

PL file

CANADA'S NATIVE PEOPLES AND THE CONSTITUTION

Background Material

- Part A - Positions and process with respect to the proposed Constitution Act
- Part B - A letter from the Prime Minister of Canada to Native leaders
- Part C - A chronology of events on Natives and the Constitution
- Part D - Native rights and Native affairs: evolution of programs in the last 20 years including
 - Appendix A: the genesis of native rights and special status
 - Appendix B: post confederation treaties
 - Appendix C: native populations
- Part E - Press release on the Federal Government's survey of Indian Conditions. The survey is available on request.

Coordinated by the Federal-Provincial Relations Office
Government of Canada

November 1980

Canada's Native Peoples and the Constitution

Native Position

Canada's Native Peoples are recognized in the Constitution of the British North America Act, 1867, and the Constitution Act, 1982.

- specific references to Native Peoples, treaty rights, and the right to self-government.

PART A

Position and process with respect to the proposed Constitution Act.

Native Peoples are recognized in the Constitution of the British North America Act, 1867, and the Constitution Act, 1982.

Native Peoples are recognized in the Constitution of the British North America Act, 1867, and the Constitution Act, 1982. The Constitution Act, 1982, recognizes the rights of Native Peoples to self-government and to participate in the development of their lands and resources.

The Constitution of the British North America Act, 1867

The Constitution of the British North America Act, 1867, is the first written constitution in North America.

The Constitution of the British North America Act, 1867, is the first written constitution in North America.

The Constitution of the British North America Act, 1867, is the first written constitution in North America.

The Constitution of the British North America Act, 1867, is the first written constitution in North America.

Canada's Native Peoples and the Constitution

Natives' Position

Canada's Native peoples are resisting patriation of the British North America Act primarily because the Constitution Act does not contain:

- specific references to aboriginal rights, treaty rights, and the right to self-government;
- an explicit guarantee of the distinct cultural, economic and linguistic identities of Native peoples; and
- a well-defined future role for Native peoples in the constitutional amendment process.

In the absence of these guarantees, Native leaders feel patriation will be a major step towards the final destruction of the ways of life of their peoples.

There are additional concerns expressed by Native leaders, such as their desire to have a constitutional guarantee to a direct share in Canada's economic surplus and the desire of Indian leaders to have Schedule 1 to the Constitution Act include the Royal Proclamation of 1763 and the various Treaties which have been signed with Indian nations since that time. Such additional demands, however, do not appear to be as pivotal as those listed above.

The Position of the Government of Canada

The Constitution Act will not reduce the current status of Native peoples in Canada:

- policies, programs, and commitments described elsewhere in this background material will continue to apply;
- section 91(24) of the BNA Act, which gives responsibility over Indians (broadly defined) to the federal government will be unchanged;

- the status of treaties will be unchanged;
- the Indian Act continues to be in force;
- the Resource Transfer Agreements embodied in the British North America Act of 1930 will continue to limit the application of provincial game laws in Alberta, Saskatchewan, and Manitoba with respect to Indians' rights to hunt, trap, and fish for food;
- the negotiation of comprehensive claims with Native groups will continue.

Section 24 of the Constitution Act continues the existing protection of the Natives' way of life by assuring that any rights of freedoms that pertain to the Native peoples of Canada shall not be abrogated by the introduction of a guarantee in the "Charter of Rights and Freedoms" of certain rights and freedoms for all Canadians. This Section is purposefully open-ended. There is a possibility of future entrenchment of additional rights in the Constitution such as those which are demanded by Native leaders.

Because adequate definitions of some of the Natives' preferred concepts have not yet been agreed upon in Canada, the Government could not go further than Section 24 on the subject of Native rights. The legal and political consequences of including such concepts in the Constitution of Canada at this stage could not be determined.

The Continuing Process

It should be noted that the issues underlying the concepts of aboriginal and treaty rights are complex and require - particularly in the case of Métis and Non-Status Indians - extensive consultations with the provinces. Those issues include, from the Natives peoples' perspective, the right to self-government, hunting, fishing and trapping rights, education rights, language rights, a special share in the revenues from the exploitation of natural resources, special provisions pertaining to family law and the administration of justice, and so on.

(Included with this material) the Prime Minister communicated the following message on behalf of the Government of Canada:

To add further to the complexity of the problem, the scope, extent and practical meaning of "aboriginal rights" varies between Native groups. The Prime Minister said in the House of Commons in November 7, 1980:

"I would merely want to point out ... that I think the simple claim of aboriginal rights, without anyone knowing exactly what it means, is not a matter which one can convincingly argue should be put in the Constitution at this time. First of all, the courts would be called upon to interpret such a constitutional amendment, and I think everyone would want to know what aboriginal rights are, what are their extent, to whom they apply, and so on."

Many of the above issues, for instance fisheries, resources, communications, and family law, are still to be resolved with the provinces in subsequent phases of the constitutional renewal process and, in that context, there is a political commitment to ensure that the Native peoples' concerns are fully taken into account. Patriation of the Constitution is a necessary first step to ensure that Canadians have their Constitution and are able, once it is in Canada, to decide between Canadians what its content should ultimately be.

