chief by their people and he spoke on their behalf at all levels.

Political control is fundamental for Indian Government. Both the province and the federal government exercise political control over education, social development, lands and resources, citizenships, economics and so on.

Our Treaties cover basically four areas: social rights, land and resource rights, economic rights, and the right to Indian Government. The right to govern ourselves was understood and not negotiated as a right, but is instead a right under International Law.

In practical concerns, we must look at how Indian Government can be implemented in the major areas of Indian jurisdiction.


## Indian Law.

Under Treaty we agreed to obey the Queens' laws and live in peace. This was a promise that was kept by our people, but there still exists a vacuum of Law within Indian Governments today. The Criminal Law obviously applies to Indians as well as non-Indians. If we are to develop our own governments, the question of Indian Law must be clearly addressed. If a government has jurisdiction over a specific area then it follows that the government has the clear responsibility to legislate in that area. It is therefore vitally important that Indian legislation be put in place and recognized as legitimate by the federal and provincial governments.

## Indian social rights.

Social rights refer to the whole area of rights related to Social, Health and Educational development.

Throughout the 1970's the Chiefs of Saskatchewan set a priority in the development of Indian control of education. The result has been that we have developed three colleges and begun development of the Education Commission. The Department of Indian Affairs has fought against Indian control and is only now in the process of releasing funding for school construction. We still require a great deal of work to complete the Indian control of education process.

Currently, the Federation has set up an Education Commission. The first task facing the commission is the development of an Indian Education Act.

Future areas under development include a technical school in Meadow Lake, a Business Management Training Centre in Prince Albert and a second Federated College Campus at the University of Saskatchewan in Saskatoon.

The proposed Indian Education Act will address itself to the Institution and philosophy of Indian Control of Education.

Through the Indian Control Movement in the 1970's the F.S.I. made a fundamental strategy shift. Previously the F.S.I. had been an organization that fought for the protection of Treaty Rights. The F.S.I. has now switched to an organization that implements Treaty Rights.

Following on their strategy the Chiefs set up a Health and Social Services Task Force to examine the related fields and propose solutions. The task force work has now been completed and the implementation phase has begun. In the future we can expect significant studies in this area.

Under Indian Government the Indian social system was intact and strong, it has only been in the past 20 - 30 years that the so-called social problems have been around. History shows us that whenever a group are displaced from their traditional lifestyle and forced to adopt to a new and imposed set of values, the social system suffers.

One of the most disasterous examples was England during the industrial revolution, people were displaced from a rural lifestyle and placed in factories under a wage economy. In short the people lost control of their lives and England suffered an extremely high rate of alcoholism, suicide, child neglect and family violence. This is a dark part of British history that is all too often overlooked by historians.

The end to our Social problems will have a political solution and it will require that we take control over our destiny.

We will have to put back the old values and adopt them to our changing times. We will also have to bring back the authority vested in the Elder. The Elder, for example, can conduct tribunals and make rulings on civil matters. Family law, child adoption and marital breakdown can all be handled by a tribunal of Elders who examine each case and provide a ruling. Their word would be final as it will be part of the Indian justice system and have the force of law under Indian Government.

The given statistics that we see in the health field reflect the social unrest as well as our economic situation.

In short the common diseases that affect Indian people are the diseases of poverty. The Chiefs have given direction in the past for an all out attack on the Social, Economic and Health areas and no area can be treated in isolation.

Politically the Governments will have to recognize Indian jurisdiction in the Health and Social development field and put in place the necessary funding to see the proper implementation of their rights.

Currently the Federal Government provides funds for Indian Health, Education and Social programs to the province through Established Program Financing. This fiscal arrangement is now under review and Indian jurisdiction must be recognized with a separate funding formula for Indian Nations.

*"We have to bring back the authority vested in the elder. The elder can conduct tribunals and make rulings on civil matters."*

The key to Canada's willingness to recognize Indian Government will come with the recognition of Indian Government as a third area of jurisdiction in Canada and the willingness to provide the necessary resources.

## Indian land rights.

When asked to define an Indian, an Elder once said, "Look for a man whose roots go two miles deep in the land". The Indian love for the land is well known but our rights to land are considered only in terms of the immediate reserve land.

At the time of the Treaty our Chiefs demanded rights to hunting, fishing, trapping and gathering over the entire ceded area. With those rights came land rights.

"If it remains silent, it is kept", is the legal axiom for contract law. Indian Government was never mentioned therefore it was kept. Mineral resources, water and air space were not mentioned and are therefore kept.

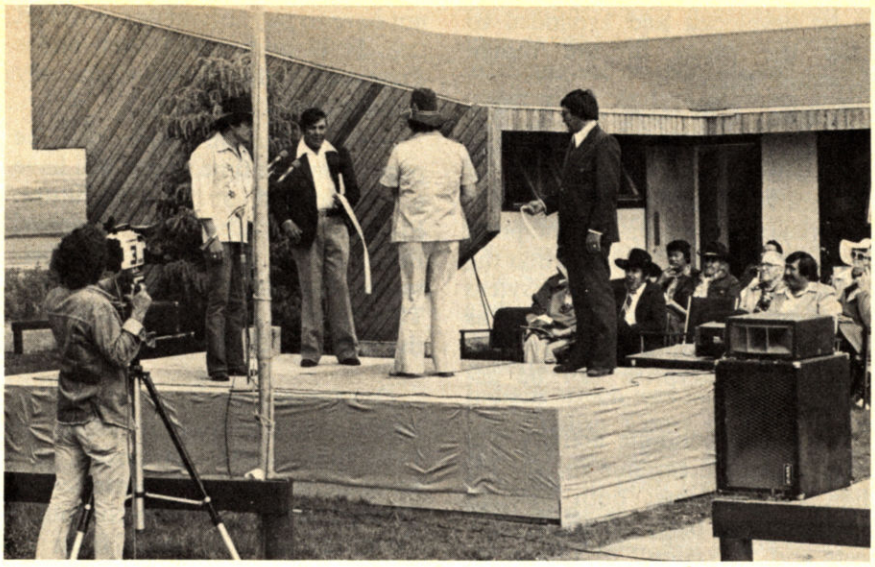
In the case of reserve land we have land still owed to us under land entitlement and land to be returned under land surrenders.

The total area to be selected will eventually exceed two million acres. The ability to re-establish our land base is an excellent opportunity to strengthen Indian Government and our economic base. Bands can now diversify and select land for agricultural purposes, resort lands, timber lands, mineral rich lands and urban lands with industrial potential.

With the judicious selection of land and proper Government support we will be able to regain our economic independance.

The rights to hunting, fishing, trapping, and gathering also included a land base to ensure the right. The traditional hunting areas have now been turned into provincial and national parks. However the recent signing of the Sipanok lease for the Red Earth and Shoal Lake Band grants the two Bands jurisdiction over their traditional hunting and trapping area and it is viewed as a model for future agreements.

The F.S.I. has requested Bands to define their traditional areas and negotiate similar leases.



*Indian political rights include the right to maintain administrative and executive offices at the band, district and provincial level. In July 1980, Little Pine Band officially opened their Band administration centre.*

Fishing rights were also recognized by Land rights and at one time most of the Bands had a piece of land beside a lake for a fishing camp. At one time the eastern shore of Last Mountain Lake contained a whole string of these fishing reserves. The F.S.I. also requested Bands to research their fishing station lands and negotiate their return.

In addition to hunting, fishing and trapping lands, reserves were also set aside for Hay lands, timber lands and Educational purposes. As you can see under Treaty and Indian Government, Indian lands and Indian jurisdiction can be greatly increased.

## Indian control of Indian economics.

The issue in the 1970's was Indian Control of Education and to a large extent it was achieved. The issue for the 1980's will be Indian Political Control of Indian Economics.

Indian Economic Development is like motherhood; everyone supports it and agrees it should be done. It is the implementation and control where the support wanes.

Political control of economics is not new to the federal and provincial governments. Canada was built on a partnership of business and government or developed in the Hudson Bay Company and the Canadian Pacific Railway. Contemporary examples of Petro-Canada, the Sask. Potash Corp., and the other Crown Corporations show the Governments heavy involvement in economics.

So why not Indian Political control of Economics? Currently there is a power struggle going on between government agencies, particularly the Department of Indian Affairs, and Indian Governments over wh will have political control.

