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of the

Legislative Assembly of Manitoba

STANDING COMMITTEE
on
PRIVILEGES
and
ELECTIONS

31-32 Elizabeth II

Chairman
Mr. A. Anstett
Constituency of Springfield

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

Thursday, 18 August, 1983

TIME — 10:00 a.m.

LOCATION — Legislative Building, Winnipeg, Manitoba.

CHAIRMAN — Mr. A. Anstett

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Penner, Mackling and Storie;

Messrs. Anstett, Graham, Harper, Sherman, Gourlay, Nordman, Santos and Lecuyer

WITNESSES: Mr. Eric Robinson and Chief Raymond Swan, Brotherhood of Indian Nations

Mr. Jack Fleming, Manitoba Metis Federation

Mr. Don Glays, Manitoba Wildlife Federation

Chief Joe Guy Wood, Chief Jim Beau, Chief Walter Monias and Mr. Colin Gillespie, Constitutional Committee of Chiefs, Standing Committee of the Assembly of Manitoba Chiefs.

MATTERS UNDER DISCUSSION:

Proposed Constitutional Amendment respecting Aboriginal Rights.

* * * *

MR. CHAIRMAN: Gentlemen, we have a quorum. The Clerk has advised that those people on the list of delegations, which I believe all members have in front of them, have advised that some of them will be late coming from out of town. The initial group, No. 1, Brotherhood of Indian Nations advised that they would be here by 10:30. Mr. Penner has suggested just before we called the meeting to order that we might take a recess until 10:30, now that we've called the meeting to order and await some of the delegations, is that agreeable?

HON. A. MACKLING: How many delegations are we expecting?

MR. CHAIRMAN: There are four on the list: the Brotherhood of Indian Nations, the Manitoba Metis Federation, the Manitoba Wildlife Federation and the Constitutional Committee of Chiefs, Standing Committee of the Assembly of Manitoba Chiefs.

Mr. Penner.

HON. R. PENNER: I think that as a matter of courtesy we should do that. Some of these issues have been pending for 400 years and I suppose 20 minutes might be added on at this juncture.

MR. CHAIRMAN: Mr. Sherman.

MR. L. SHERMAN: With the understanding that it's impossible, Mr. Chairman, to rearrange the order of appearance, are there any other delegations present even though the Brotherhood of Indian Nations isn't?

HON. R. PENNER: Perhaps the ladies and gentlemen of the press would like to . . .

MR. CHAIRMAN: Is it agreeable that the committee recess for 20 minutes until 10:30? The committee stands recessed until 10:30.

RECESS

MR. CHAIRMAN: The committee come to order. Gentlemen, that concludes the recess we took.

I'd like now to call on the list as it appears in front of you. The first delegation on the list is the Brotherhood of Indian Nations, Mr. Eic Robinson. Mr. Robinson, please would you come forward?

MR. E. ROBINSON: Thank you, Mr. Chairman. Firstly, I'd like to introduce the gentlemen that are with me. I've been asked to speak on behalf of the Brotherhood of Indian Nations to make this brief presentation. I'd like to introduce the chiefs that are in our delegation this morning. First of all, I'd like to introduce Chief Raymond Swan from Lake Manitoba; Chief Stanford Sumner from Dauphin River; Chief Edward O'Meara from Lake St. Martin and Mona Corbalo our council assistant.

First of all, we'd like to say that we're pleased to have been given the opportunity to speak with you today. However, we'd like to just say that because of the short notice, we're somewhat ill-prepared. However, we welcome the opportunity to address this committee.

As you are aware the Brotherhood of Indian Nations, the chiefs, the councils and the elders, along with other Indian organizations in Manitoba and across Canada have looked at the constitutional patriation and the subsequent First Ministers' Conference and the Accord that resulted from the First Ministers' Conference with the utmost of concern. The Brotherhood that we're here to represent in association with the Coalition of First Nations and its own right deemed it necessary to take a different stand than that of other Indian organizations and nations in Canada. It is with this understanding that we speak here to you today.

I don't think we are going to get into the history of the formation of the Brotherhood, or the development of the National Coalition that has been formed. We don't believe that it's the time nor the forum for that type of discussion. What we would like to do is to briefly state the Brotherhood of Indian Nations' position on the Constitution, the Accord and the general philosophy regarding Indian nationhood and also sovereignty.

We have brought with us this morning copies of the Brotherhood of Indian Nations analysis on the Accord

that resulted from the First Ministers' Conference and we are going to table that with this committee.

There are several basic concerns which the Brotherhood feels it necessary to be made clear to everyone. The chiefs, the councils, the elders and the band members of the Brotherhood of Indian nations maintain the sovereignty of Indian nations. We also maintain a longstanding and special relationship with the Crown and the Crown in right of Canada based on the Treaties, as well as the Royal Proclamation and The British North America Act.

It was because of our inherent sovereignty that the Brotherhood chiefs, councils and elders could not conceive a negotiation process and/or relationship with the provinces as equal partners. It was because of this sovereignty that the Brotherhood of Indian Nations decided against participating in the First Ministers' Conference. It was also because of our sovereignty that we present to you our analysis of the Accord, and reiterate the position that we have maintained; that any relationships and negotiations with Indian people can only be accomplished satisfactorily in a bilateral process with the Crown in right of Canada.

But I would like to stress here that the Brotherhood of Indian Nations appreciates that the Indian people in Manitoba must deal and appreciate the opportunity to deal with the Provincial Government on matters directly relating and affecting Indian people and also the provincial considerations.

Briefly, I guess that is all we have to say this morning. Certainly the chiefs here are capable of entertaining any questions that you may have on any matters that we have raised. I am not too sure as to the mandate of this committee, but we will table the analysis on the Accord and if there is an opportunity at a future time after you've had an opportunity to have a look at the analysis of the Brotherhood on the Accord that was reached at the First Minister's Conference, then certainly I think that the Brotherhood will be open to any discussion that may arise from anything you have, or any question you may have on the analysis.

So, Mr. Chairman, I thank you for the opportunity for this.

MR. CHAIRMAN: Thank you, Mr. Robinson. Are there any questions from members?

Mr. Penner.

HON. R. PENNER: Mr. Robinson, I understand the position that the Brotherhood has taken and your very clear presentation of it this morning. What is the position of the Brotherhood with respect to constitutional change, that is, change in the existing Charter which, as you know, deals in a very beginning or primitive way with aboriginal rights; do you hope to achieve some change in the Charter? Is that one of the goals of the BIN?

MR. E. ROBINSON: As you will probably read in the Accord, it'll become clear what the position of the Brotherhood is in that regard, as well as the kind of relationship we would like to establish, in terms of constitutional change and so on, the entrenchment of treaty and aboriginal rights. What you will read in the Accord is a bilateral process that we are seeking with the Crown in right of Canada, or the Federal Government, and you will read that. I know that the question will probably be raised, what is wrong with the bilateral process that resulted from the First Minister's Conference in Ottawa. I think if you have a look at the analysis that was prepared by the Brotherhood then it will give you a clearer picture of what we're talking about.

HON. R. PENNER: My question is somewhat more technical. Assuming that the Brotherhood somewhere down the road wants aboriginal rights more clearly defined and constitutionally entrenched, given that the patriated constitution has an amending formula, how do you see the Constitution being amended without the participation of the provinces?

MR. E. ROBINSON: I think I would like to refer that question, Mr. Penner, to one of the people that is sitting here, one of our chiefs perhaps would be in a better position to give you a more adequate answer.

MR. CHAIRMAN: Please come forward to the mike and Mr. Penner will restate his question, sir.

MR. E. ROBINSON: This is Chief Raymond Swan, Mr. Chairman.

HON. R. PENNER: Chief Swan, my question was this. Assuming that the Brotherhood would like to see some changes to the Constitution, strengthening the protection of aboriginal rights, and knowing that our Constitution now requires the participation and the agreement of at least seven provinces, with 51 percent of the population, how does the Brotherhood hope to achieve constitutional changes without the involvement of the provinces?

MR. CHAIRMAN: Mr. Swan.

MR. R. SWAN: Sorry I couldn't answer that at this stage, because we weren't very well prepared for what questions we were going to be asked here. We just heard about this meeting around 24 hours ago, so I wouldn't want to answer that question right now.

MR. CHAIRMAN: Any further questions by members?

Mr. Ransom.

MR. B. RANSOM: Mr. Robinson, we thank you for appearing before the committee, given the fact that you really didn't want to deal with the provinces originally.

Could you tell us in your own words and perhaps briefly what your position is with respect to the actual amendments that are before us? I realize that you have tabled an analysis of it, and we aren't going to have an opportunity to look at that until after the committee is finished here, and we will not have an opportunity then to ask you any questions. Can you give us an indication of whether there is something in this proposed amendment, quite apart from the way it was arrived at, that you don't like; that you don't think is in the interests of your people?

MR. CHAIRMAN: Mr. Robinson.

MR. E. ROBINSON: Firstly, I hope that we do have an opportunity before the committee concludes its work to again further talk to you about specific matters that are raised in the Accord. With reference to your question, there are a number of things that concern the Brotherhood in addition to the national organization, the Coalition of First Nations that I made reference to.

First of all, as I say, there is room and definitely the doors have not been closed to dealing with the provinces outside of the Constitutional issue, but because of the special relationship that we maintain with the Crown in right of Canada, the Brotherhood's aspirations along with the Coalition, is that we conduct that business between ourselves and the Crown in right of Canada.

As well, I suppose that although we respect our brothers, the non-status and the Metis and also the Inuit people, in what they are pursuing, we feel because of our special relationship through treaties that our business should be conducted between ourselves and the Crown in right of Canada.

I guess I could further add by saying that during the pre-patriation and the post-patriation activities that the Indian people did not really have a complete and equal opportunity to participate in the process that took place.

MR. B. RANSOM: Mr. Robinson, do you have any comment directly upon the constitutional amendments that are before us that deal with the equal status of men and women, and the amendments that deal with land claim agreements becoming part of the Constitution? Do you care to comment on those items, as such or are you simply saying that you're not prepared to discuss it because of the mechanism of the way it was arrived at?

MR. CHAIRMAN: Mr. Robinson.

MR. E. ROBINSON: No, I think that we are prepared to do that. I don't we'll be in a position to get into any great detail on the specific amendment. Certainly on the equality thing that you mentioned, I think that the position that has been taken by the Brotherhood, along with the Coalition on that matter, is that it takes away the sovereignty of Indian people in determining their own membership by giving in to - how should I say it - another government's will on how that should be done.

We believe, and we've always maintained, that as Indian nations, you know, we've had the ability, and certainly the mechanisms, to determine our own territory, including our own membership as to whose a member of an Indian nation and who is not. That's in reference, again, to the amendment there, the equality clause, applying of treaty and aboriginal rights apply equally to male and female persons.

MR. B. RANSOM: Mr. Robinson, I'm a member of the opposition in the Legislature here and, of course we, and the Legislature as a whole, are being asked to pass these amendments that are placed before our Legislature, and other Legislatures in Canada, as well as Parliament. I must say that I'm in the position, as an individual, of having some difficulty in knowing how to respond to that request because I'm not certain what these amendments mean.

Can you tell me, at least in your own mind, and in the analysis of your group, do you feel that you have a firm understanding of what these amendments mean, and what they will do if they are passed?

MR. E. ROBINSON: I believe that the brotherhood has given that a great deal of consideration and you will, you know, read on in the Accord. The official spokesman of the Brotherhood was unable to be here today, but I would certainly hope, as I said earlier, that the committee will see fit to carry on, you know, with this work.

I'm not too sure as to how long your mandate is, and so on, but I think that once you've had an opportunity to read the Accord, we've outlined specific areas there we feel could be detrimental to our special status as treaty and status people.

Again, in reference to our treaty and aboriginal rights, we do make specific mention of some of those things that you raised in your question in the Accord, and in direct reference also to the amendment that you are dealing with as a committee. But, as I say, because of the short notice I don't think that we're in a full position here to get into, you know, a real full discussion with your committee on some of these matters. But certainly what we are trying to do anyway is at least open the doors in being able to inform your committee about some of the concerns that we have as a Brotherhood. I believe that what has happened unfortunately is that the Brotherhood along with the Coalition have been second-guessed on the position that they have taken in reference to not attending the First Ministers' Conference and not being in agreement with the Accord that resulted from that conference as well.

So I can only urge that this committee perhaps consider further discussions with the Indian and the other Native groups that are going to be making presentations here.

MR. CHAIRMAN: Mr. Ransom.

MR. B. RANSOM: Would your recommendation - I won't phrase it that way, I'll say - would you recommend then to the committee that either we should reject this proposed amendment, or that we should be giving it further study with the possibility of recommending some change to it?

MR. E. ROBINSON: I would only recommend that the committee study it further, and perhaps have more deep and more serious discussions with the groups in reference to the amendment. I don't think I'm in a position, nor is anybody else here perhaps that's making presentations, just to say to totally not support the amendment because it is supported by others.