Many issues on which it was not possible to reach an agreement in the discussions between the Government of Canada and the provinces during the last round of constitutional talks, therefore, will be further discussed in Canada during subsequent phases of the Constitutional renewal process with a view to the resolution of those issues. One of those issues is the item on "Native peoples and the Constitution".

To help Canada's Native peoples prepare for their direct participation in the negotiations on this item, the federal government has recently granted the national Native organizations \$1.2 million, to be shared equally between them during the fiscal year ending March 31, 1981. This step towards the clarification of issues and positions is consistent with a decade long attempt by all concerned to arrive at a point of mutual understanding. In his most recent letter to the national Native organizations (included with this material) the Prime Minister communicated the following message on behalf of the Government of Canada:

- patriation will not reduce Natives' rights in Canada;
- the government's commitment to work with Native peoples towards constitutional change remains firm;
- the list of Natives' priority concerns, including aboriginal and treaty rights, internal self-government, representation in political institutions, and a guarantee of services will be addressed along with the other items which could be introduced in the course of discussions;
- the Prime Minister will seek to place the subject of Native rights on the agenda of the first upcoming First Ministers' Conference on the Constitution;
- the pursuit of the objective to entrench Native rights in the Constitution will likely involve a number of meetings with First Ministers along with regular meetings between the Native organizations, government officials, and ministers of the federal and provincial governments.

Summary

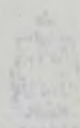
The Government of Canada's position on Native peoples and the Constitution, therefore, should be seen as a composite of the following:

- no reduction of the Natives' current legal and constitutional status;
- an open-ended Section 24 on "undeclared rights" - including those which may exist for Native peoples in Canada - in the proposed Charter of Rights and Freedoms;

- a Government commitment to pursue the issue of Native rights at the highest level of political negotiations in the next phase of the constitutional renewal process, and to fund the national Native organizations to help them fully prepare for their direct participation in those negotiations.

PART B

A letter from the Prime Minister of Canada to the President of the NIS. Letters similar in content were sent to the President of the NCC and the co-chairman of the ICNI.



PRIME MINISTER / PREMIER MINISTRE

Ottawa, K1A 0A2
October 30, 1980

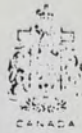
Dear Mr. Riley:

PART B

Through a number of channels, including discussions with the Honourable John Munro, the measures that represent what the actions of the government will be in this act of patriation. A letter from the Prime Minister of Canada to the President of the NIB. Letters similar in content were sent to the President of the NCC and the co-chairman of the ICNI. Let us respond to your worries by saying that your people will lose nothing in this act of patriation. Under the old system, there was nothing which the Parliament of the United Kingdom could do on its own authority, in accordance with all our constitutional customs, to change the situation for the Native Peoples of Canada. That is a responsibility of all of us here in this country. I believe that Canadians, with new-found pride in their own Constitution and in their new maturity as a country, will be more than ever generous in considering the needs and wishes of our first citizens. In short, I believe that constitutional change after patriation will become easier, rather

Mr. Del Riley
President
National Indian Brotherhood

- 1b -



PRIME MINISTER · PREMIER MINISTRE

Ottawa, K1A 0A2
October 30, 1980

Dear Mr. Riley:

Through a number of channels, including discussions with the Honourable John Munro, the uneasiness with which you and many of the people you represent view the actions of the government in seeking patriation of the Constitution has come to my attention.

Let me respond to your worries by saying that I am personally convinced that your people will lose nothing in this act of patriation. Under the old system, there was nothing which the Parliament of the United Kingdom could do on its own authority, in accordance with all our constitutional customs, to change the situation for the Native Peoples of Canada. That is a responsibility of all of us here in this country. I believe that Canadians, with new-found pride in their own Constitution and in their new maturity as a country, will be more than ever generous in considering the needs and wishes of our first citizens. In short, I believe that constitutional change after patriation will become easier, rather

Mr. Del Riley
President
National Indian Brotherhood

than harder, and I commit myself and the Government of Canada, again today, to working with the Native Peoples towards constitutional changes which will make Canada a better place for you and for all Canadians.

In the "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada" you will note that under section 24 any rights or freedoms that pertain to the Native Peoples of Canada shall not be abrogated by the introduction of a guarantee in the "Charter of Rights and Freedoms" of certain rights and freedoms for all Canadians. This section is meant to safeguard any special rights which Native Peoples may have and leaves open the possibility of future entrenchment of such rights in the Constitution.

My personal commitment to ensure that the voices of aboriginal peoples are heard in the process of framing a new constitution remains firm. When I had the pleasure of addressing the Chiefs last April 29, I noted our common purpose of working toward the goals of stronger Indian cultural identity and stronger Indian communities within a renewed Canadian federation. More recently, I stated in the House of Commons on October 10, 1980, that any changes in the Constitution which would directly affect Indian

people would only be made after discussion with them. Furthermore, I added the undertaking that when negotiations on the Constitution recommence after the Constitution is brought to Canada, we will be prepared to put the item of Native rights on the agenda. In effect, I am saying that the way will be open for either amending the Constitution or adding to it.