An economically independant group is also a politically independant group and governments realize it. If Indian Affairs had its way there would be no On-Reserve development, just people leaving for jobs elsewhere. Government programs in the past have consisted of affirmative action and training programs in Mega Projects such as the Alberta Tar Sands. Our people get a pay cheque and little else. We cannot continue to be the hewers of wood and awers to water, the time has come to set up Indian controlled Economic Institutions.

Indian "Crown Corporations: such as (SINCO) Battleford Management Associates and others are one way to pool our resources and go after contracts and business opportunities in the private sector.

Indian Financial Institutions such as the Saskatchewan Indian Equity Fund, Indian Trust Companies, Credit Unions and Banks will have

to be developed and expanded to meet the needs of the Indian Economic Sector.

Indian Government is not socialist or free enterprize in any total sense. Anthropologists call us "Primitive Communists" and hold to a romantic myth that has no place in today's world. The fact is that the Indian Government political sytem is self-defining and created by us as Indian people. Both Collective and Individual Enterprize can be accomodated.

Increased economic activity will mean increased revenue for the Indian Governments; both through revenue from band economic projects and "taxation" of Indian incomes and businesses. Exemption from taxation was guaranteed in our Treaties. It was understood that by giving the land to Canada we would not have to pay federal or provincial tax. It is understood that under Treaty and Indian Government only Indians can tax Indians.

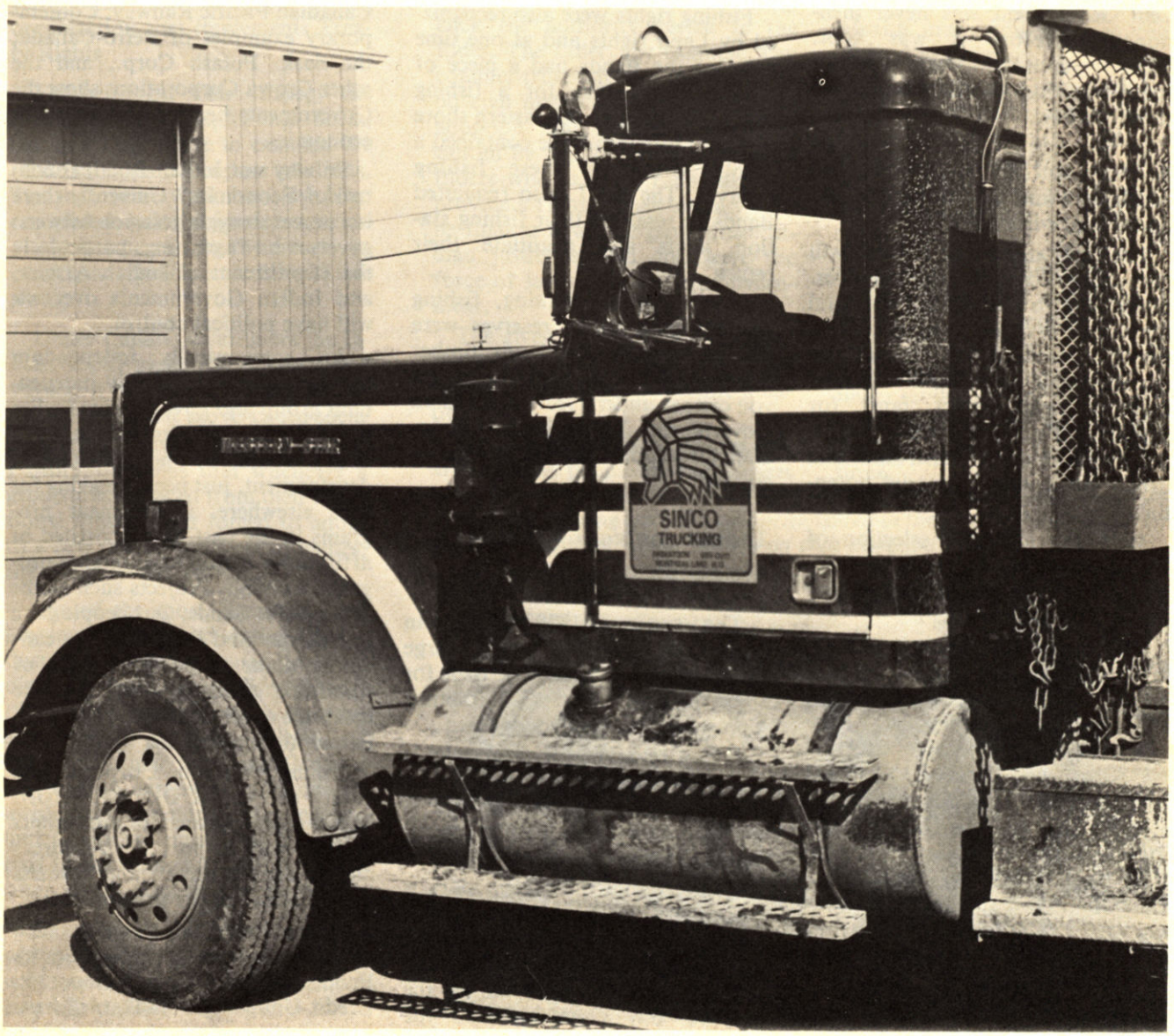
Indian taxation may not be popular at this time, but it will have to be looked at in the future. Presently, the Chiefs have assessed FSI staff a percentage of their salaries for the Constitution fund. This decision can be interpreted as the first step in Indian Taxation.

Our future constitutional position within confederation is based on two fundamental proposals, the recognition and implementation of Treaty and the recognition of Indian Government as a third form of government within Confederation.

The past centuries have been a time of open attack on our treaties and Indian Government but the passage of time has not diminished our people's belief in themselves and our treaties. The continuation of the existing arrangement with governments is unhealthy and will continue to cause both ourselves and Canada nothing but hardships.

The future, on the other hand, is very positive. Indian Government is an idea whose time has come and in the future we will see the development of our Indian institutions. It will not come overnight and there will not be any one single decision or victory, but many small ones.

To avoid the frustration of daily setbacks, it is important to fix our sights on a point in the future. By the end of the 1980's we are seeking self-sufficiency and by the end of the century we should see Indian Government and Indian people as full partners in confederation.



# Indian Government Constitutions

By Kirk Kickingbird
and
Delia Opekokew

**Background**

Indian government means that Indian bands are sovereign units having the right to their own political, social, economic, and cultural institutions. Indian sovereignty is now qualified because through the treaties the Indian nations placed themselves under the protection of the Crown. Although, having entered into a special trust relationship with the Crown, the Indian nations retained their right to self-government.

The treaties acknowledged the inherent right to Indian sovereignty as shown by the following statement made by a government spokesman at the pre-treaty negotiations,

> "What I have offered does not take away your way of life, you will have it then as you have it now, and what I offer is put on top of it."

In other words the negotiators recognized that the Indian people were organized as societies who had their own way of life.

According to the Ontario Court of Appeal, after which leave to Appeal by the Crown was dismissed by the Supreme Court of Canada on December 21, 1981, in R. v Taylor and Williams, 34 O.R. (2d) 360, it was held that those oral promises of a treaty both preceding and following the signing of a treaty must be incorporated as part of the treaty. It is a basic doctrine that all societies have their own rules to establish, empower and regulate their institutions of government. Those rules form the constitution and that constitution can be a written document and/or an unwritten tradition. That is, as long as a group of people are organized into a society such as a band or tribe they have a constitution, even though it is unwritten. This constitution includes rules and regulations which have evolved as long as the band or tribe has been in existence and can include any subsequent rules and regulations made pursuant to the Indian Act if they are acceptable to the people.

It is not just Indians that recognize unwritten traditional law. The recent court case, The Queen v. The Secretary of State for Foreign and Commonwealth Affairs, Ex parte: The Indian Association of Alberta, Union of New Brunswick Indians which was handed down by The English Court of Appeal on January 28, 1981, highlights this principle. In Lord Denning's judgement he states,

> "They had their chiefs and headmen to regulate their simple society and to enforce their customs. I say, 'to enforce their customs', because in early societies custom is the basis of the law. Once a custom is established it gives rise to rights and obligations which the chiefs and head men will enforce. These customary laws are not written down. They are handed down by tradition from one generation to another. Yet beyond doubt they are well established and have the force of law within the community.
> In England we still have laws which are derived from customs from time immemorial. Such as rights of villagers to play on the green: or to graze their cattle on the common, see New Windsor Corporation v. Mellor (1975) 1 Chancery 380. These rights belong to members of the community: and take priority over the ownership of the soil."