However, I would say to get a clearer picture and a thorough understanding of the different positions in reference to it, I would suggest that the committee perhaps consider further talks with the groups here.

MR. B. RANSOM: I think this is the last question then, Mr. Chairman, for Mr. Robinson. Would you conceive that one province, in this case Manitoba, should consider putting forward some different wording and sending that back to Ottawa and the other provinces? Do you think that's an option that is open to Manitoba?

MR. E. ROBINSON: Again I am in no position to comment on that. Perhaps that avenue should be considered upon this committee's further work. I am not too sure as to how long this committee has been established. I'm not quite clear as to its mandate, nor am I quite clear as to what kind of consultation process it intends to undertake with the Indian and the other Native groups in this province in reference to the agenda item.

HON. R. PENNER: I have just one further question, Mr. Robinson. You did express a concern that the proposed amendment dealing with the equality of male and female persons in respect to aboriginal and treaty rights might so operate as to take away sovereign rights of the Indian nations to determine membership within their own nation. That was your position, I believe.

MR. E. ROBINSON: Yes.

HON. R. PENNER: Is it not the case, and you'll correct me if I am wrong, that in fact the problem that has been the subject of court cases, the Labelle case and so on, arises from a provision in The Indian Act, which is in fact the intrusion of a federal statute into that area; that all of these cases which allegedly discriminate against Indian women who marry non-status and therefore lose their status, that is the result of a specific provision of The Indian Act, which is not the creature of Indian legislation but of federal legislation?

MR. E. ROBINSON: I don't think I'm in a position to comment on an Indian Act. That, again, is another subject and we could probably sit here for days and talk about it. I guess what I was talking about is that Indian nations have always maintained and determined their own membership.

With direct reference to your question, Honourable Minister, I believe that at least for the Brotherhood, certainly I can't speak for the other bands, whenever there has been a marriage by an Indian woman to a non-Indian person and if she applies for re-enlistment as a member from the band that she originally belonged to, certainly the band's position has been that they will take all things into consideration and determine whether or not that person should be accepted back as a member of that particular band that she belonged to prior to marriage.

So I guess there again, I'm talking about Indian bands, Indian governments and Indian nations determining their own membership.

HON. R. PENNER: Thank you.

MR. CHAIRMAN: Any further questions for Mr. Robinson?

Mr. Santos.

MR. C. SANTOS: Thank you, Mr. Chairman. I'd like to understand the national conception of the Indian people historically. In your document here, one of the assumptions stated is that the Royal Proclamation of 1763 did not create, but merely recognized the nationhood of the Indian people . In other words, the Indian nation is pre-existing and was already intact when the Royal Proclamation was made. Is that your understanding?

MR. E. ROBINSON: Our understanding of that, Mr. Santos, is that the Royal Proclamation did not grant us any rights, but it did recognize our nationhood. I think that's what we are trying to say in our analysis. I don't think that we are making any reference that any rights or anything like that resulted from the Royal Proclamation. However, it did recognize our nationhood, and this is what we still maintain today, that as nations we have binding treaties with the Crown in right of Canada.

MR. C. SANTOS: And that this proclamation is the basis of the trust relationship that was established by The Constitution Act of 1867 giving special status to treaty Indian people?

MR. E. ROBINSON: Yes, of course prior to that, the treaty signing, the Royal Proclamation of 1763 and The Constitution Act of 1867.

MR. C. SANTOS: That given the special status of Indian people, this was a relationship, a legal and constitutional relationship that was created only between the Federal Government and the Indian people; the provinces are not a party to that relationship?

MR. E. ROBINSON: Mr. Santos, in answer to your question, originally, the treaties were signed with the Crown in right of Great Britain, later the Crown in right of Canada. You will note that in our analysis, No. 4 in the Comments and Analysis on Page 3, the treaties were with the Federal Crown and the trust responsiblity is constitutionally entrenched in The Constitution Act of 1867, and the position that is being maintained by the Brotherhood and the Coalition nationally is that the provinces have no jurisdiction, political or legal, over the Indian nations and their people. I don't know if I'm making the thing more confusing or not, but I'm simply trying to state clearly to you the position that is being maintained by the Brotherhood and the Coalition.

MR. C. SANTOS: Given such assumptions, if the treaty Indian people are residing on reserve Indian land other than provincial land, the Provincial Government obviously will have no jurisdiction; but as soon as the Indian people move and reside and live in a provincial land, obviously enough the province will have some kind of concern and jurisdiction, doesn't that follow?

MR. E. ROBINSON: I don't know if I understand the question. Are you talking about a group of people or an individual, or how are you asking that question, Mr. Santos?

MR. C. SANTOS: The question I am asking is as soon treaty Indian people leave the reserved land and move onto some piece of land or area of residence which is provincial jurisdiction, obviously, they voluntarily submitted to some kind of relationship with the Provincial Government?

MR. E. ROBINSON: That is very difficult because I just don't fully understand the question. I guess I will try

and answer by saying that for many bands, when a person does move away and takes up residence elsewhere, he is still a member of that nation or the band that he's originally from. I agree that the present situation and the reality of the situation is now that when a person moves away and decides to take up residence at another location, it definitely comes under the jurisdiction of whatever government may be in the location that he has taken up residence.

MR. C. SANTOS: Thank you, Mr. Chairman. I don't want to take any more time.

MR. CHAIRMAN: Thank you, Mr. Santos.

Mr. Robinson, on behalf of the committee, thank you, and thank the Brotherhood for bringing your concerns to our attention this morning.

MR. E. ROBINSON: Thank you, Mr. Chairman. On behalf of the elders, the councillors and the chiefs, we want to thank this committee for giving us at least a few minutes of your time to address some of these concerns that we have, and we can only reiterate that I hope the committee will see fit to continue its dialogue with people who are concerned about the amendment, both the groups that support it and that are not in total support of it such as we are. So thank you on behalf of our people.

MR. CHAIRMAN: Thank you. The next name on our list is Mr. Jack Fleming representing the Manitoba Metis Federation.

Mr. Fleming.

MR. J. FLEMING: Mr. Chairman, members of the Legislative Assembly. As Metis people, we are recognized in the Constitution of Canada as aboriginal people. This reflects the fact that our ancestors lived here as self-governing people before the arrival and the dominance of European settlement and administration.

The French and British fur trade created the overlapping of Indian and European ways which led to the emergence of Metis as a distinct nation of people. For generations, the commercial fur trade played a major role in determining our economic lifestyles. However, it was not until after the expansion of Canada into the west that we began to lose our land and our political, cultural and economic independence.

The Metis of Red River Settlement hoped that the provincial status of Confederation would help ensure the continued strength and vigour of communities.

Up to the time of Louis Riel, our Metis and Indian ancestors lived as independent nations. The Metis were closely bound together by common culture, including their own land base and their own form of self-government. Since then, our independence has been greatly reduced, but our national identity has continued as a result of our cultural traditions and common ways of living, our sticking together and helping each other, our pride, our hope, and the Metis political organization.

Our Metis culture developed from a blend of Indian and European values and lifestyles. It still features commercial and domestic forms of living off the land, notably hunting, fishing, trapping, gathering of wild rice, herbs, roots, berries and farming. It also includes our socials, music, jigging, Metis Days, crafts such as sash weaving, festive clothing, country food, art, religious beliefs, historical knowledge and our mixture of mainly Cree, English, Ojibway and French languages.

All of this is bound together by a close family tie, a strong sense of identity and our common struggles for land, better jobs, improved living conditions, self-reliance, dignity and recognition as a nation. We belong to the Metis nation, however, we hold this national identity within Canada and recognize and abide by Canadian sovereignty. We want to strengthen and enrich our national culture and identity. To do this we need to attain a Metis land base, a meaningful economic development, and appropriate forms of self-government with regard to social, cultural and educational matters.

The Metis of Manitoba participated with the First Ministers of this country in March of this year. While we did not achieve as much as we would have desired, we do feel that a base for fruitful negotiations was achieved. The ongoing process provides a forum where aboriginal rights can be discussed, including a Metis land base and self-government. The achievement sets out a clause that provides for equal rights for aboriginal women and men. We support this action.

As well, the agreement sets out that further meetings will take place. These meetings are needed to provide the shape and dimension to that which are now empty phrases. We urge this government to pass this bill. The Governments of Alberta, New Brunswick, Prince Edward Island and Nova Scotia have already done so. As well, the Legislatures of Ontario and Saskatchewan have introduced this bill. This bill is not the end, but rather sets out the basis for negotiating a new beginning.

That's my brief. We have a book on what we've done, leading up to our constitutional meetings, and I'll leave that with the Chairman before we leave. If there are any questions . . .

MR. CHAIRMAN: Thank you, Mr. Fleming. Are there any questions from members of the committee? Seeing none, Mr. Fleming, thank you and your association for being here this morning.

The next person on our list is Mr. Don Glays of the Manitoba Wildlife Federation. Mr. Glays.

MR. D. GLAYS: Thank you, Mr. Chairman, and members of the committee.

I'm appearing before you this morning on behalf of the 16,000 members of the Manitoba Wildlife Federation. Since our incorporation in 1944, our organization has spoken out on many issues that affect the quality of life in this province, particularly with reference to natural resources. I'm proud to say that, for the most part, our activities have been in concert with the existing government, regardless of political stripe. Our efforts against the Garrison Diversion Project, acid rain and other similar environmentally damaging issues are examples of situations where we work very closely with government for the benefit of all Manitobans.

It is very distressing to members of our organization to note that on the subject of aboriginal rights we find ourselves at cross purposes with this government. We recognize that it is politically wise for this government

to side with the Indian people, however we point out to you that the resolution before the House to amend the Constitution of Canada is a resolution which could have and will have devastating environmental effects. It saddens us to realize that this government is not considering the ramifications of this resolution and is instead counting votes.

As we understand the resolution agreed upon in Ottawa in March of this year, the constitutional amendment is three-part. I will attempt to address each part independently, in reverse order from the way they are listed in the pamphlet, "Constitutionally Speaking."

Part 3 of the resolution calls for two more constitutional meetings before 1987. It's quite obvious that the governments of the provinces and Canada and the Indian leaders are being somewhat less than honest with the Indian people and indeed with the rest of Canada, if we are to believe that the issues can be resolved in a few short days of meetings. In our opinion the two-day prayer and ceremony session held on March 15th and 16th in Ottawa did nothing or very little to change the lives of Indian people, and if anything, it turned back the clock in terms of resolving the plight of Indian people in this province and in this country. One has to wonder why this is so and as an outsider looking in, it is quite obvious that no one at the conference sincerely wished to resolve anything. Let's be honest, if the question of Indian rights and the Constitution were resolved, the industry we know as the Department of Indian Affairs would be defunct, the Indian leaders would be out of a job and realistically, governments can't afford to settle the issue. It's wrong to put a deadline on debates because we know from experience dealing with these issues that deadlines come and go and the issue doesn't get any closer to being resolved. By amending the Constitution to only allow for two more meetings, we know that a considerable portion of the second meeting will be devoted to amending the Constitution again to allow for future meetings. It makes more sense to amend the Constitution to allow for as many meetings as necessary to resolve the issues.

The second item in the resolution call for a guarantee of rights and freedoms acquired by land claim settlements. We question the right of government - at any level - to guarantee anything so obscure in the Constitution. How can we be expected to be silent when the Constitution of our country is being tampered with by guaranteeing something that nobody knows the parameters of. There were guarantees made under the James Bay Agreement which were contrary to law and there may be agreements and guarantees given under the Manitoba Northern Flood Agreement settlement which may also offend law. Does the entrenchment of the item guaranteeing rights and freedoms acquired by way of land claim settlements now mean that a government, who could be negotiating from a position of desperation, can expand existing rights and freedoms and then is afforded protection by way of the Constitution?

You know, the public pays little or no attention to land claim settlements, probably because they don't realize the implications of them. We have been somewhat brainwashed into believing that the white man has this enormous debt to the Indian people for the way that we've treated them since Cartier landed here. I won't dispute that fact and I won't elaborate on the billions of dollars that go annually into the Department of Indian Affairs, but I will point out that we oppose the expansion of rights and freedoms that may flow from land claim settlements. In our opinion, the rights and freedoms afforded to Indian people are guaranteed in their treaties with the Kings and Queens of Canada and further affirmed by way of Section 35 of the Constitution.

The item of the resolution which creates the most concern for our members is the guarantee of equal aboriginal rights for males and females. We do not want to be viewed as either bigots or chauvinists, but we ask you to seriously consider the impact that this section will have on the populations of Indian communities.

