cial relationship of the federal government with Indian peoples, and any residual federal responsibilities to them, would be reaffirmed.

No specific recommendations can be made without going contrary to the spirit of a new relationship. The Committee believes that its proposals would permit both the federal government and Indian peoples to build toward strengthened Indian governments. The Committee wishes to emphasize, however, that the only acceptable approach to legislation is that it be developed jointly by designated representatives of Indian First Nations and the federal government. It must be the responsibility of the First Nations themselves to select a method of designating representatives to negotiate on their behalf.

The New Context for Legislation

Under section 91(24) of the *Constitution Act, 1867*, Parliament has exclusive power to legislate in relation to "Indians, and Lands reserved for the Indians". The power is exclusive but not unfettered. Parliament's actions are limited by the recognition and affirmation of existing aboriginal and treaty rights.

In his decision in the Indian Association of Alberta case, Lord Denning discussed the rights guaranteed to Indians and the constraints on Parliament resulting from these guarantees. After noting the protection of rights in the new Constitution, and the importance of defining these rights more clearly, he went on to say:

> There is nothing, so far as I can see, to warrant any distrust by the Indians of the Government of Canada. But, in case there should be, the discussion in this case will strengthen their hand so as to enable them to withstand any onslaught. They will be able to say that their rights and freedoms have been guaranteed to them by the Crown—originally by the Crown in respect of the United Kingdom—now by the Crown in respect of Canada—but, in any case, by the Crown. No Parliament should do anything to lessen the worth of these guarantees. They should be honoured by the Crown in respect of Canada "so long as the sun rises and the river flows". That promise must never be broken. (p. 99)

Any proposed legislation must therefore be cognizant of aboriginal and treaty rights and take account of the process of defining them further, since legislation must conform to constitutional standards.*

With respect to Indians, the *Constitution Act, 1982*, recognizes and affirms their existing aboriginal and treaty rights (s. 35) without defining what those rights might be. Constitutional matters directly affecting aboriginal peoples have been the subject of one Constitutional Conference, and there will be future conferences to discuss these matters. This is the "ongoing process".

In addition, the guarantee of rights and freedoms in the Canadian Charter of Rights and Freedoms is not to "be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to aboriginal peoples", including any rights or freedoms recognized by the Royal Proclamation of October 7, 1763 (s. 25 of the Charter).

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* "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution, is, to the extent of the inconsistency, of no force or effect." (*Constitution Act, 1982*, s. 52(1))