**Reasons For A Written Constitution**

A written constitution sets a formal boundary beyond which the authorities may not go in performing the basic functions of their governmental duties. In other words, the inherent and acquired rights of the people are protected from any intrusion.

The written constitution will also assist Indian people to know and understand their rights and consequently will motivate them to exercise those rights.

A written constitution drafted

by Indian people will effectively put the Government of Canada on notice as to what the Indian people consider their rights to be. It will set out clearly the jurisdictional status of Indian government.

A written constitution will answer the question,

"What do Indian people want?" and will force the national government to recognize such constitution through legislative action and policy development. Thus the present federal government management role will be limited and reduced by federal government recogniton of Indian governments as the rightful authorities over Indian people and Indian lands; legislation should be passed by the national government (in a general way so as not to restrict) the powers of Indian government and to guarantee funds so that the means of implementing Indian government powers will be available.

In a summary, a constitition will be written in order that the Indian people can codify their rights and so that the government of Canada will recognize and confirm those rights through legislation.

**Basic Issues Of Drafting A Constitution**

If we are drafting a model constitution it must be broad and general so that differences among the bands will be taken into consideration. Each band or group of bands if they should form into one unit must be able to include matters unique to their region and traditions. Consequently, there will be many constitutions.

It must be made clear that the written constitution does not include all the rights accruing to the people. The principle that both the written and unwritten laws form the constitution will continue to apply. In order to prevent any restrictions the constitution must be broad, brief and open-ended. That will allow it to adapt to any changes not foreseen by the drafters.

The constitution will formalize and protect those rights inherent to the people and will restate those rights enumerated in the Royal Proclamation of 1763, the treaties, the B.N.A. Act, the Natural Resources Agreements, statutory law, case law and the various other sources from which the trust relationship flows.

## CONSTITUTION OF THE BAND(S) OR TRIBE

**I Preamble - Intent and Purpose**

**II Territory and Jurisdiction** - people
- lands or territory

**III Statement of Principle**

1. ie. "We, _____,
do not accept the diminishing of our sovereign status as a nation and of our vested or inherent rights by the act of adopting this constitution."

2. Band Council - to protect and preserve treaty rights and an explanation of treaty rights.

**IV Membership**

1. All persons of Indian descent who are members of a band recognized by the Canadian government, regardless of degree of blood and residence as at date of constitution.

2. All persons of (one-quarter; one-half, etc., or more Indian blood) who are admitted by the band council as members.

**V Governing Body**

1. structure - traditional form or western governmental model;
2. number and residency if elected officials;
3. powers to include those enumerated and those recognized in the future;
4. to include group of elders who may review acts of governing body.

**VI Powers of governing body**

1. To define conditions for membership
   ie. -procedures for abandonment of membership;
   -adoption of non-Indians;
   -adoption of persons holding citizenship in another Indian nation;
2. The power to Tax and Levy fees
3. Regulate Domestic Relations
   -make rules governing marriage, divorce, illegitimacy, adoption, guardianship and support of family members.
4. The Powers to Regulate Property
5. To Represent the band in all negotiations
6. To promote and protect the health, education and general welfare of its members; through social, cultural, and economic programs and projects;
7. To prescribe rules governing the nominations and elections of members and non-band members on the reserve;
8. To regulate conduct of band members and non-band members on the reserve;
9. To regulate hunting, fishing and gathering over Indian lands whether on or off the reserve.
10. To regulate law and order
11. To administer any funds or property within the control of the band for whatever stated purposes;
12. To make laws, enforce such laws and administer justice
    - to set up a police force
    - to set up own court system
13. Any other powers which the band want included.
14. The above rights are not exhaustive and the governing body can exercise any additional powers as may be conferred upon its people in the future.
15. The governing body can delegate any of its powers by legislation or resolution.

**VII Procedure for Elections and Nominations**

**VIII Officers of the governing body**

**IX Meetings - annual meeting or on notice by 30% of membership, etc.**

**X Vacancies and Removal**

**XI Amendments**

# FSI Restructure:

## Next Step Forward for Indian Government

by Beth Cuthand

Perhaps in the near future you will hear a Saskatchewan newscaster say:

> "Today the Federation of Saskatchewan Indian Nations convened in legislative assembly to debate third reading of the Indian Government Bill."
>
> The Bill has gone through first and second reading at the band and district level. It is expected to pass third reading without amendment..."

The groundwork for such a reality has been carefully laid by Chief Sol Sanderson. Two and a half years ago he saw that the next step toward implementation of Indian Government in Saskatchewan was to develop a mechanism to legitimize the legal and political process of Indian governing authority.

Under treaty, the Queen promised to protect the Indian way of life, though Indian Government was never mentioned in the treaties, it was understood by our forefathers that our Indian governing authority would continue and its powers would not diminish.

The issue, Chief Sanderson believed, was to spell out the ways and means that jurisdiction under treaty could be exercised to its fullest. The basic fundamental unit of Saskatchewan Indian government is the Chiefs and Councils of the 69 bands.

The authority of the Chiefs and Councils would have to be respected and enhanced as the base for a new governing structure.

The non-profit society structure under which the Federation was incorporated was insufficient for the demands of a true government. A new structure built from the bands up to a provincial governing authority would have to be invented. There was no precedent in modern day governments.

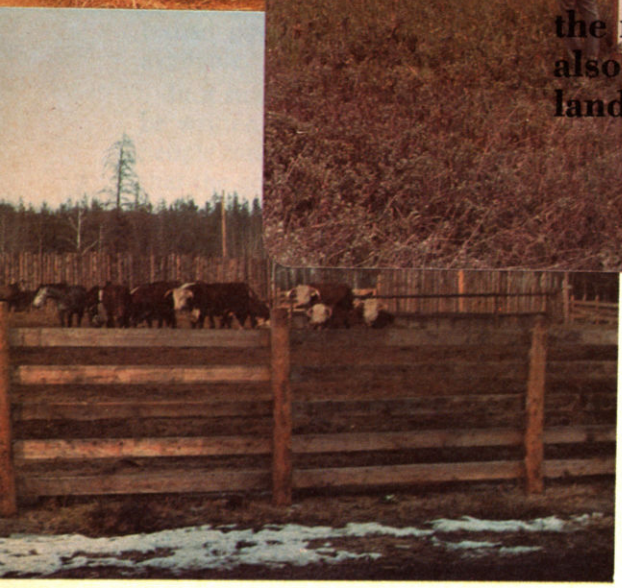
Chief Sanderson set into motion various committees to work on portions of the new structure. The committees worked independently in isolation from one another for two years. Workshops were held at the band and district level on various subjects surrounding the definition of a new governing structure.

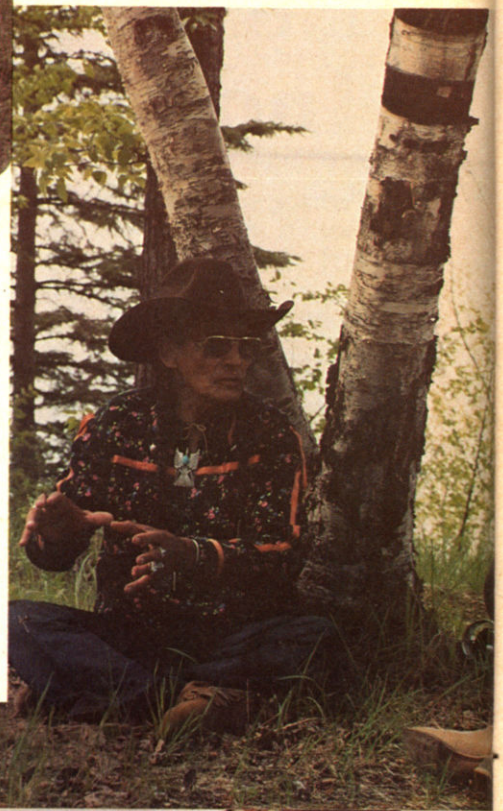
Our Chiefs in Council throughout history were the governing body of our Nations. So in the present day structure a Chiefs' Council comprised of the 69 member bands of the Federation of Saskatchewan Indian Nations is the governing authority of our Nation.