The Indian Act stipulates that a non-Indian woman who marries an Indian man gains the status of her husband by virtue of Section 14 of The Indian Act. However, under Section 12(b) of that act, if an Indian woman marries a non-Indian person she loses her status and so do her children. In 1982 the Honourable John Munro, Minister of Indian Affairs, reported that there are some 15,700 women who would be eligible to regain their status and some 40,000 children who would gain status if this section became part of the Constitution. This means that an additional 31,400 adult Canadians and 40,000 young Canadians will now become aboriginal and treaty people.

This means that 71,400 more people could be seeking land claim settlements. The same number will be eligible for all the amenities currently afforded to the Indian people, and they will be eligible to hunt, fish, trap and gather at all times of the year.

The recent report to the Legislature on the status of wildlife tells us that many species of animals cannot withstand the current pressure of overharvesting by some Native people, and there is not enough to support the Indian communities in the future. What will happen to the wildlife populations of our province once we add in the Manitoba portion of the 71,400 new Indians?

We must speak out against the entrenchment of aboriginal rights into the Constitution because there is no clear definition of the term "rights," nor is there a clear definition of the term "aboriginal."

We recognize that this government is committed to passing the resolution to amend the Constitution, because our Premier signed the Accord to do so on March 16th. We think that both the Indian people and the governments of Canada must realize that the assertion of existing rights and the granting of expanded rights, with particular reference to natural resources, will only result in the Indian people losing their rights because there is not enough to go around.

We urge this government to negotiate in good faith with the Indian people of Manitoba, but we insist that you consider the long-term effects of your decisions instead of the short-term political gain.

That ends the brief of the Manitoba Wildlife Federation.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Glays. Questions? Mr. Penner.

HON. R. PENNER: I have a few questions, Mr. Glays. I'm just a little puzzled by your reference on the first

page of the brief to the two-day prayer and ceremony session, as you style it. I take it, you're not being critical of the fact that there were prayers and some ceremonial aspects to that Conference, are you?

MR. D. GLAYS: I'm being critical at the agenda itself, Mr. Minister. I was at the Constitutional Conference, and I found it somewhat belaboured that the ceremony as opposed to dealing with the issues and the point I'm raising in the brief is that, in order to resolve the issues, we need long-term hard fast meetings, not ceremonial sitting across the table being nice to each other. There are some very hard, cold facts that have to be resolved here, and you're not going to do it by calling for four more days of meetings.

HON. R. PENNER: Your answer to my question is that you are not being critical of the ceremony and prayers?

MR. D. GLAYS: No, Sir.

HON. R. PENNER: Are you aware that, in fact in — (Interjection) — yes well, let him speak for himself - that in preparation for the two-day meeting that there were, in fact, several meetings of officials from all levels of government that occupied weeks and weeks; that there were meetings of Ministers responsible for the Constitution that met two meetings prior to that? You're aware of that, are you not?

MR. D. GLAYS: I am aware that there were several closed-door meetings held prior to the Constitutional Conference, First Ministers' Conference in March, yes. It was reported in the Free Press.

HON. R. PENNER: I'm not sure what your reference to the fact that they were closed-door meetings is intended to convey, that they were secret?

MR. D. GLAYS: No, Sir, that the public was not invited to participate.

HON. R. PENNER: A second set of questions; you're making an assumption that I would like to explore just for a moment, namely, that the Manitoba Northern Flood Agreement is a land-claim settlement. My understanding, Mr. Glays, and perhaps you can comment on this, is that in fact the Manitoba Northern Flood Agreement is a compensation agreement with respect to damage to land, but is not a settlement of land claims.

MR. D. GLAYS: It strikes me that the five Indian Bands involved in the Northern Flood Agreement are, in fact, setting aside what could conceivably be millions of acres as a settlement toward the damage that was done by the Northern Flood Agreement. In dealing with that issue, I suspect that there may be promises made - and we have no assurances to the contrary - that there may be promises made within that settlement that could become part of the Constitution if the section relative to new and expanded rights and privileges flowing from land-claim settlements.

HON. R. PENNER: But, Mr. Glays, isn't it the fact that in Manitoba - I won't speak for the rest of the country, indeed I couldn't - all land claims are now encompassed in the Treaties. Manitoba, unlike many provinces - and certainly unlike B.C. in any event - all of the land of Manitoba, to which there might be a land claim, is encompassed in the Treaties.

MR. D. GLAYS: I don't have the facts and figures on that, Mr. Minister. However, I was under the impression that there were still four or five bands whose land claims were still being challenged. I'm not familiar with the fact that they have all been encompassed and outlined.

HON. R. PENNER: There may be, I think, some of the Ojibways who still claim that they have original land claims stemming way back which, of course, are being contested because of the non-resident status of those Ojibway groups at the time. But that is, in effect, a treaty land claim.

But aside from that, the Province of Manitoba in terms of the Indian nations who were here at the time of white settlement, this has all been dealt with, in effect, through the treaties.

MR. D. GLAYS: Are we suggesting then, Sir, that there will be no new expanded treaty rights and freedoms flowing from the land claims in Manitoba?

HON. R. PENNER: No, that's not what I'm suggesting. I'm suggesting that in terms of land claims, because those are the actual words that are used, your concern that the Northern Flood Agreement, which is strictly an agreement to compensate for injury to land already claimed, is not a land claim settlement.

MR. D. GLAYS: That example may, Sir, be out of context. Our concern is that there could be an expansion of rights and freedoms that could offend law.

HON. R. PENNER: A final question relating to the reference on Page 3 of your brief about the current pressure overharvesting by Indian people of the resources. Are there not pressures on those resources by environmental pollution, by hunters which your group represents to a considerable extent as well?

MR. D. GLAYS: I may make reference to the Five-Year Report in this case, and point out that in three game hunting areas in the Interlake, there is very little environmental pollution per se. There is no industry around these three particular game hunting areas. The weather in the last five or six years in Manitoba has been very conducive to an expansion of the population. There has been no non-Native hunting. We hunters have been excluded from that area since 1972. There were good fires several years ago which create new habitat which is very conducive to expanding populations of big game animals and indeed the populations of big game animals are going down.

The only other factor, as pointed out by the biologists in the Five-Year Report to the Legislature, was subsistence use and that subsistence use is at such a level that it is devastating the populations of animals in those three particular game hunting areas.

So our concern is relative to the species of animals that could be annihilated with expanded rights, or

indeed with more Indian people being thrown into the whole thing.

MR. CHAIRMAN: Mr. Harper.

MR. E. HARPER: Mr. Glays, I would like to question you or the organization that you represent. What is your understanding of the treaties that were made between the Crown and the Indian people? What status does it hold?

MR. D. GLAYS: Are you asking the status, our position, or our . . .

MR. E. HARPER: With relation to the treaties.

MR. D. GLAYS: We view the treaties as being very sacred documents, and certainly having far more power, or influence, or being far more important to us than our statutes.

MR. E. HARPER: Yes. Mr. Glays, I think I heard you say that the aboriginal rights shouldn't be entrenched. Is that your position or your organization's position?

MR. D. GLAYS: I see no reason, sir, to entrench the aboriginal rights into the Constitution because they exist by virtue of the treaties.

MR. E. HARPER: Are you saying that the treaties are paramount above any legislation of the province or the Federal Government?

MR. D. GLAYS: I believe the treaties are paramount, and do take precedent over statutes, yes.

MR. E. HARPER: Thank you.

MR. CHAIRMAN: Mr. Storie.

HON. J. STORIE: Mr. Glays, on Page 2 of your submission, you express a concern that entrenching what you call "obscure items" such as land claims is dangerous. Could you elaborate why you feel that way?

MR. D. GLAYS: Certainly, the constitutional amendment calls for a guarantee of rights and freedoms that will flow, or could flow, from land claim settlements. That to us indicates that in the negotitation process the Indian people, or indeed the province, may wish to have an expanded aboriginal rights for a particular group or for, say, all Manitoba Indians. That expanded right would be guaranteed, by virtue of the Constitution, if this constitutional amendment is passed; that's our concern.

How can you put that into the Constitution when you really don't have a handle on what they could be? I mean, are we talking now about, say, for example, the exclusive fishing rights in some portions of Lake Winnipeg as a new right, or a new freedom, that would flow from a land claim settlement. If that's the case, is this government prepared to entrench that in the Constitution before it's even negotiated; and obviously we are because the Premier has signed that.

HON. J. STORIE: Mr. Chairman, I suppose the other question is what is being entrenched, other than the right to negotiate?

MR. D. GLAYS: What's being entrenched . . .

HON. J. STORIE: Obviously, you're quite correct, it is difficult to define the limits. I would make an analogy that, and I would assume that your organization is not opposed to the entrenching of human rights which are equally obscure, that are very difficult to define, that have by a process of, I suppose, discussion and court decision have been defined. What is so different about those two rights?

MR. D. GLAYS: I think that the Constitution makes a valid attempt at defining human rights. I don't believe that any new freedoms - and we don't know what we're talking about here, and negotiators for the government are not sure what could evolve from land claim settlements. Better we should make those land claim settlements, give the Indian people the things that they need to exist in the Indian communities, and then entrench them in the Constitution, instead of entrenching in all these obscurities and saying, well when we get around to negotiating these land claim settlements whatever we negotiate will be entrenched in the Constitution in terms of expanded rights and freedoms. I think we're putting the cart before the horse. Let's deal with the problems and the issues now and, if necessary, entrench them in the Constitution.

HON. J. STORIE: Mr. Chairman, I see only one major difficulty, and I'm sure that the aboriginal people see only one major difficulty in that, and that is that without providing the guarantee that, in fact, negotiations will take place in good faith, and that negotiations will eventually come to some conclusion would not be there. I would assume that many Native people, aboriginal people, would take the position that what they have had is virtually centuries of unsuccessful negotiations, and certainly no firm guarantees.

MR. D. GLAYS: Mr. Chairman, I think that it's very important for the government of the day, and the Government of Canada, to entrench into the Constitution a negotiation process so that, indeed, we can resolve the issue of land claim settlements. It is a very serious issue and it must be resolved, but I don't think that by incorporating the second part of the Constitutional Amendment that's before the House now, which guarantees extended rights, or new rights, gained by these land claim settlements, should be entrenched.

We're all for, in fact, we insist that you negotiate land claim settlements with the Indian people, we told the Mitchell Commission that; we've told Mr. Cowan that. We want to see the land claims issue settled, but I don't think we can entrench into the Constitution a clause that says that any rights and freedoms that are derived, or gained, by that land claim settlement should be entrenched, because we don't know what they are. Let's entrench the right to negotiate, let's entrench the negotiation process and let's get it done.

HON. J. STORIE: One final question. It was with respect to your concern about overharvesting, and I share some of the sentiments of the Honourable Attorney-General with respect to a blanket statement suggesting that overharvesting is the responsibility of one particular

group. I would ask you the question whether your organization differentiates between subsistence hunting and recreational hunting?

MR. D. GLAYS: Very definitely yes; yes we do. If we want to talk, excuse me, Mr. Chairman, about overharvesting, and the plight of the Indian people relative to overharvesting, I can tell you of a situation at the Long Plain Indian Reserve where they have recently asked the government for a permit to pen deer. They want to pen up deer and then harvest them by shooting them in the pen in order to carry on their aboriginal rights, because the Indian people at Long Plain have recognized that there's an overharvesting problem.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: Just a couple of questions, Mr. Chairman. Would it be fair to say, Mr. Glays, that not many of the 16,000 Manitobans that are represented by the Federation have read, or have any knowledge of the particulars of this brief?

MR. D. GLAYS: It's fair to say, sir, that at our latest convention, and at conventions prior to that, the sentiments expressed in this brief were, in fact, resolutions that came to your government.

HON. A. MACKLING: That wasn't my question. My question was, is it a fair comment to say that very few of the 16,000 Manitobans who are members of the Federation have read this brief, or know the contents of it?

MR. D. GLAYS: It's fair to say that very few of the 16,000 members of the Federation have read the brief, sir, because . . . But there's a second part to your question, Mr. Mackling - know the contents of it. I would state here and now that the majority of the 16,000 members are aware because this is their position.

MR. CHAIRMAN: Mr. Ransom on a point of order.

MR. B. RANSOM: On a point of order, Mr. Chairman. Mr. Chairman, what Mr. Mackling is attempting to do is to challenge Mr. Glays, on the basis of whether or not he has a right to appear before this committee and speak for the Manitoba Wildlife Federation.

There are many organizations that come before this committee with positions that are put forward based upon something that the executive of that organization has assembled, and they have the right to do that, and to put it forward in the name of the organization. There is no more reason to believe that because Mr. Glays' membership of his organization hasn't seen this brief; there is no more reason to challenge it than there is to challenge Mr. Robinson on whether or not all the members of the bands belonging to his group, the Brotherhood of Indian Nations, would have been aware of the presentation that he was making here today. I think it's out of order for the Minister to proceed with that line of questioning.

MR. CHAIRMAN: To the same point of order, Mr. Mackling.