I have already agreed to discuss with you such matters as aboriginal and treaty rights, internal Native self-government, Native representation in political institutions such as Parliament, and the responsibilities of the federal, provincial, and territorial governments for the provision of services to Native Peoples. These subjects do not exclude the introduction of others of direct interest to Indian peoples. Considerable effort will need to be expended to find common ground among Indian people, among Indians and other Native Peoples, and Canadians in general before understanding and acceptance on all issues, in part or in whole, can be achieved. The manifest complexities of such questions precludes easy and early agreements. You will understand therefore that we must proceed now to set in place, within Canada, the means for renewing the federation. Relations by meet with you or your representatives on October 11, 1980 to explain in more detail the process for constitutional change which is underway, to explore with

What the additional rights of the Indian people might be has not yet been determined. It will be your task to come to a full and common understanding of the collective rights you have claimed by virtue of your treaties and your aboriginal standing. You will have to persuade the Governments of Canada that the special rights you claim are reasonable and that they should be guaranteed in the Constitution.

To give substance to the personal commitment I referred to earlier in this letter, I shall seek to place the subject of Indian rights on the agenda of the next meeting of First Ministers' on the Constitution. I do not expect, nor should you, that agreement will be achieved within one meeting. But, as questions regarding rights are resolved or come close to resolution in subsequent preliminary meetings with officials and Ministers responsible for constitutional matters, they can be elevated again to constitutional meetings at the level of First Ministers.

Following my discussions with Mr. Munro, to give effect to the undertaking of the previous paragraph, I have already asked Dr. Michael Kirby, Secretary to the Cabinet for Federal-Provincial Relations to meet with you or your representatives on October 31, 1980 to explain in more detail the process for constitutional change which is underway, to explore with

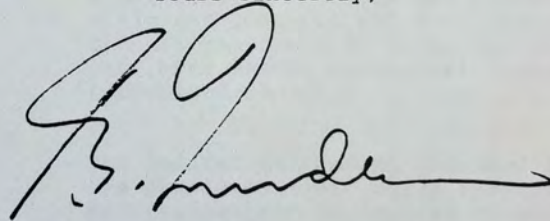
- 5b -

you the best mechanism for involving the Indian people in future constitutional discussions, and to find a common understanding, if not agreement, on the purposes of a meeting which I propose that we hold together in the spring of 1981. Since the Federal-Provincial Relations Office will be acting on my behalf, I would ask you to deal with Dr. Kirby as you would with me.

I hope my letter will dispel, or at least ease, your wariness with respect to the continuing process of constitutional renewal, and that you will be reassured with regard to your involvement in the future.

Constitution.

Yours sincerely,

A handwritten signature in black ink, appearing to read "B. Mulroney", with a long horizontal flourish extending to the right.

A CHRONOLOGY OF EVENTS

June, 1978

- The Government of Canada released a paper, A Time for Action, outlining a plan for renewing federalism, including constitutional reform. The paper gave high and specific priority to the place of native peoples - i.e. Indians, Inuit and Metis - in this work.
- The Government of Canada a few days later released the Constitutional Amendment Bill (later tabled as Bill C-60) with proposed constitutional changes in some areas, but none in areas subject to joint consideration with the provinces.
- An explanatory Document was published with the Bill, in which the prospect of native groups and governments agreeing on provisions to be enshrined in the PART C of the Constitutional Charter of Rights was raised.

August, 1978 A chronology of events on Natives and the Constitution.

The National Indian Brotherhood at its annual assembly passed a resolution that a delegation of Chiefs and Elders should visit the Queen to ask that, among other things, the Canadian Constitution not be patriated unless aboriginal rights are recognized in it.

September, 1978

- The federal government proposed to the provinces that Indian and other native representatives be invited to make presentations to the First Ministers Conference on the Constitution (to be held at the end of October, 1978). Though this proposal was not taken up at that stage, it was agreed that the native representatives should be invited to the Conference as observers.

October 30 to
November 1, 1978

- The First Ministers Conference on the Constitution heard the Prime Minister and various other First Ministers welcome the native observers and note the importance of their concerns in the constitutional work. Several provinces had native representatives in their delegations. The National Indian Brotherhood circulated a letter to all delegates stating why it thought that Indian spokesmen should participate in the Constitutional discussions.

A CHRONOLOGY OF EVENTS

June, 1978

- The Government of Canada released a paper, A Time for Action, outlining a plan for renewing federalism, including constitutional reform. The paper gave high and specific priority to the place of native peoples - i.e. Indians, Inuit and Metis - in this work.
- The Government of Canada a few days later released the Constitutional Amendment Bill (later tabled as Bill C-60) with proposed constitutional changes in some areas, but none in areas subject to joint consideration with the provinces.
- An explanatory Document was published with the Bill, in which the prospect of native groups and governments agreeing on provisions to be enshrined in the proposed Constitutional Charter of Rights was raised.