The process of consultation and definition of the powers and authority of the Chiefs' Council took many workshops and meetings at the Bands. The next step was workshops and meetings at the district and agency level where the authority and powers of district and agency Chiefs' councils were defined. During the past six months individual bands have spelled out the powers they wish to have by band council resolution.

The districts and agencies then study the band council resolutions and come to agreement as to the powers vested in district/agency Chiefs councils. There has been an incredible push in the last three months by FSI Indian government workers as well as executive and Chiefs to complete the province-wide process of definition of the

**Indian land rights include the right to determine resource development on reserve lands and to control the monies from such development. Our land rights also include a share of the natural resources off reserve lands.**





new governing structures.

The push has been necessitated at this time by the suspension of the Provincial Societies Act. The FSI can no longer incorporate under the Societies Act. To incorporate under new provincial legislation requiring organizations to become Corporations or Co-ops would be counter-productive to the goal of Indian Government.

The districts/agency have spelled out the powers of the Chiefs' Councils at their level and the fundamental principles of treaty and aboriginal rights to be protected and enhanced by their governing authority.

They agree to join together as a collective body. The Saskatoon District Chiefs were the first district to sign a "Memorandum of Agreement," spelling out the powers and authority of their district Chiefs' Council in February 1982. Since that time nearly every district and agency has signed a similar memorandum of agreement. It is expected that all districts will have signed by April 14th when the Provincial Chiefs' Policy Conference begins in Prince Albert.

What Chief Sanderson wishes to see set in place at the April Chiefs' Policy Conference is a province-wide "convention" or agreement signed by our 69 Chiefs as leaders of their nations, agreeing to:

**Principle I.**

**To formally join together as a collective body to be known as the "Federation of Saskatchewan Indian Nations' Chiefs Council", thereby affirming our relationships;**

**Principle II.**

**To formally define and outline the Protocol governing the structures to be agreed upon which reflect the collective body of the "Federation of Saskatchewan Indian Nations' Chiefs Council" as an entity unto itself;**

**Principle III.**

**To formally define and affirm the relationships between the "Federation of Saskatchewan Indian Nations' Chiefs Council";**

**Principle IV.**

**To promote and protect Indian Self-determination, and Indian Government through the establishment of Indian Government Centres on and off the reserves, through the development of Indian (Band) Government Constitutions, Indian Law, and also by establishing District or Treaty Area structures and supporting institutions, in accordance with the Principles of Indian Government, the Treaties, and appropriate Canadian, Saskatchewan and other legislative authorities as may be acceptable to the parties hereto;**

**Principle V.**

**To promote and protect the rights of the Indian People as herein represented, including rights accrued to the parties hereto resulting from the international treaties which were entered into between the Indian Nations, and the Crown of Great Britain and of Ireland, their heirs and successors, as these Treaties are binding upon the said Crown, its heirs and successors, as represented by the Governments and peoples of the United Kingdom, Canada, Saskatchewan, and upon the Governments and Peoples of the Indian Nations as herein partially represented;**

**Principle VI.**

**To promote the betterment of the Indian People by advancing their welfare, education, health, economic, spiritual, cultural, land, resource and political rights and development;**

**Principle VII.**

**To speak and act as a common voice on matters of mutual interest at the band, local, district, regional, national, and international levels;**

**Principle VIII.**

**To provide each Band and its Indian Government the final jurisdiction on the reserves, and the extra-territorial jurisdiction beyond the reserve boundaries into Treaty Territory as guaranteed by the Treaty agreements aforementioned, and as that jurisdiciton was previously confirmed by the Royal Proclamation of 1763, by the British North America Act of 1867 and by Indian customary law and practice;**

**Principle IX.**

**To formalize Crown/Canada/Saskatchewan and Indian/Dene/Dakota Trust and other relationships including an Office of Indian Rights Protection wherever necessary.**

*Principle V of the Convention calls for the protection and promotion of our rights under treaty. The treaties are international treaties binding upon the Crown.*

**Indian Education rights include the right to learn the things necessary to maintain our identity as a distinct people from early childhood to the adult years.**



The Convention outlines the powers, duties and responsibilities of the FSIN Chiefs Council.

1. to enhance and safeguard the natural laws.

2. to protect and strengthen the inherent sovereignty of Indian nations

3.to protect, preserve and reclaim Indian homelands and resources.

4.to strengthen the political autonomy of the band governments and to recognize and enhanse the common and different customs of the bands.

5.to assist Indian nations and their people to reaffirm their dignity and faith in their treaties.

In addition to these five basic duties, the FSIN Chiefs' Council will work to initiate, develop and negotiate protocol and agreements for an Indian/Canada/Crown relationship. The Chiefs' Council will negotiate for the implementation of legislation at the federal and provincial level confirming Indian treaty rights including revenue sharing for Indian governments. The Council will also plan legislation regulations and amendments for the development of policy and enacting legislation. They will appoint a trustee to hold title to all goods and properties in trust for the benefit of the Chiefs.

The final clause says whatever powers, duties and responsibilities are taken by the Chiefs' Council, "shall be fulfilled consistent with the policy of co-existance with nature and mankind."

Signing the Convention, Chief Sanderson says, "could be the most powerful political statement we could make at the time when the Queen comes to Canada to proclaim the Canada Act. Our people could hold their heads high with the knowledge that we are taking a great step forward in implementing treaty and aboriginal rights for our future generations."

# Towards a Political Solution

By Beth Cuthand

Politics not law will ultimately determine the future of the First Nations in Canada. Whether we will continue to exist as distinct internally sovereign peoples within the Canadian confederation or acquiense to the relentless movement to assimilate us into the settler society of Canada, is the quintessential question raised by the patriation of the Canadian Constitution.

The First Nations have maintained, since the onset of the patriation process, that they have the legal, political and moral right to be a party to the Constitutional renewal; that their consent is required in matters affecting treaty and aboriginal rights in the Constitution. Ironically, the failure of the government of Canada to address Indian constitutional concerns has strengthened Indian political philosophy and ideology and has set the development of Indian government ahead by a generation at least.

During the past few months there has been movement toward the definition and consensus of principles among the First Nations. From mid-February to early April, exciting developments have been taking place in the hot noisy boardroom of the National Indian Brotherhood offices in Ottawa just three blocks from the corridors of non-Indian political power in Canada. Indian politicians and technicians from the provincial and territorial organizations have been working non-stop to push for a political solution to the Indian/Federal constitutional impasse.

The realization of a mutually acceptable political resolution of Indian/Federal disagreement over the degree of commitment to treaty and aboriginal rights addressed in the Constitution is more pressing than ever.

The Constitution leaves treaty and aboriginal rights vulnerable to amendment by provincial and federal governments and does not safeguard those rights "for as long as the grass grows and the rivers flow..." It does not spell out an adequate post patriation process that is acceptable to the First Nations who are themselves equal parties to Confederation and morally, legally and historically deserving of a status greater than that of a "special interest group."

Joint Council decisions and action at the National level during the winter just past have speeded definition of process and agreement between the First Nations. The Joint Council is the interim ruling body at the national level. It is made up of Chiefs, elders and provincial and territorial organization representatives. It is the bridge between the old non-profit society structure of the National Indian Brotherhood and the new national Indian government, the name and structure of which is to be decided later this month at the First Nations Assembly in Penticton, B.C.

The Joint Council met February 17 and 18 in Ottawa and marked a turning point in the First Nation's Constitutional Lobby. Prior to this the emphasis had been on legal and political action in Great Britian. Since domestic remedies had failed in Canada in the political forum and First Naitons had been denied access to Canadian courts on constitutional matters, the First Nations went to London England, and the seat of the British government.