HON. A. MACKLING: Yes, Mr. Chairman, I don't believe that my comments or my questions were out of order at all. The question I put was not to indicate that Mr. Glays had no right to appear before this committee and represent the views of the Wildlife Federation. My concern was to establish that some of the wording, certainly a lot of the wording in this presentation is such that I doubt very much that it received the formal approval — (Interjection) — just a moment. I didn't interrupt you.

MR. CHAIRMAN: Order please.

HON. A. MACKLING: I merely confirm that this brief was not read or approved by a general membership meeting before it was presented here.

A MEMBER: It doesn't have to be.

HON. A. MACKLING: Well, I know it doesn't have to be, and I am not saying it has to.

A MEMBER: Well then, why are you asking?

HON. A. MACKLING: Mr. Chairman, I just want to indicate that certainly I know that I was not aware of the wording of this brief before it came here. I wanted to make that point, and it's fair to make the point. It's not out of order.

MR. CHAIRMAN: Gentlemen, to the point of order, I think it's very clear. It has been a practice used in legislative committees across the province, travelling or here in this building, for members on both sides of the table to ask what the approval mechanism was for briefs presented to committee. In fact, part of the questioning related to that has been to ask the membership size, to ask whether the brief went through an executive committee or a special drafting committee or sub-committee, often even as part of the analysis and questioning of witnesses before standing committees to even go so far as to ask if they or their group are politically affiliated. Those questions have not been ruled out of order in the past. So to rule out of order Mr. Mackling's question on the grounds suggested by Mr. Ransom would depart from past practice in the committee.

However, considering the subject matter before us today, I have some reservations about Mr. Mackling pursuing that line of questioning, because it is not direct to the mandate given to this committee to address the constitutional amendment on aboriginal matters. That is the matter before the committee.

Although Mr. Glays did raise these other matters as part of his presentation, I would strongly suggest to members of the committee, including Mr. Mackling, that we try to keep our questions generally to the constitutional amendment before us.

Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, I recognize and I agree with your ruling. I had the one question to put to Mr. Glays on the general tenor of the brief itself. I have put that question and I have my answer. I now have one or two other specific questions about the brief.

Would you agree, Mr. Glays, that the members of the Manitoba Wildlife Federation believe that Indian rights have been left by previous governments, both federal and provincial, in a rather vague, undefined condition?

MR. D. GLAYS: I have only been on staff, Mr. Mackling, with the Manitoba Wildlife Federation for less than two years, and I am not familiar with the attitudes of the general membership prior to that term.

HON. A. MACKLING: As a former member, former civil servant with the Department of Natural Resources, you would have had some experience in the difficulty in the province then interpreting what Native and treaty rights were.

MR. D. GLAYS: There is a great deal of difficulty in determining what Native and treaty rights are, yes.

HON. A. MACKLING: Would you agree then . . .

MR. CHAIRMAN: Mr. Ransom on a point of order.

MR. B. RANSOM: Mr. Chairman, surely it is out of order to begin questioning a witness before the committee on the basis of what that person's background and work experience might have been.

MR. CHAIRMAN: Further contributions to the point of order?

Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, I wanted to identify from the witness that he, as a member . . .

A MEMBER: A witness.

HON. A. MACKLING: Well, he is testifying before the committee, . . .

MR. D. GLAYS: I am prepared to answer the question, Mr. Chairman.

HON. A. MACKLING: . . . delegation, that he, as a member of the Manitoba Wildlife Federation, would have some knowledge of both his understanding and other members of the Wildlife Federation's understanding as to the question of Native and treaty rights. I am asking him about whether or not he would agree that members, including himself, have a perception that Native and treaty rights are vague, and previous governments, including both provincial and federal, have left this area too long in this vague condition. I got a vague answer to that question, and I merely asked him to refine his opinion on the basis of his personal knowledge as a member.

MR. D. GLAYS: Based on my personal . . .

MR. CHAIRMAN: Order please. Mr. Glays is here representing the Manitoba Wildlife Federation. He is not here — (Interjection) — order please. Mr. Glays is not here as a personal individual. If Mr. Glays chooses to answer a question from a personal perspective because it is not something that has been discussed and is part of his brief and he cannot on that question speak for the Federation, he has that option.

However, it has not been past practice of the committee to ask people who are here representing an association, federation or other organization, to answer personal questions of personal opinion. Mr. Glays has been asked a question by Mr. Mackling, that question should relate to the Federation's position if at all possible, and should not reflect on his personal history, as Mr. Ransom has pointed out, and should relate directly to the Federation. If Mr. Glays can't answer it from that perspective, then he is free to qualify his answer as being his personal answer.

Mr. Glays.

MR. D. GLAYS: My personal opinion is, and based on my experience both as a member and as a former civil servant, that the issue of aboriginal rights is a very vague issue in terms of having it resolved.

Unfortunately, we tend to leave these issues up to the Supreme Court. What that does is put the Indian people in a very precarious situation, because the rights of Indian people change drastically almost on a day-by-day or month-by-month basis. One day, they're allowed to hunt in a provincial park; the next day, they're not. One day, they're allowed to hunt on provincial roads; the next day, they're not. They are subject basically to the Supreme Court of Canada decisions instead of what they themselves want and are in a position to negotiate with the Government of the Day, and then entrenched into the Constitution.

HON. A. MACKLING: Does your organization believe then, Mr. Glays, that there is an obligation on the part of this government to be involved in the process of trying to define what treaty and aboriginal rights are?

MR. D. GLAYS: Very definitely, Mr. Mackling. Because of the Natural Resource Transfer Agreement of 1929, where the Federal Government put the responsibility for the management of natural resources onto the provinces, it thereby behooves the provinces to negotiate and to deal with the Indian people relative to natural resource management.

HON. A. MACKLING: Therefore, I assume that you are in favour of further meetings to deal with the question, but are not in favour of the process itself.

MR. D. GLAYS: I'm sorry, the constitutional process?

HON. A. MACKLING: Yes.

MR. D. GLAYS: Very definitely in favour of the constitutional process, Mr. Mackling, and the way that it has been going. Our objection relative to the third part of the constitutional amendment is that it only calls for two more meetings. In our opinion, that won't be enough to resolve the issue.

The speakers before me indicated that there are a great number of issues to be resolved. I think it's wrong to put a deadline or put a number on the amount of time that can be spent solving these issues.

HON. A. MACKLING: One final question then, Mr. Chairman. In view of those opinions that you represent

on the part of the Federation, are you here opposing the passage of this resolution?

MR. D. GLAYS: I would not oppose the passing of the resolution, but I would like, because I think that you have a commitment to the other provinces and to the Federal Government and, therefore, you have to pass a resolution as agreed upon in Ottawa, but I think there is some room for amendment, Sir, and I think there is some room for deliberation and consideration and a look at the ramifications of it before it becomes entrenched in the Constitution.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Just one final question. Am I right in summarizing your position, Mr. Glays, that you say we should entrench the right to negotiate, but not the rights obtained by negotiations?

MR. D. GLAYS: I'm sorry, I didn't understand the question.

HON. R. PENNER: It seemed to me that what you were saying is that we should entrench the right to negotiate, but not those rights obtained by the negotiations?

MR. D. GLAYS: I think if you are talking about expanded rights and freedoms that would flow from the land claims settlement, that you should not entrench that. You should entrench, I believe, the process and the guarantee of settlement, but you should not entrench any expanded rights or freedoms that may flow from that settlement.

HON. R. PENNER: Thank you.

MR. CHAIRMAN: Mr. Santos.

MR. C. SANTOS: Thank you, Mr. Chairman. Mr. Glays had stated in his presentation that Indian treaties are sacrosanct in the sense that they are higher and above statutory law, federal or provincial. If that is the case and if it is the case that under such treaty rights, Indian people have the right to hunt, how come the Federation, according to my colleague Elijah, is bringing some native people into court for hunting rights?

MR. D. GLAYS: I'm sorry, that's not the case. We are not taking anybody to court.

MR. C. SANTOS: If treaties are sacrosanct and higher than federal or provincial laws, and you said that the rights that are now being entrenched are vague, is it not an argument that there should be more reason for entrenching such rights so as to remove such rights from the vicissitudes and uncertainties of which political party may hold the reins of political power in both federal or Provincial Government?

MR. D. GLAYS: I'm afraid I can't answer that question. I'm not here to deal with who's going to hold the balance of power in the Provincial or Federal Governments relative to the Indian situation.

MR. C. SANTOS: What I am saying, Mr. Glays, is that by entrenching such rights in the Constitution, it will practically remove the treaty rights from the reach of any government that might be in power federally or provincially, because it is now entrenched in the Constitution and that will uphold the treaty rights that you said is higher than any provincial or federal law.

MR. D. GLAYS: Sir, I believe that we should entrench treaty rights into the Constitution without a doubt, but I think we should define what they are before we entrench them in the Constitution as opposed to entrenching them first and then trying to figure out what the heck they are.

MR. C. SANTOS: They are now being defined by this constitutional proposal. It says treaty rights include rights that now exist by way of land claims agreement or may be so acquired under such land claim agreements and still the source would be treaty rights, which you said would be higher and sacrosanct than any federal or provincial law?

MR. D. GLAYS: But the Supreme Court daily changes those, or monthly, or however often they look at the issue. I think it's important to define what they are specifically and say, here are the rights, so that the Indian people know where they stand and then entrench them in the Constitution, instead of entrenching obscurities and hoping it will work out.

MR. C. SANTOS: One last question, Mr. Chairman. Even the Supreme Court, if these rights are already entrenched, would be unable to touch them except to interpret what they mean.

MR. CHAIRMAN: Order please. Mr. Santos, that's a debate, not a question. Do you have any further questions?

MR. C. SANTOS: No more, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions? Mr. Sherman.

MR. L. SHERMAN: Mr. Chairman, I'd like to ask Mr. Glays whether he is convinced that the wording of the proposed resolution as it appears before us firmly limits and restricts the number of additional constitutional conferences on this subject to two. The precise wording suggests that at least two constitutional conferences would be held.

Is it your Federation's feeling, Mr. Glays, that that's purely rhetoric and that only two conferences will be held, and that it will just be an exercise in rhetorical recognition of a problem without any real attempt to solve the problem?

MR. D. GLAYS: Mr. Sherman, at the Constitutional Conference, the initial proposal was to have four future meetings, and after the first Accord was dealt with overnight, I believe they came back with the concept of three future meetings, and the final Accord that came out indicated that there should be two future meetings, or at least two future meetings. I suggest that it's our

position that as many meetings as needed to resolve the issue be dealt with and not a number.

MR. L. SHERMAN: I appreciate the point you make, Mr. Glays, about the entrenchment of rights achieved and attained from a negotiating process. I think that is an important point that you made, and the point you make about the wisdom of not rushing into premature entrenchment of unknown rights, but I have a little difficulty with part of your Federation's presentation in the intial paragraph on Page 2 where you raised the spectre of bureaucratic self-interest on this question.

You make the point that if the question of Indian rights in the Constitution were resolved, the industry known as the Department of Indian Affairs would be out of business. That's an interesting proposition, but then you go on to say that it is wrong to put a deadline on the debate. I had a little difficulty establishing a link of logic between those two positions.

Could I ask you, would it not be more likely that the industry known as the Department of Indian Affairs would go on perpetuating itself ad infinitum if there were not a deadline placed on debate?

MR. D. GLAYS: I am not disagreeing with the year 1987 as a deadline, sir. I'm disagreeing with the number of meetings that the constitutional amendment calls for. Again, I reiterate, the final paragraph of our brief where we say that it's important to negotiate in good faith and to resolve the issue. Therefore, you don't need a number. If it takes five meetings to resolve the issue, then let's have five meetings, but let's get the issue resolved. That's the whole point of the brief.

There are some perhaps hidden reasons why there was not more done in Ottawa on March 15th and 16th, I don't know; it just seems to me that things got bogged down. It is a very very sensitive issue, there's no question about that, and it's going to take time to resolve it to the fairness and to the benefit of everybody. That's why we're saying, let's not put a number, two meetings, before 1987, or at least two meetings before 1987; let's just say we'll entrench as many meetings as needed to solve the issue.

MR. L. SHERMAN: So, as I understand it then, Mr. Glays, the Federation is saying that a deadline is all right as long as it is a reasonable and realistic deadline, and as long as it doesn't also include constraints on the numbers of meetings and the process to be pursued in leading up to that deadline. You find a combination of those two constraints to be very restrictive and negative.

MR. D. GLAYS: Well, ambiguous, let's use that term.

MR. L. SHERMAN: Just one other question for my own edification. Mr. Chairman, I'd like to ask Mr. Glays, with respect to a point that he makes relative to the March 15th, 16th Conference this year. At the bottom of Page 1 of the Federation's brief Mr. Glays, you say that meeting turned back the clock, in terms of resolving the plight of Indian people. Could you elaborate on that? Do you feel that it actually turned back the clock or simply that it stopped the clock where it stands at the present time?