August, 1978

- The National Indian Brotherhood at its annual assembly passed a resolution that a delegation of Chiefs and Elders should visit the Queen to ask that, among other things, the Canadian Constitution not be patriated unless aboriginal rights are recognized in it.

September, 1978

- The federal government proposed to the provinces that Indian and other native representatives be invited to make presentations to the First Ministers Conference on the Constitution (to be held at the end of October, 1978). Though this proposal was not taken up at that stage, it was agreed that the native representatives should be invited to the Conference as observers.

October 30 to
November 1, 1978

- The First Ministers Conference on the Constitution heard the Prime Minister and various other First Ministers welcome the native observers and note the importance of their concerns in the constitutional work. Several provinces had native representatives in their delegations. The National Indian Brotherhood circulated a letter to all delegates stating why it thought that Indian spokesmen should participate in the Constitutional discussions.

November, 1978 to
January, 1979

- Federal officials began meeting with representatives of the three national native federations: the National Indian Brotherhood representing status Indians, the Inuit Tapirisat of Canada representing Inuit, and the Native Council of Canada representing Metis and non-status Indians - to explore their views and keep them in touch with the Constitutional process.

January 30, 1979

- The Prime Minister invited the three national native federations to send observers to the second First Ministers Conference on the Constitution to be held at the beginning of February. He also noted the continuing native contact with federal officials, and proposed that national native leaders meet with the federal ministers working on the Constitution to exchange ideas and discuss what processes might be begun to give the native people greater involvement in Constitutional work.

February 5, to
February 6, 1979

- At the First Ministers Conference the Prime Minister, with the strong support of several Premiers, proposed, and the Conference accepted, that federal and provincial Ministers and/or First Ministers meet with the native leaders at a later date to explore their concerns and have a dialogue on outstanding issues related to the Constitution, and that, as part of the work on the Constitution, federal and provincial governments adopt an item, "Canada's Native Peoples and the Constitution", with as much native participation in the work as possible.

February 12, 1979

- The Prime Minister released the list of new constitutional items proposed for federal-provincial discussion, said he attached particular importance to the item regarding the native peoples, and expressed the hope that representatives of the native people would participate in the work on the question.

September 29, 1978

March, 1979

- Federal ministers working on the Constitution met with the National Indian Brotherhood and discussed what matters the NIB raised, confirming the content of the discussion later in an exchange of correspondence.

June 8, 1979

- The President of the National Indian Brotherhood wrote to the Minister of State for Federal-Provincial Relations, requesting the new government's views on Indian participation in the Constitutional review process.

June 18, 1979

- Government House delivered a message from Buckingham Palace to the NIB in which Her Majesty, acting on the advice of her Canadian Ministers, said she recognized the great importance attached to discussions which have already begun between the leadership of the Indian Peoples of Canada and the Government of Canada and, in particular, to the question of Canada's native peoples and the Constitution. Her Majesty went on to express the hope that, at some mutually convenient time, His Excellency the Right Honourable Edward Schreyer, as Her Majesty's representative in Canada, would receive in audience the representations of a delegation of Chiefs and Elders under the aegis of the National Indian Brotherhood.

June 20, 1979

- The Minister of Indian Affairs and Northern Development met the NIB leadership for a wide-ranging "get-acquainted session", including hearing NIB views on the Constitution.

June 29, 1979

- The Minister of State for Federal-Provincial Relations replied to a letter from the NIB, committing the new government to consultation with Indian and other native people on Constitutional processes and to their direct participation in the work of Constitutional revision in areas related to their interests. This commitment was expressed in letters to the NCC and the ITC as well.

September 28, 1979

- The Prime Minister and the Minister responsible for federal-provincial relations met with the executive of the NIB and explored in a general way some form of structure which could be set up to provide for continuing constitutional work with the three Native groups at the levels of officials, expert advisors, politicians, and First Ministers.

December 3, 1979

- The first formal meeting between Native leaders and governments took place. The Native organizations represented were the NIB, NCC and ICNI (Inuit Committee on National Issues, set up by the ITC for focus on constitutional concerns). Represented by Ministers of the Crown were the federal government, Saskatchewan and Quebec.

April 29, 1980

- The Prime Minister made his first major speech on the Constitution, since re-election, at a national meeting of Indian chiefs, which was also attended by leaders of the NCC and ICNI. He announced that federal funding of \$400,000.00 had been approved for each national Native organization in order to help them prepare for discussions on the Constitution. He identified the following areas as the ones upon which attention should be focussed: aboriginal and treaty rights, internal Native self-government, Native representation in political institutions, and the responsibilities of the federal and provincial governments for the provision of services to Native peoples. The Ministers responsible for Energy, Mines and Resources and for Indian and Northern Affairs subsequently explained that the Prime Minister's list specified items which could be dealt with initially, but that other items could be introduced while constitutional negotiations between governments and Native leaders continued.