Because all legal agreements had been signed with "the Crown in the right of Great Britain...", the First Nations put their trust and hope in the British sense of justice and honor. Britain would, they reasoned, recognize her responsibility to Canadian Indians and act to ensure Indian treaty and aboriginal rights were safeguarded in the Canadian Constitution. But the January British Court judgement brought down in the IAA case was adversely

affecting the London lobby. The IAA had challenged the findings of the Select Committee on Foreign Affairs: or the "Kershaw Committee" as it came to be known or a narrow point of Law. This British Committee of the House of Commons looked into the constitutionality of the Canadian proposal. It had conducted a cursory investigation of Canadian Indian claims that Britain was party to the treaties and still had legal obligations. On the advice of the Foreign and Commonwealth office it declared that Great Britain no longer had responsibilities to Indian Nations. When the IAA challenged their decision in the Courts, the British Court of Appeal upheld the Kershaw Committee's findings. The 3 justices on the case unanimously agreed that the Crown had become "divisible". Lord Denning, Master of the Rolls, said Britain had no authority for Indians because the Crown was divided in the first half of the present century by Constitutional "usage and practice". Political and legal means to delay passage of the Canada Bill in the British parliament were not substantially slowing the patriation process enough to allow political activities in Canada to take effect. Various paths had been tried but neither conservative Prime Minister Margaret Thatcher or the Labour caucus in the British House are willing to advocate further delay of the Canadian independence process. Entreaties to delay passage until the full legal arguments could be heard in the British courts were quashed by the IAA court ruling. The British and Canadian press latched on to the court's ruling as the definitive and final adjudication of the "Indian question". Press on both sides of the ocean closed their doors to the Indian side of the Canada Bill story. Press reports were one-sided and openly disparaging of the Indian position.

In Canada, Prime Minister Trudeau had steadfastly refused to meet with Indians until after patriation. Numerous letters were written between Indian leaders and the Prime Minister as well as his constitutional ministers and senior government bureaucrats. The Canadian government wanted to deal with the "aboriginal peoples"; the Indian, Metis and Inuit, as one group. This was problematic for Indian Nations because of the unique legal, historical and political basis for Indian rights as opposed to the rights of the Metis and Inuit. The inclusion of the provinces in the future constitutional talks was also contrary to the constitutionally recognized federal jurisdiction over "Indians and lands reserved for Indians".

Time was running out for the First Nations. In Britain the parliamentary process was going forward. Second Reading in the House of Commons was beginning. In Canada, public opinion was being manipulated by the Federal government to anti-Indian sentiment. The Constitutional issue was so complex and long standing that few people knew the real moves being made and many simply didn't give a damn anymore. Indian efforts to get their side of the story before the Canadian public and the British public were thwarted at every turn. Most Canadian journalists were openly hostile to any Indian public relation initiatives. So when the Joint Council met in mid February, it was with a sense of urgency. Their meeting began February 17, 1982 amid a flurry of telexes and phone calls from London where the historic Second Reading was taking place. As British Members of Parliament debated the merits of the Canada Bill as it related to Indian rights, on this side of the ocean the Indian Nations, as diverse culturally, politically, geographically and historically as the nations of Africa or Europe, struggled to reach a unified position on the process and principles to be addressed through a political solution.

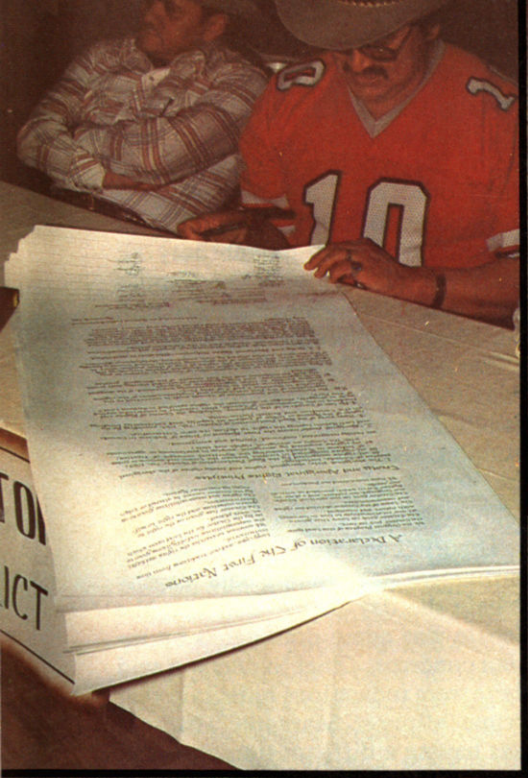
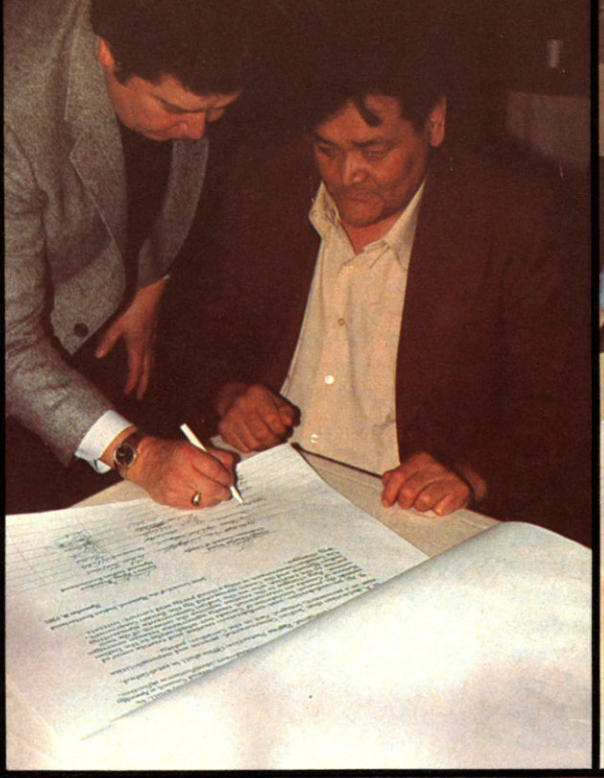
They were assisted in their deliberations by the treaty and aboriginal rights principles. The principles are a declaration of the fundamental political beliefs shared by the First Nations of Canada and were signed November 18, 1981, by the Joint Council. They have since been ratified by most of the 576 Chiefs in the country. The "nine points" as they are sometimes referred to were and are, the basis for political action at the national level. They were used as the framework for the Indian Rights amendment clause proposed by Chief Solomon Sanderson of the Federation of Saskatchewan Indians. This was the clause that had been lobbied in Britain with those Indian Nations taking an active part in the British lobby as well as British Members of Parliament and Lords. It was referred to over in London as "the addition to the Canada Act".

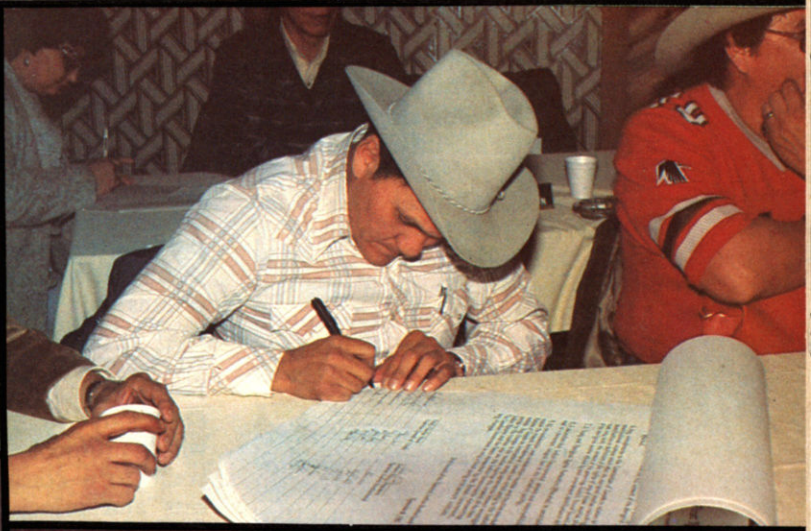
Chief Sanderson liked the clause because it didn't affect the body of the Canada Act and if accepted, would define a process of amendment that the Inuit and Metis could follow to spell out their rights in the Constitution. This new clause was by no means the final Indian Rights Amendment Bill. It was proposed as the basis to draw Members of Parliament into the