MR. D. GLAYS: I had an opportunity to sit in the viewing room with several hundred Indian people who I've really discussed the issues with that were ongoing in the next room. I found that as the deadline for the meeting adjournment got closer the people I were sitting with got more frustrated. They didn't see a resolve to the issue and, in that sense, the good feelings they had going into that Constitutional Conference were lost, and they came away feeling very frustrated because they don't feel anything other than an accord to meet again, and an accord to try again was resolved. In that sense I feel it did turn back the clock because we found that there were some good feelings there at the beginning of the meeting.

MR. L. SHERMAN: Thank you.

MR. CHAIRMAN: Further questions? Seeing none, Mr. Glays, on behalf of the committee, I'd like to thank you and the Federation for being here today.

MR. D. GLAYS: Thank you.

MR. CHAIRMAN: Next name on our list is a whole series of names:

The Constitutional Committee of Chiefs, Standing Committee of the Assembly of Manitoba Chiefs. I have a list of names. I'm not sure who wishes to appear first.

The names are as follows:

Chief Joe Guy Wood; Chief Jim Bear; Chief Harvey Nepinak; Chief Allan Pratt; Chief J. J. Harper; Chief Philip Michel; Chief Walter Monias; Chief Russell Tobacco; and Ovide Mercredi.

Could one of the gentlemen please come forward and advise who will be presenting the brief?

MR. G. WOOD: Yes, my name is Chief Joe Guy Wood from Ste. Therese.

Our presentation is going to be done by two people. I will make a presentation on a general format, and then there's going to be a specific area on the Manitoba scene, and that'll be done by Chief Jim Bear.

I would like to introduce our group; I'm sure you know them all. Chief Jim Bear is from Brokenhead Reserve; Chief Allan Pratt is Sioux Valley; Chief Harvey Nepinak from Waterhen Band; Chief Philip Michel from Brochet; Chief J. J. Harper from Wasaykamak; Chief Walter Monias from Cross Lake; Chief Russell Tobacco from Moose Lake. And we have our legal counsel from The Pas, Ovide Mercredi; also Collin Gillespie, legal counsel for the Northern Flood Committee, he's with us. I hope I didn't miss anybody.

At the offset I'd like to say that we're pleased to be here to make a presentation to this committee.

INTRODUCTION: The 1983 Constitutional Accord on Aboriginal Rights requires resolutions of the Senate and the House of Commons and resolutions of the Legislative Assemblies to authorize a proclamation issued by the Governor-General under the Great Seal of Canada to amend the Constitution Act, 1982. The proposed resolution, the subject matter of this Legislature Committee, flows from the 1983 Constitutional Accord on Aboriginal Rights which expresses and contains the consensus reached between

the First Ministers and the Leaders of the Aboriginal people at the March 15-16, 1983 Constitutional Conference.

Our belief and expectations as chiefs of Manitoba and, indeed, the hope of all our people is that the proposed Resolution on Aboriginal Amendments will be given swift passage in this Session, as has already been done by several other provincial legislatures across Canada.

Your responsibility, with respect to this proposed resolution, is to ensure that commitments made by your people, to our people, in your forums do, in fact, get implemented without further debate and negotiations between yourselves, that may alter or change in any way an undertakng and commitment between our peoples. We, as leaders of the Indian people, share the frustrations of all our people each time the treaties are abrogated and diminished by the unilateral action of either the Federal and Provincial Governments or your courts.

In our experience, commitments made in the past have not always been honoured. However, the ongoing constitiutional discussions and constitutional processes now in place to deal with treaty and aboriginal rights and other constitutional matters affecting our people give you an opportunity to do justice.

Despite the curtailment of treaty rights, we continue to have an abiding faith in humanity. We believe the people of Manitoba have a strong sense of right and wrong, and of fairness and justice, in our quest to correct past mistakes and wrongs, it is to the Manitoba people we turn for assistance and support to stop the deplorable erosion of our treaty and aboriginal rights and to restore our rights through constitutional recognition, renewal and entrenchment.

SIGNIFICANCE OF THE CONSTITUTIONAL ACCORD: The 1983 Constitutional Accord signed by the Prime Minister, all Premiers except Quebec, elected representatives of the Territorial Governments, and leaders of the Aboriginal Groups, provides that certain amendments to the Constitution Act, 1982 will be initiated by activating Section 38, the amendment clause of that Act.

In addition, the Conference agenda of March 15 and 16, 1983, not fully considered at that meeting, is to be included in future constitutional conferences on treaty and aboriginal rights.

The Accord commits the signatories - Premiers and Prime Minister - to introduce resolutions in the Legislative Assemblies and in Parliament respectively prior to December 31, 1983 to authorize a proclamation issued by the Governor General under the Great Seal of Canada to amend the Constitution Act, 1982.

It also requires the Prime Minister to convene a Constitutional Conference consisting of the First Ministers, elected Territorial Governments representatives, and representatives of aboriginal people within one year of March 15-16, 1983 Constitutional Conference. In addition, prepatory meetings for the future Constitutional Conferences are to be convened at least annually composed of Ministers of the Government of Canada and the provinces, and respresentatives of the aboriginal peoples and elected representatives of the Territorial Governments. These preparatory meeting are in addition to the Constitutional Conferences the Prime Minister will be required, by law, to convene.

The Accord also contemplates bilateral discussions that have been, or may be, established between the Government of Canada and the aboriginal peoples of Canada. It also contemplates bi-lateral discussions of agreements between governments and the aboriginal peoples.

In the context of our province, this means that the aboriginal people and the Manitoba Government have flexibility with respect to establishing bilateral constitutional discussion and with respect to conducting "business as usual" on any subject matter involving this province and Indians, such as, land entitlement, resource issues and job creation.

However, the Constitutional Conferences and prepatory meetings leading to such Constitutional Conferences will be undertaken with the involvement of the provinces. In essence, the Constitutional Accord and this resolution ensures the participation of aboriginal peoples in constitutional matters that directly affect them, and acceipts the political and legal reality that the Provincial Governments must participate in discussions of these constitutional matters. It ensures continuing discussions and some preparation between your governments and our people on the entrenchment of treaty and aboriginal rights. As you know, the Constitution of Canada, the Supreme Court of Canada, cannot be amended without the consent of Provincial Governments, as provided for in the amendment provisions of the Constitution. We hope that this power to amend will not be exercised in a manner inconsistent with the principles of fairness and justice.

The proposed resolution attached to the Constitutional Accord, as does your resolution, contains authorization to amend the Constitution Act, 1982:

1. Paragraph 25(b) of the Constitution Act, 1982 is repealed and substituted by the following amendment:
   "(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired."
2. Section 35 of the Constitution Act, 1982 is amended by adding the following subsection:
   "(3) For greater certainty, in subsection (1), 'treaty rights' includes rights that now exist by way of land claims agreements or may be so acquired."
3. Section 35 of the Constitution Act, 1982 is further amended by adding the followng subsection:
   "(4) Notwithstanding any other provision of this Act, the Aboriginal and Treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."
4. The said Act is further amended to entrench the principle of participation by Aboriginal peoples in Constitutional discussions at future Constitutional conferences relating to any proposed amendments made to Class 29 of Section 91 of the Constitutional Act, 1867, to Sections 25 and 35 of the Constitution Act, 1982.
5. Section 37 of the said Act is further amended to provide for an ongoing Constitutional process which will be repealed on April 18,

1987. Under this section, a non-derogation clause is added, presumably as direction to the interpretation of the existing rights referred to in Section 35 of the Constitution Act of 1982, stating that Section 37 is not to be construed as derogating from subsection 35(1).

The process of constitutional renewal provided for in the Resolution on Aboriginal Amendments provides the opportunity for a political settlement, rather than interpretation by adjudication, on the meaning of constitutional provision respecting aboriginal peoples. It was agreed at the last Constitutional Conference that future Constitutional Conferences and preparations leading to such conferences will consider for inclusion in the Constitution of Canada the following agenda items:

(1) There's going to be a preamble; the removal of "Existing", and Expansion of Section 35 to include Recognition of Modern Treaties, Treaties signed outside Canada and before Confederation, and specific mention of "Aboriginal Title" including the rights of aboriginal peoples of Canada to a land and water base (including land base for the Metis) - then on the same agenda we had - the Statement of the Particular Rights of Agoriginal Peoples; Statements of principles; Equality; Enforcement; Interpretation.

(2) Amending formula revisions, including: Amendments on aboriginal matters not to be subject to provincial opting out (Section 42); Consent Clause.

(3) There was a part we want to discuss - self-government.

(4) Repeal of Section 42(1) (e) and (f).

(5) Amendments to Part III, including: Equalization, Cost-sharing, Service Delivery, which is the Resourcing of Aboriginal Governments.

(6) Ongoing process, including further First Ministers' Conferences and the entrenchment of necessary mechanisms to implement rights.

This was the agenda as was proposed on that first conference.

The meaning of substantive provision, such as, existing rights and the amendments contained in the resolution is to be determined by the process of political discussions and some agreements. In our view, to insist on the resolution of substantive issues now would signify a lack of understanding of the intent of the constitutional renewal and of the ongoing constitutional process. This is not to suggest that no person should question the meaning of constitutional provision respecting aboriginal people, but only to advise that answers may not be available but will definitely become apparent as the constitutional renewal process resumes the goal of identifying Treaty and aboriginal rights for constitutional recognition and protection.

Those of us who were observers or participants in the constitutional discussions in March, 1983, know that the identification and definition of aboriginal and Treaty rights must remain in the political forum, and will take time. The resolution before your Legislature is but a simple step to facilitate that political process of constitutional renewal by politicians instead of by courts.

I will now pass this on to Chief Jim Bear.

MR. CHAIRMAN: Chief Bear.

MR. J. BEAR: Thank you very much. I would like to just add that Chief Joe Guy Wood's constitutional makeup has a capacity for more air, so I only have two pages to read.

MANITOBA CONSTITUTIONAL PROCESSES: In Manitoba, the Assembly of Manitoba Chiefs established a Standing Committee called the Constitutional Committee of Chiefs, to undertake and be responsible for all matters related to aboriginal rights, Treaty rights and other constitutional matters for all Indian Bands that belong to the First Nations Confederacy and MKO.

The Province of Manitoba and the Constitutional Committee of Chiefs, along with the Manitoba Metis Federation, established a year ago a mechanism for bilateral discussions and consultations related to aboriginal and treaty rights. In all of Canada, only the Province of Manitoba had such a mechanism to ensure the visibility and participation of Indian people in the preparations for and at the Constitutional Conference in March. Other provinces, such as Ontario, did convene informal meetings with Indian leaders and had in their official delegation provincial Indian representatives.

The success of the provincial constitutional preparatory process can be attributed to its essential features: consultation, consensus, co-operation, co-ordination and the political will to make the constitutional renewal process work to the advantage of the aboriginal people.

This is not to imply that the Province of Manitoba is always supporting and understanding of our positions on aboriginal and treaty rights. In our view, all governments in this matter need, must and will be educated by aboriginal peoples. We acknowledge, however, the financial support and political support on some of our positions received from the Province of Manitoba. It was evident to all at the March Constitutional Conference that meaningful Indian-Metis-Provincial Government consultation and co-operation in the development of an official government position on treaty and aboriginal rights can generate good will and the political will to do justice.

We look forward to renewing the bilateral discussion in the Province of Manitoba in preparation for the next Constitutional Conference to be convened before March, 1984.

CONCLUSION: In closing, we would repeat our request for the swift passage of this resolution in this Session, before you depart to enjoy what's left of the summer. Given this description of the constitutional process, you can all appreciate that it would be inappropriate to seek or demand finite resolutions to substantive issues at this time. Questions relating to the meaning of the amendments can and will be addressed in the constitutional process now in place in the province and at the national level. You will, of course, look forward to Indian summer which is just around the corner. And having supported by then, this resolution, we pray the Great Spirit will make the Indian summer a special one for you.

Thank you.

MR. CHAIRMAN: Can you make that a promise? Questions from members?

Mr. Ransom.

MR. B. RANSOM: Thank you, Mr. Chairman. The briefs just presented by Chief Wood and Chief Bear do, in my view, an excellent job of describing what has taken place and what the chiefs hope will take place in the future. What it didn't do was deal with the actual amendments that are before us, and I think the chiefs are aware that we have some question about that. While I recognize their position, on the last page for instance, saying that, "Questions relating to the meaning of the amendments can and will be addressed in the constitutional process now in place in the province and at the national level," I must say that I have some concern at that, that we as legislators are being asked to pass amendments to the Constitution without knowing what they mean. I think that places us, as legislators, in a difficult position.

I know you have faith that these are going to be resolved later. I think the other side of that argument would be that if it cannot be resolved by political discussion, then it would eventually be resolved by the courts. In either case, we as legislators here, really don't know what it is that we are approving. I would just like to ask one or two fairly specific questions that perhaps one of the chiefs can give an answer on, just for our edification, so that we have a little more concept of what we are being asked to do.