June 9, 1980

- The constitutional initiative taken by Canada's First Ministers, as a result of the May referendum in Quebec, drew the attention of the federal and provincial governments to 12 items, tabled by the Prime Minister in the House of Commons on June 10. The final point in the tabled list, but excluded from the immediate agenda, was:

"The Government also proposes that the leadership of the native peoples continue to be involved in the discussion of constitutional changes which directly affect the native peoples, in the context of the joint work on the item "Canada's Native Peoples and the Constitution". In addition, governments would pay special heed to representations from them on the items in the Package (i.e. the list of 12) set out below."

June 17, 1980

- The Continuing Committee of Ministers on the Constitution (CCMC), organized in response to the June 9 initiative of First Ministers, agreed that a sub-committee of CCMC Ministers should approach the national Native organizations with a view to arranging a meeting to hear their views on constitutional matters.

August 11, 1980

- A letter from the Prime Minister to each national Native organization affirmed that Native leaders would again have observer status at the upcoming First Minister's Conference and advised the Native leaders of the CCMC's decision to meet with them prior to the First Minister's Conference on the Constitution scheduled for September 8 - 12.

August 26, 1980

- The CCMC sub-committee met with the leadership of the NIB, NCC, and ICNI. As a measure of the importance of this meeting to all the governments involved, it is worth noting that the sub-committee meeting was attended by all but two of the CCMC ministers. The leaders of the Native organizations presented briefs to the ministers which gave their views on all 12 of the items which the First Ministers would be addressing. The Natives' submissions to the sub-committee were subsequently presented in whole and in summary form to the full CCMC and to First Ministers.

September 8 - 12, 1980

- The First Ministers' Conference on the Constitution (FMC) saw attention being drawn to Native rights by a number of Premiers and by the Prime Minister. A "best efforts" draft for a possible preamble was offered to the conference by the federal government which made the protection of "collective rights, including those of the Native peoples" a fundamental purpose of the Constitution. The acceptability of that passage was declared by the federal government to be conditional upon the agreement of the Native leaders, whose representatives had in fact had a chance to consider it prior to the FMC. The Native leaders found themselves unready to formally agree to the passage as drafted and unprepared to provide a jointly agreed alternative. In any event, there is no preamble in the Constitution Act.

October 2, 1980

- The Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada is presented to Parliament. Article 24 of the Charter of Rights in the Proposed Resolution states: "The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the native peoples of Canada.". On October 10 and on October 17 the Prime Minister assured the House that constitutional negotiations with Native leaders would continue and that any changes directly affecting Native peoples would only be made after discussion with them. He stated that meetings with Native leaders would continue to take place to consider how best to protect Native rights, and added that the question of Native rights could well be amongst the first on the agenda of the next phase of constitutional discussions. Constitutional concerns were discussed by the Minister of Indian and Northern Affairs with the ITC (October 7) and the NIB (October 17 - 19). The Minister of Justice met with the NCC leadership on October 28 on the same subject.

October 31, 1980

- The Secretary to the Cabinet for Federal-Provincial Relations met with representatives of the three national Native organizations to detail the structure and processes which the federal government was putting into place in order to pursue the constitutional item "Canada's Native Peoples and the Constitution". At the meeting, the October 30th letter from the Prime Minister to each organization was handed over to the organizations. Since then a number of exchanges have been held between government officials and representatives of the national Native organizations on proposed amendments to the Constitution Act.

Native Rights

describes the evolution

peoples and provides background information on the

genesis of their rights.

PART D

Native Rights and Native Affairs: this section describes the evolution of government programs for native peoples and provides background information on the genesis of their rights.

and administration of an increasing number of government programs. More than \$17.5 million, one-third the 1980 Indian Affairs Budget, is now being directly administered by heads of the three purposes, compared to \$14.9 million or 13 per cent of the budget in 1976-77.

The decentralization of Indian Affairs activities to the regions is an effort to place decision-making at the point of contact with native client groups, and the scaling of Indian agencies (the last one was closed in 1980) to align with direct government intervention in administration at the community level.

NATIVE RIGHTS AND NATIVE AFFAIRS:

A BACKGROUND TO THE ISSUE OF NATIVE PEOPLES AND THE CONSTITUTION

Patterns of Change, 1960-1980

The past twenty years have seen a fundamental change in the way the native community perceives itself, a change that could be summarized as a new awareness among native peoples of their identity as a strong and viable community, and a new determination to protect and enshrine their rights.

These changes, which have helped bring about a tremendous growth of public awareness of native issues, have been both reflected in and stimulated by federal programs and policies during these years.

Up to the Second World War the general policy towards Indians was primarily custodial and directed towards protecting and sustaining Indians on reserve while encouraging integration or "enfranchisement" of Indians living off-reserve.