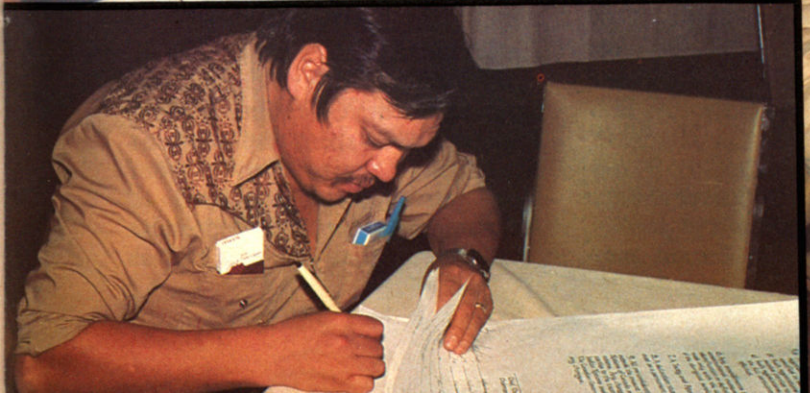
*The Declaration of Treaty and Aboriginal Rights Principles are the united position of the Indian Nations in Canada.*

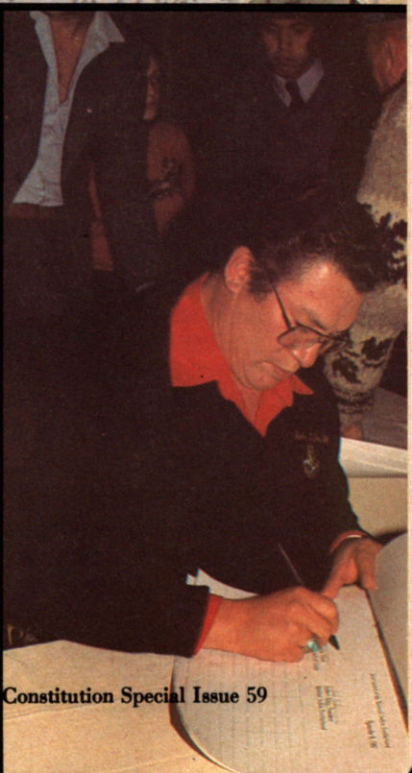
*The principles were agreed upon November 18, 1981 by the Joint Council at the national level. They were ratified by Saskatchewan Chiefs at the Moose Jaw Policy Conference November 27, 1981.*

*Some of the signatories are featured on the next page. From upper left clockwise: Chiefs Alfred Stevenson, Roland Dustyhorn, unidentified, Louis Taypotat, Charles Wood, Pat Dillon, Lindsay Cyr, Edward Black (right), George La Roque, Miles Venne.*





debate, to fully examine the issues and finally refer it to a select committee to work with Indian leaders for its final draft. The Indian Association of Alberta was also putting forward an amending process for the endorsement of the Joint Council. The IAA was proposing nine admendments to the body of the Canada Act. The existence of two amending processes complicated the decision making at the Joint Council, but didn't preclude agreement. The Council agreed to support the IRA Clause and the amendments put forward by the IAA. The general feeling was that every means should be attempted to achieve the goal of entrenchment of the treaty and aboriginal rights principles in the Canadian Constitution. However, the chances of amending the Act in Britain were remote and Indian politicians knew it. The Liberal government in Canada did not want to trifle with the Constitution because of the Accord reached with the Provinces amid great controversy and divisiveness November 5, 1981. Quebec's failure to agree to the terms and conditions of the accord was bad enough without allowing the Indians to get their fingers on it. The British government was very aware of the situation and weakly allowed the Canadian government to dictate the terms of the passage of the bill through Westminister. Government Members of Parliament declared that they did not wish to interfere with the "internal matters of another sovereign nation".

On February 17, the Joint Council passed a major resolution calling for a political solution and spelling out the process to be followed to achieve a mutually acceptable solution with the Federal government. Though the debate leading up to the unanimous acceptance of the resolution was long and heavy, the Council spelled out the terms and conditions of political solution to be reached in Canada. The political policy committee which had lain dormant for months was resurrected and Gordon Peters, leader of the small but vocal Association of Iroquois and Allied Indians, was appointed to chair the committee. Representatives from New Brunswick, Saskatchewan, Manitoba and Treaty 3 in Ontario sat on the commmittee. In order to lobby for a political solution, it was obvious much technical work had to be done quickly and the Joint Council needed a political arm to direct the work of the lobby in Ottawa. FSI Chief Sol Sanderson volunteered the services of Clive Linklator to serve as National co-ordinator on the technical side of the lobby. He agreed to the committee concept and urged the member technicians and politicians draft the Protocol Agreement.

"The ways and means by which Indian governments and the federal government interact has never been formally addressed", Chief Sanderson said, "A Protocol would be used to implement formal political action through the Canadian parliament and our own governments. It would lay out the conditions of intergovernmental action". Drafting the Protocol Agreement was a difficult task. For starters it was difficult for everybody to get a handle on what protocol meant, let alone come to a consensus on the process and principles to be included in the Protocol Agreement. The PPC met February 23 and 24 to hash out the draft of the agreement. Technicians Clive Linklator, Fred Kelly and Joe Saunders had worked on the First Draft prior to the Committee meeting. There followed a clause by clause, phrase by phrase study by representatives and technicians of the First Nations. Luckily the Indians sense of humour mitigated the intense debate and the pressing need for agreement over-rode any Nations's natural will to dominate the political philosophy and process put forward in the document.

As the Political Policy committee worked on one part of the political solution, events in Britain were shaping the next step. The Canada Bill had been referred to a Committee of the Whole which means that the House of Commons sat as a committee to study the Bill. This Committee was sitting February 23. On February 24 at 4:30 Ottawa time, Chiefs Eugene Steinhauer of the IAA and Sol Sanderson of the FSI as well as Robert Daniels of the Four Nations Confederacy called the PPC on a conference line from London where they had observed the debate of the Canada Bill in Committee.

The PPC was told that the British parliament had completed a lengthy debate the day before and that the debate was again dominated by Indian concerns. Chief Sanderson said there were indications in Britain that Prime Minister Margaret Thatcher was having a difficult time controlling her party M.P.'s "Half of her party want to speak to Indian concerns but they're muzzled" said Chief Sanderson. They said the British house had once again urged Canada to settle the Indian problem as they had during Second Reading of the Bill.

Chief Sanderson indicated that he had spoken with Jean Chretien earlier in London just after the debate. Chretien had indicated he was prepared to meet with representatives of the First Nations back in Canada. A meeting with Chretien could open the door to Federal/Indian negotiations before patriation. They recommended that a letter of intent be drafted immediately to spell out what the terms and conditions would be for a political solution. "We have to show over here", Sanderson said, "that we are moving toward a political solution in Canada". When asked about the status of the FSI and IAA amendments, they agreed there was not much hope for their being adopted in Britain and that the letter of intent should take precedence over other means.

The Political Policy Committee met again March 2 in Ottawa to finalize the draft Protocol and the letter of intent. Co-ordinator Clive Linklator had spent the weekend contacting senior government bureacrats and cabinet ministers to follow up on the verbal promise Jean Chretien had made in Britain

to meet with the First Nations. Chretien's "promise" eventually proved to be a puff of wind and the meeting never materialized.

In the meantime, Prime Minister Trudeau had not replied to a February 17 letter from NIB Acting President Sykes Powderface calling for a meeting. Governor General Ed Schreyer had not followed up on an earlier commitment to use his influence to urge Trudeau to meet with Indian representatives.

The Joint Council met again March 3 and 4. Once again the debate was heavy. IAA representatives, Helen Gladue and Sam Bull spoke against the political solution. They feared public acknowledgement that Indians were seeking a settlement of Constitutional inadequacies through a political forum in Canada would have a detrimental effect on the London lobby. Doug Cuthand, first vice-president of the FSI, took the opposite view. He said, "The people we lobbied in Britain support a political solution in Canada. They will delay to give us time over here. The British Parliament has thrown the ball in Canada's court and that is evident from the debate".

The Joint Council ratified both the draft Protocol and the letter of intent entitled: "Memorandum concerning the rights of the First Nations of Canada in the Canada Bill now before the Parliament and the Courts of the United Kingdom". The memorandum outlines the process for negotiation and the principles to be addressed. It was the first time that Indian Nations in Canada have made a comprehensive and united move to spell out the terms and conditions for their continued relationship with the government of Canada. The memorandum outlined 7 principles to be addressed by First Nations and the Federal Government. They are:

1. Acceptance and confirmation of treaty and aboriginal rights recognized by the Proclamation of 1763 and the treaties and various settlements and agreements.
2. Recognition of Indian Government.
3. Establishment of Treaty and Aboriginal rights Protectorate office.
4. Consent to any future amendments to the Constitution affecting aboriginal peoples.
5. A "not withstanding clause" or right to opt out of the Constitution where it might infringe on aboriginal and treaty rights.
6. Reasonable access to Federal and/or Provincial information and documentation.
7. Indian government immunity.