Now I would want to know, in your opinion, whether or not specifically the Northern Flood Agreement, or the Forebay Agreement dealing with the Grand Rapids situation, whether in your view those two agreements will become part of the Constitution of Canada by virtue of these amendments that we are being asked to pass here.

MR. CHAIRMAN: Chief Wood.

MR. G. WOOD: Okay, maybe I could start to make a comment on it, and I have people that deal specifically on that question to elaborate a little further on it - and I'm talking about Chief Walter Monias who is specifically involved with the Northern Flood Agreement - and also the legal counsel that works with him to answer that question.

But I would like to say that there are some questions that are a constitutional issue, and there are some of them that are not. Sometimes, it is pretty hard to separate the two of them. These items that are constitutional, for example, the aboriginal rights that we are talking about regarding the land and treaties and these areas, will be dealt on that forum, but there are other areas that are not a constitutional question which have to be dealt with in another forum.

In that case about the Northern Flood Committee and also relating to the agreement, the land settlement issue as such, the relationship with that, I would like to ask Chief Walter Monias and the legal counsel to elaborate further on your question.

MR. CHAIRMAN: Please come forward to the mike, Chief Monias.

MR. W. MONIAS: Chief Walter Monias, Cross Lake. Thanks, Mr. Chairman.

I asked legal counsel to be present here in case there were some questions under the Northern Flood Agreement. I would ask, Mr. Chairman, if I could have our legal counsel explain the contents of the Northern Flood Agreement under land settlements.

MR. CHAIRMAN: Certainly.

MR. W. MONIAS: Mr. Colin Gillespie.

MR. C. GILLESPIE: My name is Colin Gillespie, Mr. Chairman. I regret to say that I certainly have not had opportunity to give the amount of thought to the question that it undoubtedly requires, so my answer may be less than satisfactory.

I can speak firstly only to the matter of the Northern Flood Agreement. I'm not in a position to say anything of any help to you on the question insofar as it relates to the Forebay Agreement.

The question obviously is one which we may have opinions on but in the end it is a matter of what the courts would say - and that is as Mr. Ransom has observed - the issue and the concern that you're wrestling with.

The Northern Flood Agreement already has a rather unusual constitutional status, because it is, in part, a federal-provincial agreement that is intended to be legally enforced. As such, it presumably is something which could not be dealt with unilaterally by legislation of either the Federal Government or the Provincial Government. So in part, I am suggesting the question hinges, not entirely on what would be the status that would result from the proposed words, it's also a question of in what degree would the proposed words produce a change in the status of the Northern Flood Agreement.

A second comment that may be a little helpful in relation to the question is that there, I think, are two discernible issues here. One is the issue of land. The Northern Flood Agreement contains provisions providing for an exchange of land that is to become reserve land in exchange for lands which are affected by the Hydro development. Those lands become reserve land in the same manner and with the same status as any other reserve land, and I anticipate there would then be a question of whether the status of those lands would fall within the meaning of the provisions that you are considering. I can't give any definitive answer to that. I would offer perhaps this observation.

It would be surprising to me if the result should obtain that the land which was originally affected and was exchanged for these lands was subject to such protection, but a general provision of the kind that you're looking at was so interpreted as to deny the equivalent protection to the lands received in exchange. That would seem not to be a very common-sense result, and I would think would require some fairly compelling reason to arrive at it. I see no such reason. But that's far from a definitive statement on the question.

MR. CHAIRMAN: Mr. Ransom.

MR. B. RANSOM: You see, Mr. Gillespie, your answer really doesn't do very much to satisfy my concern because you used the words yourself. I believe that you had given less thought than it requires to this question. Quite frankly, my whole concern about these

amendments are that they have been given less thought than is required. It may be that I can entirely accept what they mean if somebody can tell me what they mean. My concern is that I don't know that.

All I was asking for here was not a hard, fast position on it, but an indication from the chiefs of whether they thought the status of the Northern Flood Agreement would be changed in any way by the passage of these amendments. I think it would be helpful if the chiefs could say, yes, or they could say, no, because it may be that 10 years from now or 20 years from now or 50 years from now, some judge is going to be making a decision. It may be helpful to go back and see whether people had expressed any indication of what they thought it actually meant.

My question arises from something the First Minister said in the House when he introduced this resolution on the 27th of June. I'll just read a bit of this into the record and for your benefit, if you haven't read it.

"Briefly, the objectives outlined in our statement of principles are equality of rights for Native women; the repeal of those sections pertaining to the extension of provinces and to the territories and to the creation of new provinces; providing a constitutional guarantee to Treaty rights to include modern agreements similar to treaties such as the James Bay Agreement."

So when the Premier referred to modern treaties similar to the James Bay Agreement, it certainly raised in my mind a question about the Northern Flood Agreement.

So I'm not looking for a legal answer, but preferably some expression from the chiefs, of whether they see any change in the status of the Northern Flood Agreement or the Grand Rapids Forebay Agreement as a consequence of passing these amendments.

MR. CHAIRMAN: Mr. Gillespie.

MR. C. GILLESPIE: I think your question recognizes that if I were to say that I knew what the effect of it would be, you probably wouldn't believe me. I think the best I can do in response to your question is to say that it is not evident to me that there would be, as a result of the presumed application of these amendments to the Northern Flood Agreement, that there would be any change of any practical significance that would result from that.

If I were in your position, I would consider it prudent to take it that these words may well have the effect that you're considering. I would want some very solid assurance that it was not so if that question mattered in making a decision. I cannot see a basis for anybody providing you with that kind of an assurance.

So the approach that I would take to the question is first to try to determine how important a question it is - and I'm suggesting it may not be an important question when analyzed - and secondly, if it is important, then I would be inclined to presume that the effect of such an amendment would be to incorporate constitutional protection for agreements of the nature of the Northern Flood Agreement.

MR. B. RANSOM: I have one question then on another area as well and that has to do with the equality provision. Whereas it's my understanding at the moment that an Indian man marrying a non-Indian woman confers status of the Indian man to the non-Indian woman. Is there any possibility that by the acceptance of this amendment that we would find non-Indian men gaining the status of treaty Indian by marrying an Indian woman?

MR. C. GILLESPIE: Mr. Chairman, I should make it clear I'm here solely to assist the committee to the degree I can in relation to the Northern Flood Agreement. I'm quite prepared to do my best on that kind of question, but on the question that Mr. Ransom is raising, I should defer to one or more of the chiefs.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: I would like to ask Mr. Gillespie just on the Northern Flood Agreement, not on the other one.

MR. B. RANSOM: I think we should have the answer adjacent to the question.

HON. R. PENNER: He says he can't answer.

MR. B. RANSOM: No, Chief Wood was going to answer.

HON. R. PENNER: As long as Mr. Gillespie isn't disappearing from view.

MR. CHAIRMAN: We can call Mr. Gillespie back. Chief Wood, did you wish to call in your other legal counsel?

MR. G. WOOD: I haven't read the term of references of this committee exactly the purpose and its mandate that it has. I don't think you should blame me for that since you've given us very short time to appear in this committee. However, we'll try our best to answer the questions as we know them because we've been working on this issue for quite some time and we have dealt with specific issues that you're mentioning.

On the previous question, when you asked us whether the chiefs would say yes or no to an item on whether the signing of this resolution will have an effect on the claims or Northern Flood Committee as such, I think that is pretty hard to say and I wouldn't want to say yes or no to that. Correct me if I'm wrong.

The committee is here to try to find out whether this resolution should go through or not and then the purpose for that is to find to open the door to further these discussions on the question of substantive issues that you're talking about. So in that light, I couldn't very well say, this is what the effect is going to have on the Northern Flood Committee Agreement or not. I thought what we were going to do is open the door to facilitate these discussions so we could find out about those issues.

On the other question that you have asked about the equality issue, the chiefs in Manitoba have always stated publicly that they believe in equality - women and men. We have done this even before the white man appeared in our country, that we have treated everybody equally. However, with the introduction of laws in our country, which is foreign to us, some of these laws were imposed on us without us participating

in it - and I'm specifically dealing with The Indian Act that deals with the section, that if a white non-status woman marries a status, then she gains status and not the other way around. We feel that is not fair at all.

I think what we will be doing, and these discussions have taken place in the community, there is also one aspect of that too. We're working on the self-government aspect, that the people should be allowed to define their memberships in their reserves and these are in the process of discussion right now. I haven't run into any case where we had problems. As a matter of fact even The Indian Act doesn't recognize a white person, let's say a male, not treaty. Some of these people are living in our communities, but they are white people, and the services we have, they pay for the services. On the other hand, too, the white woman that marries an Indian, they're given status recognition. So we decide in the communities how we want to deal with that and I never did have any problem in my community. However, there are other problems that will have to be taken into discussion and one of the problems is the children.

Are they going to be status or are they going to be non-status? And these are the issues. I don't have any problem, or we don't have any problem, about the original union of the two people because one person is an Indian and she or he will be an Indian all the time, whatever the law says or whatever The Indian Act says. On the other hand, you, Mr. Ransom will never be an Indian and I think that is a fact. So we don't have any problem with that. But it's what has happened before that's going to be a little problem. It becomes a land issue.

I don't see an influx like the last presentation, that says there's going to be an influx of thousands and thousands of people becoming status all of a sudden. I completely think that's unreal. The fact of the situation is, you have to address this in reality the way it is. But there are some areas that need further discussions and we're asking this government and the opposition to support this resolution so we can get on with the show.

MR. CHAIRMAN: Mr. Ransom.

MR. B. RANSOM: Chief Wood, you raised the question that you weren't certain just what the mandate of the committee was in considering this resolution. I think it's fair to say that from my perspective part of the mandate of the committee is to seek an understanding of what these amendments mean and, of course, it's very helpful to be able to question those people who are directly involved because I hope you will appreciate the fact that we as legislators being asked to vote for or against something - in this case we're being asked to vote for it - I think it's proper that we have some understanding of what we're voting for. I want to assure you that we have no intention of holding up this resolution even though the process that's been used to arrive at it may have some weaknesses and there may be some questions left unanswered. I think it's useful to have the discussion on the record in any case.

Just one more question which is a continuation of the previous one, and if you don't want to answer it or just feel you can't make any comment, I'll understand that. That is: do you see any possibility that a non-Indian man could gain treaty status by virtue of the equality amendment?

MR. G. WOOD: Maybe I can answer that as the Chief from Ste. Therese, definitely no in Ste. Therese, because I'm the government there.

MR. CHAIRMAN: Chief Bear.

MR. J. BEAR: In Brokenhead, I am the government and definitely no. I didn't know we had status as Indians, Mr. Ransom, but I thank you very much for that. You may get to be Honourary Indian Chief, there's always that possibility.

We hate to prejudge what may come out of the equality angle of it. As a fundamentalist myself, I believe that the Creator made Adam and Eve, not Adam and Steve. However, since this is political, we do have a structured Indian women's organization that we are in the process of consulting with and they will be giving their definition as to what should happen in this area and of course through our negotiations with them, we'll be able to answer this at a later date and be more specific on what we're referring to.

MR. CHAIRMAN: Further questions, Mr. Ransom.

MR. B. RANSOM: No.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: I have one question of Chief Bear and another one of Mr. Gillespie. Chief Bear, the section with respect to male and female persons says: "That notwithstanding any other provision of this act the aboriginal and treaty rights referred to are guaranteed equally to male and female persons." To your knowledge is there anything in aboriginal and treaty rights which states to the contrary? Is there any discrimination between males and females in aboriginal rights as you know them and in the treaty rights? Leave aside The Indian Act, that's not an aboriginal right or a treaty right.

MR. J. BEAR: Not that I'm really aware of except for The Indian Act which was the law that was put into place without proper negotiations with the Indian people; but at least this time we have input into it and hopefully that you allow us to resolve the problems that you created.

HON. R. PENNER: So The Indian Act of course is not, you would agree, an aboriginal right or a treaty right and it's your answer that the aboriginal rights as you understand them, and the treaty rights as you know them, do not discriminate between men and women.

MR. J. BEAR: Well, for one thing, we can't be too specific here because those are the things that we'll be talking about with the government and to lay out all our cards now would not be in our best interest.

HON. R. PENNER: Well, I'm not too sure about that. Try it sometime.

MR. CHAIRMAN: Mr. Gillespie, please.

MR. C. GILLESPIE: Yes, Mr. Chairman.

HON. R. PENNER: On the Northern Flood Agreement, obviously two assumptions, one is that the Northern Flood Agreement is covered by these words; the other is, that it is not. If it is not then there's no problem with these words. It's only if it is.

Let us assume then that the Northern Flood Agreement is. Do I understand from your answer that the constitutional protection which this apparently would give the Northern Flood Agreement, does not of itself add any substantive rights to the rights already encompassed in the Northern Flood Agreement?