A revised Indian Act of 1951 eliminated many of the repressive aspects of previous legislation and encouraged increased control of status Indian communities. Most of this development has occurred particularly since 1960. This period has been marked by:

- a 488 per cent increase in Indian Affairs expenditures (discounting inflation) between 1957-58 and 1970-71;
- band administration of an increasing number of government programs. More than \$227 million, one-third the 1980 Indian Affairs budget, is now being directly administered by bands for this purpose, compared to \$34.9 million or 13 per cent of the budget in 1970-71;
- the decentralization of Indian Affairs activities to the regions in an effort to place decision-making at the point of contact with native client groups, and the closing of Indian agencies (the last one was closed in 1969) to eliminate direct government intervention in administration at the community levels;

- the growth of established native political organizations and the five-fold increase between 1971-72 and 1978-79 in federal funding for their activities. These organizations now receive more than \$20 million annually for administration, Indian Act and claims research, consultations, and political program development;
- the establishment, as a result of a 1976 policy paper entitled "Approach to Government/Indian Relationship", of Indian organization involvement in Indian policy and program development;
- the change from a pre-1950's policy to actively discourage the use of Indian languages and cultural practices, to the active promotion of Indian and other native languages and cultures based on the concept of a distinct native identity within Canadian society rather than separate from it or assimilated into it;
- the federal government's adoption, in 1973, of the principles put forward in a National Indian Brotherhood policy paper entitled "Indian Control of Indian Education."

Since 1960 the Canadian Government has recognized that the Indian Act of 1951, which essentially establishes the relationship between Indians and Government, retains too great a responsibility with the Minister of Indian Affairs and his officials. A number of attempts have been made to change the legislation and establish mechanisms and institutions that could deal effectively with Indian needs. Specifically:

- Proposals for Indian Act revision have been developed in 1962-63, 1966-67 and 1978-79. The most recent proposals, designed to remove discrimination and introduce concepts of optional local self-government have been rejected by the National Indian Brotherhood until constitutional issues are resolved.
- In 1969 the Government issued a proposal on Indian Policy (1969 White paper) which proposed the phasing out of the Department of Indian Affairs and the integration of Indians into the general population.

- The "1969 White paper" was rejected by Indians. The Indians' position has been accepted by the Government of Canada. Ottawa's acceptance of the special nature of Indians has been subsequently reaffirmed by the Government's 1976 paper entitled "Approach to Government/Indian Relations."
- Following 1970 the Government committed itself to extensive discussions with Indian and Native Groups. A special committee was formed between cabinet and Indian representatives. The National Indian Brotherhood decided to withdraw from this Committee in April 1978.
- Since 1970 the Government has provided around \$6 million to Indian Associations to support Indian Act revision and constitutional review. Funding for claims research during the same period now totals more than \$30 million.
- Also since 1970 the Federal Government has established mechanisms to deal with Indian Claims including the formation of an Indian Claims Commission, which operated from 1969 to 1974. A special Office of Native Claims now operates, which is responsible for negotiating 13 claims with Native groups that have not surrendered their aboriginal interest. In addition, the Office of Native Claims is dealing with the grievances of a wide range of native groups which have already entered into treaties or agreements with the Government.

The Government of Canada is still concerned that the funds available, particularly to Canada's 305,000 Status Indians (around \$1 billion in 1981/82) will not meet Indian needs without a substantive change in the relationship between Indians and government. It is therefore still considering the introduction of legislation that will permit an option for Band self-government as well as participating in continuing administrative and policy discussions with Indians and Provinces while negotiations on the constitution proceed.

In early 1971 this issue was brought sharply into focus by the decision of the Supreme Court of Canada in the Calder case, in which the Wishik Indians sought to assert the existence of native title to the lands of northwestern British Columbia they had traditionally used and occupied. Although the case was dismissed on a technicality, the court split three-three on the substantive issue of whether or not the native title continued to exist. In response, the federal government undertook a review of its position and changed the policy set forward in its 1973 statement on native claims.

THE GENESIS OF NATIVE RIGHTS AND SPECIAL STATUS

The genesis of native rights in Canada can be traced back to the early days of British contact with native peoples in North America and the policy adopted by the British Crown in its dealings with them.

British colonial policy towards Indians found its best-known expression in the Royal Proclamation of 1763. This policy assumed that native people had an interest in the land which had to be dealt with before non-native settlement could take place. It resulted in a series of agreements or treaties dating from the 1780s whereby the Indian interest in a great part of what is now Canada was relinquished to the Crown in return for certain benefits, including land.

The treaties placed certain obligations on the Imperial Crown with regard to Indian groups who had entered into a treaty relationship with the Crown, and went a long way toward formalizing the relationship between Indian people and the Crown. As the treaty making process evolved, so too did the body of colonial legislation and administrative practices to deal with Indian matters.

The BNA Act confirmed the new Canadian government's exclusive legislative jurisdiction over "Indians, and lands reserved for Indians", a jurisdiction which was subsequently (in 1939) interpreted by the courts to apply to Inuit as well. This jurisdictional responsibility found particular expression in the 1868 Secretary of State Act, which consolidated existing colonial legislation dealing with Indian matters and became the precursor of the first Indian Act of 1874.

