In group rights voting on October 26, 1992 the people of Canada said 'no' to a series of proposed constitutional amendments. These amendments were cast from the Charlottetown Accord of August 28 which, among other things, 'recognized' the distinctiveness of Quebec, 'its language, its unique culture and its civil law tradition'. For the people of Quebec it was an insufficient recognition of its group rights; for most of the rest of Canada – for English Canada – it was too much.

Also incorporated into the Charlottetown Accord was aboriginal constitutional reform. This included 'recognition' of 'the inherent right of the Aboriginal peoples of Canada of self-government within Canada'. Such aboriginal governments would then be one of the three constitutional orders of Canada – the other two being the federal government in Ottawa and the governments of the ten provinces.

Few said that this was too much. But most of the aboriginal peoples themselves contended that it was too little, for in paragraph 42 of the Charlottetown Accord were these words concerning the Indian, Inuit and Métis populations of Canada: 'The inherent right of self-government should be entrenched in the Constitution. However, its justiciability should be delayed for a five-year period through constitutional language and a political accord'.

In response to government recognition of the inherent right of aboriginal self-government, the Mi’kmaq Nation is presently drafting what is believed to be the first constitution of a Canadian Indian nation. For the record: there are fifty-three Indian nations within Canada, and the Mi’kmaq (probably better known as the Micmac) is the dominant Indian nation in the four small Atlantic Provinces of Canada. These are the provinces of Nova Scotia, Newfoundland, New Brunswick and Prince Edward Island.

Under the leadership of Dwight A. Dorey, president of the Native Council of Nova Scotia, and Roger J. Hunka, chief of administration of the NCNS, work on the Mi’kmaq Commonwealth Constitution began in 1991. I was designated to serve as constitutional counsel and draftsman. The basic effort was designed to produce a 'text and form for the Mi’kmaq Commission on self-determination/self-government in progressing the Mi’kmaq First Nation'. That objective was accomplished with the publication of the fourth draft in April 1992, which is published here. Since that time, the chiefs and other
Mi'kmaq groups have been in consultation to make recommendations for the final draft, which will then be subject to a referendum of the Mi'kmaq electorate.

The Mi'kmaq Constitution embodies the basic principles of group rights. Its Preamble emphasizes Mi'kmaq 'identity and ideals' and the affirmation of that nation's 'ecocentric convictions'. It asserts the right of the Mi'kmaq people, as a people, to 'give unto ourselves' the authority 'to establish a Commonwealth'.

Of particular interest in the manifestation of group rights are Articles 8 and 9. They provide that the Mi'kmaq Commonwealth 'shall be true to its heritage and shall dedicate itself to the values, customs and practices of Mi'kmaq tradition'. In addition, 'all provisions of this Constitution shall be construed and interpreted to protect, enhance and foster the rights, property, resources, culture and tradition of the Mi'kmaq'.

Constitution of the Mi'kmaq Commonwealth

PREAMBLE
I. Constitutional principles
II. Territory and jurisdiction
III. Citizenship
IV. Fundamental rights and duties
V. Government of the Commonwealth
VI. Assembly of Delegates
VII. Executive-Administrative branch
VIII. Judicial branch
IX. Ratification and amendments

Preamble

We the Mi'kmaq, a sovereign people under the Creator of all life and all that is around us, who have maintained sovereign nationhood since time immemorial, in the exercise of our inherent sovereignty and inalienable right of self determination, do hereby give unto ourselves and our posterity this Constitution to establish a Commonwealth, to achieve genuine social dignity, to protect our rights and liberties, to promote our aspirations, to assert our principles, to affirm our ecocentric convictions avowing respect for all plant and animal life, and to proclaim our identity and ideals to all other nations of the world.