MR. C. GILLESPIE: Well, I cannot conceive of any practical circumstance in which it would. That's a little short of saying that it cannot. I don't know whether anybody has suggested such a result. I'd be interested if there is such a suggestion to consider it. It's simply that having considered that question, I cannot find such a circumstance.

HON. R. PENNER: Thank you. Then on the process question, assuming that what the entrenchment of an agreement, like the Northern Flood Agreement if that should happen does, is protected against unilateral abrogation or change. Is it not the case? I gather from your answer that the Northern Flood Agreement in any event is a multiparty agreement that cannot be changed unilaterally.

MR. C. GILLESPIE: Again, I don't see any constitutional way in which it could be changed unilaterally.

HON. R. PENNER: Thank you.

MR. CHAIRMAN: Mr. Ransom.

MR. B. RANSOM: Just pursuing that line a bit . . .

MR. CHAIRMAN: Mr. Gillespie?

MR. B. RANSOM: Of Mr. Gillespie, please. It is my understanding that the Northern Flood Agreement was arrived at between the governments and the Indian people involved. If it were to become part of the Constitution, would it not then change the mechanism by which any change could ever be negotiated in that agreement; that it would then become subject for Legislatures and Parliament as opposed to governments?

MR. C. GILLESPIE: I suppose that result could be suggested or argued if it was accurate to say in the ordinary usage of the words that it became part of the Constitution, but I would not consider that as the result of the application of these words. I am again presuming that the words that you are looking at do include that agreement within their meaning.

On that assumption, it seems to me that the effect is to prevent the unilateral change, and we're talking about two of the four parties interested here, of that agreement. That is what's being done. You are entrenching it. You are not making it part of the Constitution.

The thing that's in the Constitution is the process of change. Now as a practical matter, at present any change in that agreement would require the consent of both the Federal and Provincial Governments, at least as I understand it. After the application of such a constitutional amendment to it, any change would require the consent of both those governments. You could argue that it might also require the consent of other Provincial Governments. I don't think that has any practical significance here.

MR. B. RANSOM: Mr. Chairman, the amendments that we are being asked to approve involve a change of putting in words, "now exist by way of land claims agreements and rights that now exist by way of land claims agreements or may be so acquired."

If I understand you correctly, you are saying it doesn't make any difference because they are already there, then why are we making this amendment to the Constitution to include land claims agreements that already exist?

MR. C. GILLESPIE: I am speaking not in the general about land claims agreements. I am addressing the question of one particular agreement. I don't know that the purpose of the amendment before you is particularly to entrench the Northern Flood Agreement.

As I understand it, the basic question that's being raised is whether this amendment, which is being considered for purposes far beyond the Northern Flood Agreement, would have the effect of entrenching rights under the Northern Flood Agreement and if so, what would be the effect of that. I don't feel competent to comment on the purpose beyond that.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: One final question. It has been your answer, as I understand it, that the Northern Flood Agreement in order to be changed has to be changed by an agreement between, among others, the Federal Government and the Province of Manitoba.

Section 43 of the Constitution says, "An amendment to the Constitution of Canada in relation to any provision that applies to one or more but not all provinces may be made by that province and the Federal Government." That would then be the same, would it not?

MR. C. GILLESPIE: Yes, I would think that's a sound position, but that still is going to the extent of presuming that the effect of the amendment is to bring the agreement itself within the meaning of the Constitution of Canada. My suggestion would be that that is not the effect of the amendment.

HON. R. PENNER: Thank you.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: We have centred our discussions around the Northern Flood Agreement because it is of specific concern to us. That may have in some way skewered the overall discussions.

Mr. Ransom indicated, and appropriately so, that when the First Minister introduced this amendment, he

said that portion which we are now talking about dealing with land agreements was designed to deal with agreements such as the James Bay Agreement and similar agreements. You're very familiar with the Northern Flood Agreement. I would ask you if you are familiar with the James Bay Agreement as well?

MR. C. GILLESPIE: Only in a general way.

HON. J. COWAN: I think that general knowledge may be appropriate in this instance. In your opinion, what are the differences between the James Bay Agreement, and what would be the similarities between the James Bay Agreement and the Northern Flood Agreement?

MR. C. GILLESPIE: I would say, to take it in reverse order, the main similarity is situational. Both agreements arose in a situation that related to a hydro-electric development. It is difficult to find much similarity beyond that. You could say they both deal with land issues. They deal very differently with land issues.

The fundamental philosophy around which the James Bay Agreement is built is entirely different from that lying behind the Northern Flood Agreement. In addition, the James Bay Agreement was a treaty in my view, in the ordinary sense of the term. It was a settlement of aboriginal rights and substitution of other rights for the extinguishment of those aboriginal rights. There is no such element present in the case of the Northern Flood Agreement.

The provisions in respect of land use are fundamentally different. I could go through virtually item by item and, I think, suggest to you that there is really no useful parallel to be drawn between the specific provisions of the two agreements.

HON. J. COWAN: So in your opinion then, they would not be similar agreements? I'll leave the question at that.

MR. C. GILLESPIE: I find that a difficult question to answer in that form because it would depend upon the nature of the examination of it. For some purposes, I think it would be meaningful to say they are similar agreements. If you are drawing a distinction between commercial contracts and other forms of agreement, they are similar agreements.

If you are narrowing into land claims settlements, or let's use land claims agreements, the terms that are used here in the proposed amendment, I can see many grounds for distinguishing them.

HON. J. COWAN: So in the context of the constitutional discussions and specifically in the context of this particular amendment, they would be more dissimilar than similar in your opinion?

MR. C. GILLESPIE: I would say so. Let me put it this way. If you were looking at a precedent which said that the James Bay Agreement does fall within the terms "land claims agreements," I would think any capable lawyer would very quickly find you a large number of arguments to suggest it didn't apply to the Northern Flood Agreement.

MR. CHAIRMAN: Further questions for Mr. Gillespie or for anyone else in that delegation? Seeing none, Mr. Gillespie, Chief Wood, Chief Bear and your colleagues, thank you very much for appearing here this morning.

Gentlemen, that concludes the delegations before us. I would ask the committee's indulgence to deal with one other matter, despite the time, and that is the comment and analysis presented by our first delegation. It was suggested in a note by one member that we might include that lengthy comment and analysis as part of our transcript of this meeting to be a part of the permanent record of the committee, presented by the Brotherhood of Indian Nations.

Would someone so move that's the will of the committee? Is that agreed? (Agreed)

Is there anything else before the committee?

Mr. Harper.

MR. E. HARPER: Mr. Chairman, I move that this committee recommend the proposed constitutional amendments respecting aboriginal rights to the Legislative Assembly.

MOTION presented and carried.

MR. CHAIRMAN: There being no further business before the committee, committee rise.

BRIEF PRESENTED BUT NOT READ

(Brief presented by Brotherhood of Indian Nations, May, 1983.)

1983 CONSTITUTIONAL ACCORD ON ABORIGINAL RIGHTS - COMMENTS AND ANALYSIS

I. INTRODUCTION

On March 16, 1983, an Accord known as the 1983 Constitutional Accord on Aboriginal Rights was signed by the Federal Government of Canada, nine provincial governments, four native organizations, plus the territorial governments.

The Accord was the product of a two-day conference (March 15-16, 1983) pursuant to Section 37 of The Constitution Act of 1982 mandating that a Constitutional Conference be held within one year of The Constitution Act coming into force.

The Constitutional Conference was mandated to discuss those items "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 Constituion of Canada . . . "

Since The Constitution Act 1982 Section 37(2) did not specify what were those constitution matters affecting the aboriginal peoples, an agenda worked out by the various Native organizations during Ministerial and official meetings with Federal and Provincial Governments was put before the Constitutional Conference. That agenda included the following matters "that directly affect the aboriginal people:"

1. Charter of Rights of the Aboriginal Peoples (Expanded Part II) including:

   - Preamble

- Removal of "Existing", and Expansion of Section 35 to include Recognition of Modern Treaties, Treaties signed outside Canada and before Confederation, and Specific Mention of "Aboriginal Title" including the Rights of Aboriginal Peoples of Canada to a Land and Water Base (Including land base for the Metis)
- Statement of the Particular Rights of Aboriginal Peoples
- Statement of Principles
- Equality
- Enforcement
- Interpretation

2. Amending Formula Revisions, including:
   - Amendments on Aboriginal Matters not to be Subject to Provincial opting out (Section 42).
   - Consent Clause
3. Self Government
4. Repeal of Section 42(1) (e) and (f).
5. Amendments to Part III, including:
   - Equalization) Resourcing of
   - Cost Sharing) Aboriginal
   - Service Delivery) Governments.
6. Ongoing Process, including further First Ministers' Conferences and the entrenchment of necessary mechanisms to implement rights.

According to the Accord, the identified agenda items as noted above were not completed during the conference, thus giving rise to provisions that:

> "future conferences be held at which those agenda items and other Constitutional matters that directly affect the aboriginal peoples of Canada will be discussed."

II. AGREEMENTS IN THE ACCORD

While there are seven paragraphs noted in the Accord, there are basically only three major aspects upon which the agreement was made. These are:

1. Another Constitutional Conference will be called within one year of the March 15-16, 1983 Conference (para. 1) and the preparations for the Conference (para. 5) and the actual representatives makeup of the Conference (para. 2, 3) will be identical to those of the March, 1983 Conference;
2. the recognition and provisions for bilateral discussions between the aboriginal peoples, particularly the Indian people (including Inuit) as generally provided for under Section 91(24) of The Constitution Act of 1867 (para. 6);
3. the provision that the Prime Minister will put before the Senate and the House of Commons and the Premiers will place before their respective Legislatures before December 31, 1983 the resolution attached to the Accord to amend The Constitution Act of 1982.

III. COMMENTS AND ANALYSIS

In order to analyze and comment on the Accord, it is necessary to state the fundamental propositions from which the perspective is drawn. Those fundamental assumptions are:

1. We are nations with the full and unemcumbered authority and jurisdiction to govern ourselves unhampered by either the Federal or Provincial Governments of Canada;
2. The Royal Proclamation of 1763 recognized (it did not create or grant) nationhood, right to consent, title to land, and it further put in place the process for cession of land with our consent through the treaty process and it further put in place the trust relationship;
3. The Constitution Act of 1867 constitutionally recognized the special status of Treaty Indian people with the Federal Government - Section 91(24);
4. Since the treaties were with the Federal Crown, and since the trust responsibility is constitutionally entrenched in The Constitution Act of 1867, the provinces have no jurisdiction, political or legal, over the Indian Nations and their people.

Given these fundamental propositions, it is prima facie that the Accord, in fact, violated most, if not all.

On the face of the document, the title speaks only of "aboriginal rights" and is totally silent on the issue of "treaty rights." It is of real concern that the Assembly of First Nations would become signatory to a document whose title and contents are totally silent on the treaties and the rights and obligations by international law which flow from them.

Now to the three major agreements. First, prior to the Constitutional Conference of March 1983, the process of the Constitutional Conference was attacked because it involved the provinces in the discussion and decision making concerning the Treaty Indian Nations. It seems incomprehensible that the concurrence of participating in such forum by the AFN could so easily take place in view of the proposition that the provinces should not and cannot be involved in decisions concerning Treaty Indian's rights.

It is even more incomprehensible that, not only was there full participation by the AFN in the March, 1983, Conference; but that they signed an accord which entrenched in the political and legal process the same identical process for the future conferences. Such an act must obviously give constitutional and statutory sanctity to provincial involvement in, and no doubt evolving control over the Indian Nations and their right to self-government.

The consequences of such a concession are far-reaching and its full implications are yet unknown as such relates to the nature of the treaties being international agreements, the nature and authority of Indian nationhood with the right to self-government, and the full and unqualified trustee responsibilities of the Federal Government.

One could certainly argue that what has really happened, in a not so indirect way, is that of sanctioning with a signed accord and thus to constitutional

eventuality Section 88 of The Indian Act. In a policy manner, even though the mechanics may be different, the ultimate, if not more immediate results, will be similar to or the same as Public Law 280 in the United States whereby Indian Nations came under the jurisdiction of the state in which they were located. The only difference appears to be that in the United States such a submission of Indian Nations to state jurisdiction by Congress was without Indian consent; wherein in the Accord, the AFN freely gave their consent by becoming a signatory to the Accord of which they full, and of their own choice, freely participated in.

It is surely one thing to have a more dominant and powerful government exercise its greater authority to impress its will on smaller and more dependent nations as happened in the United States in Public Law 280 - but, it must be quite another to willingly submit to a process, the result of which is voluntary consent to an Accord that, not only accepts the dominance of the larger and more powerful nation, but readily agrees that the more powerful nation's subdivisions, namely, the provinces, can also have a decision-making authority over Indian Nations.

