



Department of Justice
Canada

Amending our Constitution

*The rights
of the
aboriginal peoples*



Canada

**This brochure is published
to mark the proclamation of
the first amendment to *The
Constitution Act, 1982.***

June 21, 1984

AMENDING OUR CONSTITUTION: THE RIGHTS OF THE ABORIGINAL PEOPLES

On April 17, 1982, *The Constitution Act, 1982* came into force. Its major elements are the *Charter of Rights and Freedoms*, provisions on the rights of aboriginal peoples and an amending formula. Combined with our previous constitutional documents, most notably the *Constitution Act, 1867*, the Canadian Constitution defines the rights of citizens and the relationship of governments to them. It also defines the major institutions of government in Canada, spells out how these powers are divided between the provinces and the federal government, and the limits of those powers.

But our Constitution is more than just a document. It is the embodiment of the aspirations of our Canadian society, reflecting both what we are as a nation and what we want to become. It is, in a sense, a blueprint for nation building. And, as we evolve, so too must our Constitution.

That is why the authors of the Constitution provided a method for amending it when this is felt to be necessary. This formula requires that, in most cases, any change to the Constitution must receive the consent of Parliament (the Senate and House of Commons) and seven provincial legislatures representing at least 50 percent of the population of all the provinces.

In 1983 the amending formula was used for the first time in Canada, when Parliament and nine provincial legislatures approved a resolution to amend the Constitution. That amendment, which was proclaimed on June 21, 1984, brought a number of changes to the Constitution regarding a process of consultation with Canada's first citizens - the aboriginal peoples - and regarding a number of their rights.

Those rights of Canada's aboriginal peoples flow from a number of sources including the common law, the Royal Proclamation of 1763 and certain treaties signed between the Crown various Indian nations or

tribes. They include such matters as rights to hunt and fish. The existing aboriginal and treaty rights of the aboriginal peoples were recognized and affirmed in section 35 of *The Constitution Act, 1982*. Now by an amendment of that section, these rights have been further clarified in certain respects.

This particular constitutional amendment is part of a process that was foreseen in *The Constitution Act, 1982*. Section 37 of the Act called for a constitutional conference, composed of the Prime Minister and the first ministers of the provinces, to be convened within a year after the Constitution went into force. It provided that:

“The conference...shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those people to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.”

That constitutional conference was convened in Ottawa on March 15 and 16, 1983, and representatives of four national aboriginal associations as well as the two territorial governments joined the first ministers at the conference table and participated fully in the deliberations.

The major outcome of the 1983 conference was a constitutional accord which was signed by the federal government and nine provinces. The accord was also concurred in by the four aboriginal associations and the two territorial governments. It provided that another first ministers' conference would be held within a year to discuss such issues as self-government by native peoples, aboriginal and treaty rights and title to land. In addition, the accord included a commitment by the governments to make several constitutional amendments. It is these amendments which were proclaimed in June 1984. They include:

- a) provision for two more First Ministers' Conferences on aboriginal constitutional matters, one before April 17, 1985 and the other before April 17, 1987;
- b) a commitment that before any other amendments are made to provisions of the Constitution dealing with aboriginal people, native leaders will be invited to participate in a constitutional conference with First Ministers to discuss the proposed changes;
- c) aboriginal and treaty rights are guaranteed equally to men and women; and
- d) rights acquired through both existing and future land claims settlements are treaty rights and thus are recognized and affirmed in the Constitution.

What is the significance of these changes to the Constitution? In what ways will they affect the situation of the aboriginal peoples?

In essence, the constitutional changes are part of an on-going process to redefine the place of the aboriginal peoples in Canadian society. All participants at the 1983 First Ministers Conference agreed that the future constitutional conferences would consider such matters as self-government by native peoples, the rights of the aboriginal peoples and their entitlement to land. It also ensures that they will be fully involved in discussions on constitutional matters which directly affect them, and that rights they now have, as well as rights they may acquire in the future, will have constitutional recognition.

There could be further constitutional amendments relating to the aboriginal peoples. A number of issues are still unresolved: the form of self-government by native peoples; a more precise definition of aboriginal rights; cultural and linguistic rights; the entitlement to a land and resource base sufficient to make aboriginal communities economically self-supporting; the status of the Métis people.

In addition to the on-going constitutional process, the federal government has engaged in the negotiation of native land claims and is also committed to the development of new laws within federal jurisdiction in

respect to Indian self-government and to eliminate sexual discrimination from the *Indian Act*.

Our first constitutional amendment is an historic and important step in shaping our country. Just as the patriation of our Constitution in 1982 marked the final step in Canada's journey from colonial status to full nationhood, the first amendment to the Constitution marks another step on the path to redefining and re-establishing the place of our native citizens in the building of the nation.

Amendment to the Constitution of Canada

1. Paragraph 25(b) of the *Constitution Act, 1982* is repealed and the following substituted therefor:

“(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 thereto the following subsections:

*Land claims
agreements*

“(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.

*Aboriginal
and treaty
rights are
guaranteed
equally to
both sexes*

(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.”

3. The said Act is further amended by adding thereto, immediately after section 35 thereof, the following section:

*Commitment to
participation in
constitutional
conference*

“35.1 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 sec-

tion 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."

4. The said Act is further amended by adding thereto, immediately after section 37 thereof, the following Part:

"PART IV.1 CONSTITUTIONAL CONFERENCES

Constitutional conferences

37.1 (1) In addition to the conference convened in March 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982 and the second within five years after that date.

Participation of aboriginal peoples

(2) Each conference convened under subsection (1) shall have included in its agenda constitutional matters that directly affect the aboriginal peoples of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters.

*Participation
of territories*

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

*Subsection 35(1)
not affected*

(4) Nothing in this section shall be construed so as to derogate from subsection 35(1)."

5. The said Act is further amended by adding thereto, immediately after section 54 thereof, the following section:

*Repeal of
Part IV.1
and this
section*

"54.1 Part IV.1 and this section are repealed on April 18, 1987."

6. The said Act is further amended by adding thereto the following section:

References

"61. A reference to the *Constitution Acts, 1867 to 1982* shall be deemed to include a reference to the *Constitution Amendment Proclamation, 1983*."

Citation

7. This Proclamation may be cited as the *Constitution Amendment Proclamation, 1983*.