The Memorandum defined a mechanism for political resolution. The Joint Council proposed that two negotiating teams be appointed. One would consist of the Joint Council and the other would be appointed by the government of Canada. "representative of the Cabinet and the three major political parties of the House of Commons and the Senate". They proposed that a chairman be chosen for or by each negotiating team and that the chairmen, "in joint consultation make the necessary arrangements for the respective teams in joint session". They further proposed that "officials and staff be so established to assist the respective negotiating teams in separate or in joint sessions so as to facilitate the negotiations."

The memorandum and a covering letter signed by Sykes Powderface calling for a meeting was sent to the Prime Minister March 4, 1982. The Joint Council gave Prime Minister Trudeau a deadline of March 8 by which to reply to the memorandum.

In his reply dated March 8, 1982, Prime Minister Trudeau said, "I do not believe it would be useful for us to meet at this time for I do not intend to ask the Parliament of Canada or the provincial governments to amend the Constitutional Resolution before patriation".

The political policy committee continued to lobby the hill. They met with members of parliament and with the NDP and Conservative caucases. Both leaders, Ed Broadbent of the NDP and Joe Clark of the Conservatives, agreed that a meeting between the Prime Minister and representatives of the First Nations was needed as soon as possible. Both committed themselves to writing the Prime Minister and agreed to support a political solution.

On March 23, third reading of the Canada Act Bill took place in the British House of Lords. The Queen in the right of the United Kingdom gave Royal Assent to the Bill March 29. The Queen in the right of Canada announced she would bring the Constitution to Canada April 17 and declare Canada's independence.

While the Queen was busy dividing herself, the British parliament breathed a sigh of relief to be rid of the Canada Bill; the First Nations doggedly continued to press for a political solution. The Joint Council met again March 31 and April 1 in Ottawa to continue their work toward a political resolution of Canada/Indian difficulties.

## Is there a solution?

Is a political solution possible? Indian Nations' activities of the recent past indicate a willingness on the part of the First Nations to sit down and negotiate a meaningful solution. Because of the intense political lobbying of the past three years, the Constitutional patriation has been good for Indian Nations. It has forced us to address our relationships with one another. It has fostered an unprecedented growth in Indian political ideology. It has forced us to look at the basis for our existing relationship with the rest of Canada and to address the process and principles of a future relationship. Amid this fast growth and rapid change, the timelessness of Indian existence in this land gives us hope. Time is on our side and whatever history has been made in the past few years is a mere drop in the ocean of time. The "Pierre Trudeaus" and "Margaret Thatchers" of this world come and go, but the will of the First Nations remainingdistinct entities in our own land is defined by occupation of the land since time immemorial.

A political solution which recognizes a just and lasting place for the First Nations in Canada is the goal of the First Nations.

We have the right to expect no less.

# A Declaration of The First Nations

We the original peoples of this Land know the Creator put us here.

The Creator gave us Laws that govern all our relationships to live in harmony with nature and mankind.

The Laws of the Creator defined our rights and responsibilities.

The Creator gave us our spiritual beliefs, our Languages, our culture, and a place on Mother Earth which provided us with all our needs.

We have maintained our freedom, our Languages, and our traditions from time immemorial.

We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the Land upon which we were placed.

The Creator has given us the right to govern ourselves and the right to self-determination.

The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation.

# Treaty and Aboriginal Rights Principles

1. The aboriginal title, aboriginal rights and treaty rights of the aboriginal peoples of Canada, including:
   (a) all rights recognized by the Royal Proclamation of October 7th, 1763;
   (b) all rights recognized in treaties between the Crown and nations or tribes of Indians in Canada ensuring the Spiritual concept of Treaties;
   (c) all rights acquired by aboriginal peoples in settlements or agreements with the Crown on aboriginal rights and title;

are hereby recognized, confirmed, ratified and sanctioned.

2. "Aboriginal people" means the First Nations or Tribes of Indians in Canada and each Nation having the right to define its own Citizenship.

3. Those parts of the Royal Proclamation of October 7th, 1763, providing for the rights of the Nations or tribes of Indians are legally and politically binding on the Canadian and British Parliaments.

4. No Law of Canada or of the Provinces, including the Charter of Rights and Freedoms in the Constitution of Canada, shall hereafter be construed or applied so as to abrogate, abridge or diminish the rights specified in Sections 1 and 3 of this part.

5.
   (a) The Parliament and Government of Canada shall be committed to the negotiation of the full realization and implementation of the rights specified in Sections 1 and 3 of this Part.
   (b) Such negotiations shall be internationally supervised, if the aboriginal peoples parties to those negotiations so request.
   (c) Such negotiations, and any agreements concluded thereby, shall be with the full participation and the full consent of the aboriginal peoples affected.

6. Any amendments to the Constitution of Canada in relation to any constitutional matters which affect the aboriginal peoples, including the identification or definition of the rights of any of those peoples, shall be made only with the consent of the governing Council, Grand Council or Assembly of the aboriginal peoples affected by such amendment, identification or definition.

7. A Treaty and Aboriginal Rights Protection Office shall be established.

8. A declaration that Indian Governmental powers and responsibilities exist as a permanent, integral fact in the Canadian policy.

9. All pre-confederation treaties and treaties executed outside the present boundaries of Canada but which apply to the Indian Nations of Canada are international treaty agreements between sovereign nations. Any changes to the treaties requires the consent of the two parties to the treaties, who are the Indian Governments representing Indian Nations and the Crown represented by the British Government, the Canadian Government is only a third party and cannot initiate any changes.

Joint Council of the National Indian Brotherhood
November 18, 1981

# Current Constitutional Positions Indian Nations and Federal Government

by Clive Linklater

November 18, 1981 the National Joint Council unanimously passed and adopted the "Declaration of Treaty and Aboriginal Rights Principles".

On February 17, 1982 the Joint Council unanimously agreed to reaching a political solution with the Canadian government over the impasse regarding patriation of the Constitution.

The solution was in the form of an Indian Rights Amendment Bill to be passed by both the British and Canadian Parliaments. The Indian Rights Amendment Bill embodies the basic principles of the Declaration of Treaty and Aboriginal Rights Principles.

The Indian Rights Amendment Bill was not passed by the British Parliament but has been discussed with both opposition parties in Canada, with Cabinet Ministers and Senior Government officials.

The Prime Minister and his Senior Constitutional officials have agreed to make these "Principles" an item of priority discussions immediately following patriation and prior to any First Ministers' conference.

The following is an explanatory comparison between the Treaty and Aboriginal Rights Principles and the Government's position on the points included in the "Principles".

Items No. 1(a) Royal Proclamation of 1763, 1(b) Treaties, and 1(c) Rights recognized in any settlements or agreements. which are the stated legal basis "recognizing" and "affirming" aboriginal and Treaty Rights are now included in the Constitution.

Item No. 2 defining the First Nations or Indian peoples as "Aboriginal People" is now included in the Constitution.

Item No. 3 defining the Royal Proclamation as binding upon the Canadian Parliament but not the British Parliament, is now included in the Constitution.

Item No. 4 stipulating that no other section of the Constitution including the Charter of Rights shall be construed as to abrogate aboriginal and Treaty Rights is now included in the Constitution.

Item 5(a) and the first portion of Item 6 are the "definition" and "clarification" clauses are now included in the Constitution.

Item 5(b) is the Indian position that the negotiations to "refine" and "clarify" aboriginal and Treaty Rights is not included in the Constitution now.

Item 5(c), 6, and the last portion of 9 are the "current" clauses and are not included in the Constitution now. The Government says it does not know from whom to get consent of Indians. The last part of Item 9 spells this out.

Item 7 is the Treaty and Aboriginal Rights Protection office - is not included in the Constitution now, but the government agrees with this in principle but takes the position it is not necessary to include this in the Constitution, and that it can be implemented outside the Constitution.

Item 8 is the Indian Government provision and is not in the Constitution now. Again the Government agrees with this in principle (it is even proposing its own Indian Government Bill) but again says it is not necessary to include in the Constitution.