The policy of entering into treaties with native people continued after Confederation with a series of so-called "numbered treaties" dating from 1871 (see Appendix "B"). This treaty making process which had gradually spread westward from Ontario, effectively stopped in the 1920s, once the native interest in the most likely areas of settlement or development had been dealt with. In the following decades, little attention was paid to completing formal arrangements with native people in this regard. Yet, despite the fact that the traditional native interest had not been taken into account, non-native occupancy of land in non-treaty areas continued.

In early 1973 this issue was brought sharply into focus by the decision of the Supreme Court of Canada in the Calder case, in which the Nishga Indians sought to assert the existence of native title to the lands of northwestern British Columbia they had traditionally used and occupied. Although the case was dismissed on a technicality, the Court split three-three on the substantive issue of whether or not the native title continued to exist. In response, the federal government undertook a review of its position and adopted the policy set forward in its 1973 statement on native claims.

The 1973 statement began by reaffirming the special relationship between the government and Indian people. In describing how the government would deal with claims, the statement confirmed a longstanding obligation on the part of the government to discharge its responsibilities, as defined in the treaties and the Indian Act, to Indian people. More precisely, it committed the government to a formal process for dealing with claims that Indian people had about government administration of Indian lands and other assets under the various Indian Acts, and about the actual fulfillment or interpretation of the terms of the treaties.

What made the 1973 policy statement particularly significant, however, was that it provided a framework for dealing with another, and deeply rooted, sense of grievance on the part of many native people: the fact that the native interest in large areas of Canada, including the greater part of British Columbia, Yukon, most of the Northwest Territories, northern Québec and Labrador, had never been extinguished by treaty or superseded by law.

Specifically, it expressed the government's willingness to negotiate settlements with native groups in those areas of Canada where their traditional interest in the lands concerned had not been extinguished by treaty or superseded by law. The purpose of negotiating with the native groups concerned was to reach final agreements, the objective being to exchange traditional native rights and interests for concrete and contemporary rights and benefits. These benefits, as the policy stated, were to "contribute positively to a lasting solution of cultural, social and economic problems that for too long have kept the Indian and Inuit people in a disadvantaged position within the larger Canadian society". Final settlements of these claims were to be enshrined in legislation, enacted by Parliament, so that they would have the finality and binding force of law.

Appendix "B"

Post-Confederation Treaties

In all of these, the native people agreed to observe the treaty, to keep the peace, not to molest persons or property, and to help in bringing Native offenders to justice.

Treaty Date	Tribes, Area Ceded	Government Obligation
Number 1, 1871	Chippewa, Swampy Cree 16 700 square miles	Reserves - 160 acres per family of five. To control liquor traffic. A school on each reserve. Annuity, triennial suit of clothes for the chiefs and headman.
Number 2, 1871	Chippewa, Swampy Cree 35 700 square miles	See Treaty Number 1.
Number 3, 1873	Saulteaux and others 55 000 square miles	Reserves - 1 square mile per family of five. Government right to sell or lease reserve lands with consent of the band and to appropriate reserve lands for public use with compensation. Schools. Control of liquor traffic. Government regulations over hunting and fishing in ceded area. Treaty presents of \$12 per head, farm stock and equipment, flags, medals, tools, seed. Annuity, \$1 500 annually for ammunition. Triennial suit of clothes for chiefs and headman.
Number 4, 1874	Cree, Saulteaux 74 600 square miles	See Treaty Number 3. Annuity, \$750 annually for ammunition and twine, triennial suit of clothes for chiefs and headman. Treaty presents of \$25 per chief, \$15 per headman, \$12 per Indian.

Treaty Date	Tribes, Area Ceded	Government Obligation
Number 5, 1875	Swampy Cree, Saulteaux 100 000 square miles (much larger added through the Adhesions of 1908-09-10)	See Treaty Number 3 except for reserves - 160 acres per family of five. Right to navigation and free access to shores of all lakes and rivers. Same annuities as Treaty Number 4 plus \$500 annually for ammunition and twine, plus additional proportionate amount for Adhesions of 1908-09-10.
Number 6, 1876	Plains and Wood Cree 132 066 square miles (including the Adhesion of 1889)	See Treaty Number 3 including treaty presents and annuities. Extras included \$1 500 for ammunition and twine and additional proportionate amount for Adhesion of 1889; aid in case of pestilence and famine; medicine chest for band use.
Number 7, 1877	Blackfoot, Blood, Peigan, Sarcee, Stony 42 900 square miles	See Treaty Number 3 excluding hunting and school teachers. Treaty presents and annuities similar to Treaty Number 3 except for \$2 000 annually for ammunition.
Number 8, 1899	Cree, Chipewyan 324 900 square miles	See Treaty Number 3. Treaty presents - \$12 per person; \$32 per chief, \$22 per headman, agricultural implements, ammunition and twine. \$1 per family head preferring hunting to farming. Annuity.
Number 9, 1905	Ojibwa and Cree with Canada and Ontario 218 320 square miles (including the Adhesions of 1929-30)	See Treaty Number 3. Compensation for expropriation included "an equivalent in land, money or other consideration". Treaty presents of \$8 per person. Annuity.