A second aspect of the forum entrenched by the Accord, of which more will be said later, is that of the equality of the "aboriginal peoples" - to use the term in the Constitution. It is a well-known fact of the political theory of the present government that "equality" is central to its political philosophy. The idea of having a class or persons based purely on ethnic lines recognized either in the constitutional or statutory laws of Canada is a anathma which is not easily reconciled with the fundamental principle of equality. Without commenting on the arguments and forces that finally culminated to, in fact, constitutionally recognize an ethnic group known as the aboriginal peoples, it would be even more difficult for the government to recognize an inequality amongst the "aboriginal peoples" within the Constitution itself. Put another way, the Government of Canada, with its philosophical position of equality for all persons in Canada, can hardly recognize a particular special class of persons, such as, the aboriginal peoples and also recognize that within that class of persons or peoples another special class, namely, Indians.

The so-called win of the Indian people at the Constitutional Conference for a bilateral process with the Federal Government is an illusion. It is an illusion because it was not the Indian people who won, it was the other aboriginal people, namely, the Metis. What, in fact, happened was that the Indian people simply maintained what they have always had; i.e. a bilateral relationship with the Federal Government, but it was, in particular, a gain for the Metis who have not had such a relationship.

The implication of such is that the equality principle has won out as far as the aboriginal peoples are concerned and the ultimate reality of that is that the Treaty Indian people, as the first people whose treaties were with the Imperial and Federal Crown, have been reduced to the level of all aboriginal people. A further implication of this is that while Metis people have constitutionally been under the jurisdiction of the provinces, so now will the argument hold that Treaty Indian people will come under greater jurisdiction of the provinces. The Metis people have gained a bilateral process while remaining under the provinces and the Indian people, who have always had a special relationship with the Federal Government, will be more generally reduced to provincial jurisdiction. Thus, as far as the Federal Government is concerned, their objective of equality, at least as far as a class of persons are concerned, the aboriginal person, has been accomplished.

In summary, to argue that Indians have made a gigantic win on a bilateral process at the Constitutional Conference is illusory because they have been reduced to a level of all other aboriginal peoples thus losing their historical and constitutional special status because of the treaties by the lifting of a segment of the aboriginal peoples to the same level. Conversely, since the Metis, whose constitutional position has always been provincial, such in fact well reduced the once special class of Indian people to greater jurisdiction by the provinces.

The Indian representation signatory to the Accord fell into the identical process of an aboriginal accord which many, including the leadership of AFN, resisted so prior to the Constitutional Conference. Because it was at the Toronto meeting in December, 1982, that the Confederacy of Nations passed a resolution mandating the AFN leadership to seek co-operative relationships with other aboriginal groups, namely, the Metis and Inuit.

The leadership of AFN refused to implement that mandate, on the grounds of the special relationship of Indian people to the Federal Government. Yet, the Accord signed in Ottawa on March 16, 1983 accomplished precisely the same objective and the proof of that is in paragraph 5, whereby all aboriginal peoples now have bilateral access to and process with the Federal Government. The inequality of aboriginal people based on the argument that Treaty Indian people have a special status can no longer be maintained with any integrity and credibility particularly as such applies to the Treaty Indian. Thus, what was originally proclaimed by the leadership of the AFN should and could not happen has in fact happened with the full participation and signatory consent of the AFN.

The third agreement was that of a proposed schedule to the Accord (para. 4) to amend The Constitution Act, 1982. Within the schedule there are proposed a number of constitutional changes.

First, there are the proposed changes to paragraph (section) 25(b) of The Constitution Act, 1982. At present the paragraph reads:

(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

The proposed change is that the above paragraph be repealed and the following be substituted:

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

A second proposed change is the so-called "equality" clause which reads:

notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed to equally male and female persons.

A third proposal is to amend section 35, which says:
The Government of Canada and the Provincial Governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of The Constitution Act 1867, to section 25 of this Act or to this Part,
(a) a Constitutional Conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the First Ministers of the provinces, will be convened by the Prime Minister of Canada, and
(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

The fourth change is that of providing for in addition to the Constitutional Conference of March, 1983, at least two more additional conferences; one to be called within three years after April 17, 1982, and a second conference to be called within five years after April 17, 1982. The formal agenda and participants remain the same as provided for in Section 37(2) and as agreed upon in the Accord.

Comments on the four basic proposals as they affect Treaty Indians are in order.

First, the proposed changes in paragraph (b) of section 25. It is to be remembered that section 25 is part of the Charter of Rights of The Consitution Act, 1982. The proposed change has a number of implications. One, it further reaffirms and entrenches the term exist (existing) as provided for in section 35. But, it would appear that efforts have been made to make the term existing in section 35 more specific by adding the word "now" to make it specifically "now exist." This clearly, it would appear, precludes any expansion of or the recognition of rights, particularly as such relate to land rights, in the future or many of the past that have not been fully affirmed and recognized.

One only has to recall the sacking by the Premiers of the originally proposed section 34 in the back room of the Chateau Laurier Hotel only to be reinstated by section 35 with the word "existing." It becomes even more apparent that the term is even more restricted by adding the term "now."

While it is unfathomable that AFN agreed to the inclusion of such a term, the agreement seems to be that of recognizing in the Constitution newer land agreement arrangements such as the James Bay Agreement and others, and also, it is argued, to lift them to a level of constitutional status as the originally signed treaties concerning land cession under the general rubric of the Royal Proclamation of 1763.

If such be the argument, it is spurious because the original treaties were negotiated and signed between the Indian Nations or tribes and the Imperial Crown. The modern day land cession agreements as the James Bay is a tripartite arrangement which involves the provinces who are not nations and cannot enter into treaties of an international nature or standing.

By implication, as was pointed out earlier, the original treaties signed by the Indian nations and the British Crown have been diminished by the so-called raising (if in fact that is what it is) of current land settlements to the constitutional level of treaties between nations possessing an inherent power to so enter, with land settlement agreements of which one party, the provinces, have no such international capacity. It probably further implies that if the earlier international agreements between the Indian Nations and the British or Canadian Crown are put to the test of interpretation or re-interpretation or even renegotiation, the provinces because of the constitutional provisions will no doubt be involved.

In summary then, two consequences appear to flow from the proposed change to section 25. One is that of defining more narrowly the term "existing" in section 35; and two, the diminishing of the original inter-nation treaties by the entrenchment of current land settlements and or agreements which by the very involvement of the provinces in such agreements who have no international legal personality. The leveling process has once again been accomplished.

Second, the so-called "equality" clause. This clause does a number of things. One, it implants within the Indian Nation's own jurisdiction the equality principles of the federal and most provincial standards of equality of the sexes. By so doing, two, it is a direct invasion into the inherent jurisdictional domain of the Indian Nations. If Indian Nations have inherent jurisdiction over their members or citizens, it is the inherent right of a given Indian Nation to determine the inter-relationships of those citizens or members. To concede to the standards and imposed equality principles of one nation into the affairs of the relationship of the citizens or members of another nation is to concede or delegate inherent jurisdictional authority to that other nation. To the degree that the delegation is complete, especially by the entrenchment of that jurisdictional delegation in another nation's Constitution, the loss of the inherent power to determine one's own membership or citizenship is completely forfeited. To concede to such a proposed constitutional amendment in The Canadian Constitution Act, 1982 makes a mockery out of the argument of the inherent right to self-government. For who can take the right to self-government seriously.

The third proposal in the schedule speaks to the issue of consultation by the Prime Minister and the Premiers with the aboriginal peoples before there are any amendments to change paragraph 24 of section 91 of The Constitution Act, 1867 and section 25 of The Constitution Act, 1982. It would appear that this would (or should) present some very difficult problems for Treaty Indians.

It will be recalled that earlier in this paper comments were made on the so-called bilateral process as provided in paragraph 6 of the Accord (see pp. 5-6). While the bilateral process was opened to all aboriginal peoples in paragraph 6, it did specifically mention the class of people (Indian and Inuit) under the non-explicit paragraph 24 of section 91 of The Constitution Act, 1867.

In the proposed consultation clause, it specifically provides that both the provinces and all of the aboriginal peoples' representatives will be consulted on any proposed amendment to section 91(24). Again, at the risk of sounding repetitious, the uniqueness of Treaty Indian people to the Federal Government via 91(24) and the resulting trust relationship of the Federal Government with Treaty Indian people has been dissipated and reduced to a principle of equality the Treaty Indian people and the involvement of the provinces in that constitutional special relationship.

As to the involvement of all aboriginal peoples as defined by the Constitution with reference to section 25 of the Charter of Rights, one can only say that such is a moot point. It is a moot point because it is not certain what role or place the Charter of Rights will play in the development of constitutional law as to the relationship of the Charter with other and, some would argue, the more substantive sections of The Constitution Act, 1982.

The clue to section 25 as far as the aboriginal class or people and the Treaty Indian in particular is concerned, may well be in the application of section 15 - the section that deals with equality before the law and the equal protection and benefit of the law. In fact, it can be put forward in this paper, that section 15 has been fully implemented, or is on its way to being implemented, by the Accord itself and by the proposed schedule to amend The Constitution Act, 1982.

The proposition has previously has been repeatedly made on the pervasiveness of the equality principle. The irony of the whole Accord and the proposed schedule is that on the one hand Indian people in general and Treaty Indian people in particular have always maintained that because of the Royal Proclamation, section 91(24) of the old BNA Act and the treaties that a special class (citizens plus some usage) has existed with the Federal Government while, on the other hand, their representaties to the 37(2) conference became signatory to an Accord to which was attached a proposed amendment schedule both of which destroy that very special class.

By implication, therefore, all of the aboriginal peoples (Indian, Inuit, and Metis) as well as the provinces will have consented to and will be involved in any changes to section 91(24) - a domain of constitutional relationship once though only to involve Indians and by Supreme Court ruling, Inuit.

A second aspect of the consultation provision is that aboriginal people including Treaty Indians, in fact all First Peoples, will only be consulted concerning changes. They will have no veto or consent provision. This obviously violates the basic tenets of the Royal Proclamation of 1763 and the treaties whereby Indian Nations not only possessed the inherent authority of consent but that consent could only be given at their discretion. It would appear that the power to consent has willingly and knowingly been traded for the authority to be consulted. Nothing more and certainly a whole lot less.

The fourth proposed change needs no comment in that it provides for additional constitutional conferences or, as it is argued, an ongoing process. It can only be apparent that while there may be additional conferences, the parameters are set, the fundamental political philosophy and the jurisprudence have been accepted.

One last observation. When one compares the various agreements in the Accord and the proposed amending schedule with the proposals put forward by the Assembly of First Nations (see attached), one is immediately struck by not only the contrast but with the outright and blatant contradictions. Without any detailed comment, which would only repeat many of the earlier comments concerning the Accord and the schedule, it would appear that the AFN's proposals had no impact upon their representation because the Accord and the schedule in fact violate the fundamental aspects of the proposals themselves. For example:

1. How can one talk about the First Nations being a distinct (reference: p. 5.1, para. 1) people and then agree to the equality formula for aboriginal peoples both in law and in process? (general reference: Page 5.2. para 2.)
2. How can one propose to delete the word "existing" in section 35(1) and then agree to a constitutional amendment which proposes to add the words "now exist" in section 25? (general reference: Page 5.2., para. 1)
3. How can one propose in both instances (Accord-schedule and the proposals) to discuss on the one hand the treaties made between the Indian Nations and the Crown and also to propose to constitutionally entrench presumably of the same stature agreements entered in by the Indian Nations, the Federal Government and the provinces, the latter of which do not have national capacity? (general reference: Page 5.3. para. A)
4. How can one propose the notion of Indian consent (assent) on the one hand and be a signatory to a proposed constitutional amendment which only provides for a forum for consultation? (general reference: Page 5.9. First Nation's Consent.)
5. How can one propose on the one hand the right of self-identity including the right to determine membership and on the other hand concede to the equality principle of one's citizenship whose standards are those of and imposed by another nation and its part, the provinces? (general reference: Schedule to Amend the Constitution.)
6. How can one originally object to a constitutional forum which includes the provinces and then on the other hand, freely attend and in fact propose and further consent by signatory that the identical same forum and participants should be entrenched by constitutional amendment - all under the guise of an ongoing process? (general reference: Page 5.9. Constitutional Conference.)

Note: Overall Reference: Page 5.14. All inclusive amendments to part four.

IV. SUMMARY

The foregoing comments and analysis concerning the 1983 Constitutional Accord on Aboriginal Rights as to how and why the Accord violates the fundamental proposition, assumptions and declarations of Treaty Indian Nations needs no further observations.

That the pervasive and consistent objectives of the Federal Government and the provinces to equalize and thus to assimilate Treaty Indian people into the "Canadian mosaic" have been accomplished is without question. The principles have been agreed upon, the forums have been established and the process has been consented to.

For those Treaty Indian Nations who refused to participate, who did not consent either to the principles, forum or process, their own nationhood will be severely tested. But nationhood of the First People of this land is not easily subdued nor is the spirit of their people easily crushed - unless they consent.