In January, Indians and the Government agree substantially on Items 1, 2, 3, 4, 5(a) and portions of 9.

The government agrees in principle with items 7 and 8 but disagrees on including them in the Constitution.

The Indians and Government disagree substantially on items 5(c), 6, and the latter portion of 9, which is the current clause.

Although these are also disagreements on definitions in terminology it is clear Indians and the Government agree substantially on the items contained in the Declaration of Treaty and Aboriginal Rights.

There is more agreement than disagreement, and it need not take much discussion and negotiation to agree upon the items that are the source of disagreement.

**Indian cultural rights include the right to determine our future cultural development and to maintain the Indian way of life in perpetuity.**

*continued from inside front cover*

federal/provincial governments and municipal governments. The settlers' government powers and territorial boundaries resulted in the systematic erosion of our Indian government powers and national territories.

The overlapping jurisdiction created through the division of powers to the exclusion of Indian governing authorities impacts on Indian lands and resources, and our social, economic, cultural and spiritual development. The conditions, as we witness them today, are caused by the degree of control we have lost over our affairs.

The high suicide rate, the high incarceration, the high drop-out rate, the severe alcohol abuse are symptoms of the loss of control by our parents, our elders and leaders over Indian government and all the institutions that affect the rights of our people individually or collectively.

What powers we will exercise to take control of the situation is the fundamental question we must address. Do we wish to continue the existing order through the Department of Indian affairs and the Federal Government, which is essentially a relationship of colonial dependance? Or do we wish to take control and govern ourselves by our own legislation enacted by our own governing authority? In short, the choice is: Indian government or local control.

Up until now our struggle has largely been one of resistance. We have resisted assimilation and the symptoms of colonization. Now we must take the initiative. We must not only oppose, we must propose. We must exericise our political powers to put in place a system based on treaty and aboriginal rights. We must put in place the institutions and mechanisms that will allow the Indian Nations to in fact be nations.

We will never be secure until our rights to govern ourselves as Indian Nations have been irrevocably entrenched in the Canadian Constitution, guaranteed by the Crown. The action or lack of action our leaders take in this generation will determine the presence of Indians in the Canadian Confederation of the 21st Century.

We must be clear about our constitutional and political objectives. There are fundamental issues outstanding that need to be addressed before we can fully implement the means to assure our future within Canada:

1. **Political Autonomy**

   a. a formal legal/political process must be established soon between Indian Nations to foster the discipline and solidarity necessary to ensure our continued existance as nations.

   b. a formal legal/political process must be established between the Indian Nations, the Crown and Canada.

2. **Constitutional Safeguards**

   We require an Office for the Protection of Treaty and Aboriginal rights. This office would provide a continuous process for the definition implementation and protection of our special status. This office would ensure that no changes in our constitutional status would be affected without our consent.

3. **Revenue Sharing**

   We require a Canada/Indian Nations fiscal agreement which would recognize the right of the First Nations to a fair share of the wealth of the land and on terms conducive to Indian special political and constitutional status.

4. **Economic Development**

   Should take place within Indian Nations and should not be used to undermine the autonomy of our governing authority

6. **Resource Sharing**

   Formal agreement must be established with the Federal and Provincial governments concerning the proper development and proper distribution of profit from natural resources.

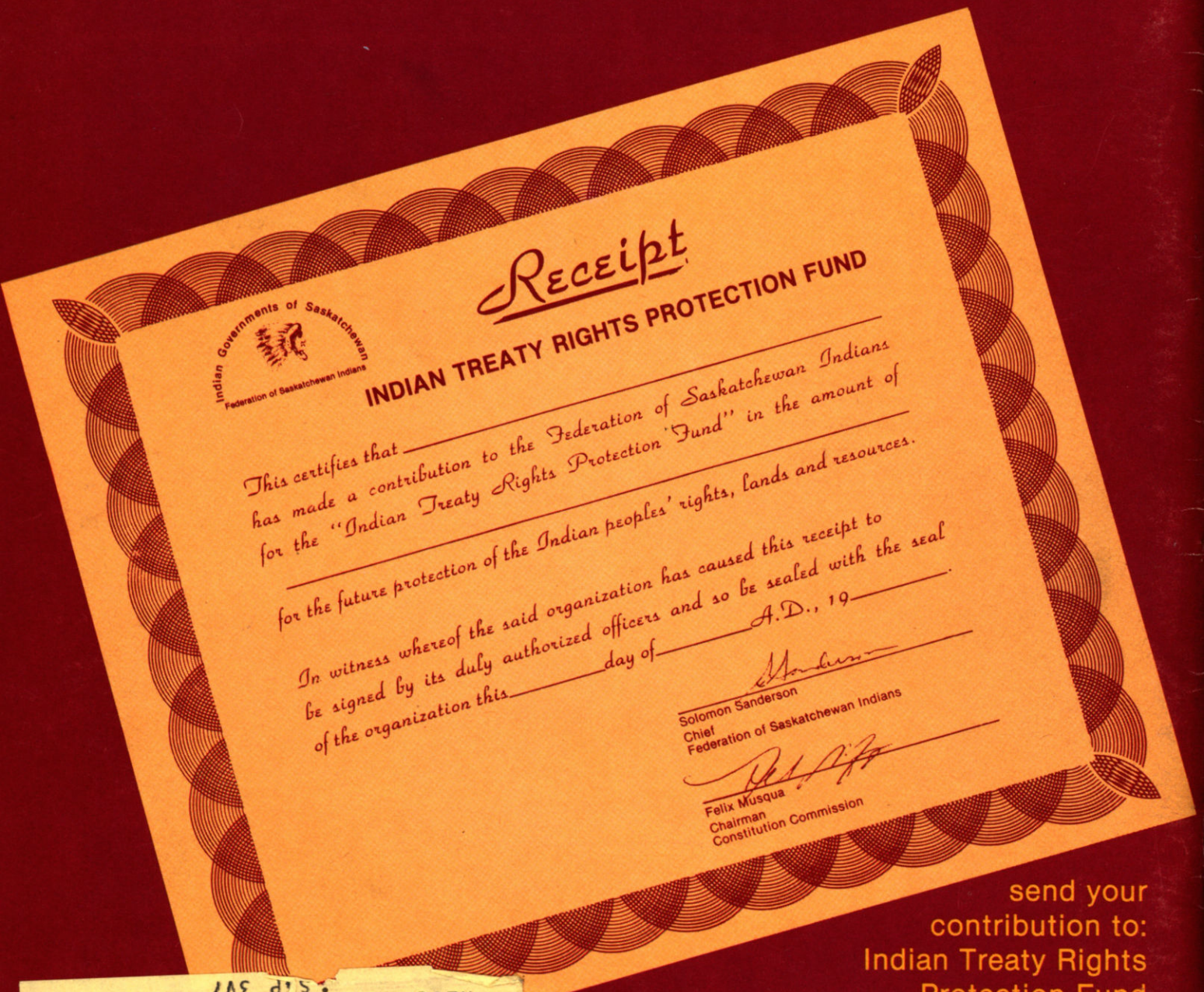
Our best instrument today is tomorrow and tomorrow is Indian Government. How we address the issues before us depends on our degree of Committment to the future our grandfathers sought to protect through the Treaties they made with the Crown. The Treaties were binding documents made between nations. Our grandfathers never gave up Indian governing authority. It was part of the way of life they solemnly signed Treaties to protect.

Though Indian governing authority has been severely diminished, it is crucial that we address the question of our own governing authority now. If we fail to act, the governments will act for us and our Treaty and Aboriginal rights will be wiped out. The Canadian Constitution could provide the means to secure our future or ensure our ultimate demise as Indian peoples. It is a two-edged sword that can only be effectively weilded as a weapon, if we are prepared to take the offensive and act quickly to implement the political power Indian Nations have by right of birth and their timeless existance in this land.

# PROTECT THE TREATIES

Is money a dirty word? Not when it comes to protecting a future for our children. Canada has a new Constitution which endangers everything our grandfathers sought to protect.

Can you put a price tag on your treaty rights? The federal government has. They say the price is too high. So there's no government funding to fight this battle. We have to pay the price. Your contribution would help to secure a future for our nations.




send your contribution to:
Indian Treaty Rights Protection Fund
Federation of Saskatchewan Indians
310-20th St. E. Saskatoon, Sask.