INDIAN POPULATIONS

Treaty Date	Tribes, Area Ceded	Government Obligation
Number 10, 1906	Chipewyan, Cree 85 800 square miles	See Treaty Number 3. Treaty presents - see Treaty Number 8. Annuity. Unspecified amount re twine and ammunition.
Number 11, 1921	Slave, Dogrib, Hare Loucheaux 372 000 square miles	See Treaty Number 8. Treaty presents - hunting and trapping equipment of \$50 in value per band family. Annuities as Treaty Number 3. Twine and ammunition to the value of \$3 per Indian hunter.
1923	Chippewa of Christian Island, Georgina Island, Rama, Mississauga of Rice Lake, Mud Lake, Scugog Lake, Alderville. Ceded hunting, fishing, trapping rights over 20 100 square miles between Lake Ontario and Georgian Bay	\$500 000 paid by Ontario.

Appendix "C"

NATIVE POPULATIONS

At least three-quarter of a million Canadians are of Indian descent. Of these, approximately 300,000 are "status" Indians (Indians registered under the Indian Act), about half of whom are also "treaty" Indians (Indians who are descendants of the signatories to treaties). The vast majority of status Indians are members of Indian bands, of which there are 575 in Canada on 2240 reserves.

Approximately a quarter of a million Canadians are Métis, and another quarter of a million are "non-status" Indians (Indians who are not registered under the Indian Act).

The Inuit population of Canada numbers approximately 23,000.

PART E

The attached press release highlights the major conclusions of a survey of Indian Conditions. While progress has been made, much more needs to be done to improve their situation.

REPORT ON INDIAN CONDITIONS
PREPARED BY HON. JOHN C. MUNRO

...social, economic and other conditions of Indian life have improved in the last two decades but remain well below those enjoyed by other Canadians, says a survey by the Department of Indian Affairs.

The 113-page report entitled "Indian Conditions, A Survey" was released today by Hon. John C. Munro, Minister of Indian Affairs and Northern Development. It documents the principal developments and trends in social, economic and political conditions of Canada's 100,000 status Indians since the 1950's.

SURVEY OF INDIAN CONDITIONS
RELEASED BY HON. JOHN C. MUNRO

OTTAWA---Social, economic and other conditions of Indian life have improved in the last two decades but remain well below those enjoyed by other Canadians, says a survey by the Department of Indian Affairs.

The 153-page report entitled "Indian Conditions, A Survey" was released today by Hon. John C. Munro, Minister of Indian Affairs and Northern Development. It documents the principal developments and trends in social, economic and political conditions of Canada's 300,000 status Indians since the 1950's.

The report provides a perspective of Indian conditions based on available information from various government departments and does not attempt to give the Indian view.

Mr. Munro said this information must be augmented by the views of Indians through consultation.

The report provides the private and public sectors with a clearer appreciation of Indian conditions than has been available for several years.

These major changes on the Indian scene in the last two decades are described in the report:

- Indian associations have developed as major spokesmen for Indians.
- Band governments have emerged to take on basic responsibility for local administration and to take the initiative in Indian-government relations.
- Relationships between Indians and officials are more positive and cooperative than a decade ago.
- Indians participate more in the provision of services.
- Shelter has improved since 1960 but still lags well behind national standards.
- Indians receive more and higher levels of education with more native-oriented programs and greater Indian control of education.
- Indians have more access to more kinds of employment, both on and off reserve.

However, compared with national standards the report provides the following measures of how Indians are disadvantaged:

- 11,000 new houses are needed to meet existing needs while current construction barely meets new demands.
- 40 per cent of Indian housing needs replacement or repair.
- One family in three lives in crowded conditions on reserves, usually in relatively small houses in poor repair, resulting in unhealthy and unsafe conditions.
- More than half existing Indian housing lacks safe water or proper waste disposal.
- The alternatives are unprotected water supplies and waste disposal that is a potential source of pollution.
- Fires and fire deaths on reserve are six or seven times higher than national levels.
- Indian use of health services is 2.5 times higher than national levels.
- Infections, respiratory diseases, accidents and violence are four to five times higher than national levels with a considerable proportion related to alcohol abuse.
- Mortality rates are improving but three times as many Indians die between birth and middle age as non-Indians.
- A third of Indian deaths result from accidents or violence, especially for young adults among whom suicides are particularly high.
- Between 55 and 70 per cent of the Indian population use social assistance, 22 times higher than national levels.

- Five times as many Indian children are in care as non-Indians.
- Juvenile delinquency rates are three times higher than among the rest of the population.
- Jail and penitentiary populations have seven times as many adult Indians as non-Indians.
- Although the education picture has improved, still only 20 per cent of Indian children stay in school to grade 12 compared with 75 per cent on a national basis.
- Post-secondary education participation has increased tenfold but still is less than half national rates.
- Despite more access to employment, still only 18 per cent of the Indian population is working against a national average of 37 per cent.

Contact: Ken Kelly
(819) 994-3248