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THE HONOURABLE JEAN MARCHAND, P.C.
SPEAKER

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LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE
SENATE

Hon. Royce Frith (Deputy Leader of the Government): Honourable senators, I move, with leave of the Senate and notwithstanding rule 45(1)(a):

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit while the Senate is sitting this evening and that rule 76(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

• (2025)

CONSTITUTION ACT, 1982

ABORIGINAL RIGHTS—AMENDMENT PROCLAMATION—NOTICE
OF MOTION

Hon. Royce Frith (Deputy Leader of the Government): Honourable senators will perhaps have noted that the other place is debating a motion concerning an amendment to the Constitution respecting aboriginal rights. Therefore, with leave of the Senate and notwithstanding rule 45(1)(h), I move:

Whereas the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and resolutions of the legislative assemblies as provided for in section 38 thereof;

And Whereas the Constitution of Canada, reflecting the country and Canadian society, continues to develop and strengthen the rights and freedoms that it guarantees;

And Whereas, after a gradual transition of Canada from colonial status to the status of an independent and sovereign state, Canadians have, as of April 17, 1982, full authority to amend their Constitution in Canada;

And Whereas historically and equitably it is fitting that the early exercise of that full authority should relate to the rights and freedoms of the first inhabitants of Canada, the aboriginal peoples;

Now Therefore the Senate of Canada resolves that His Excellency the Governor General be authorized to issue a proclamation under the Great Seal of Canada amending the Constitution of Canada as follows:

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 Paragraph 25(b) of the *Constitution Act, 1982* is repealed and the following substituted therefor: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

"(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.

(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:

"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 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 the item."

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

"PART IV.1 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.

(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.

(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.

(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:

"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:

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

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

Honourable senators, before the question is put, my proposal is to introduce the subject this evening. I have some notes and can give an outline of the government's position with reference to this motion. Then, of course, I would expect that, if leave is granted and if I do proceed this evening, we will adjourn the debate and other senators who so wish will have an opportunity to speak to the motion. If leave is not granted we can consider this to be a notice of motion and proceed with the matter tomorrow.

• (2030)

Hon. Jacques Flynn (Leader of the Opposition): Would the deputy leader tell us whether the house passed this resolution today?

Senator Frith: My information, honourable senators, is that debate on the aboriginal rights resolution was, by house order, to be finished tonight by 5 o'clock. I do not know whether it was, and for that I apologize.

Senator Flynn: Honourable senators, today I was listening to the debate in the other place. At 5 o'clock, and apparently for quite a long time prior to that time, they were debating Bill C-95. That does not appear to be anything like approval of this resolution by the other place. Had the resolution been approved by the other place, I would agree to leave being granted. Without that assurance, however, I think this will have to be considered as notice.

Senator Frith: Honourable senators, I should have explained that the proposal is to proceed in both houses concurrently rather than consecutively. Therefore, we can proceed with the resolution whether it has been passed by the other place or not.

Hon. Duff Roblin (Deputy Leader of the Opposition): Where has this resolution been for the last month or so?

Senator Frith: Honourable senators, the same can be asked about any piece of business that comes to this chamber now.

Senator Roblin: If we are proceeding with the resolution concurrently, there was no need to wait for the House of Commons. We could have dealt with it a month ago.

Senator Frith: Of course we could have.

Hon. Martial Asselin: It is always the same at the end of the session.

Senator Frith: Honourable senators, let me disclaim any implication that I am putting blame on anyone. I am not debating whether the resolution ought to have been brought here earlier. I am simply asking leave to deal with it tonight. I understand that leave has not been granted. That being the case, perhaps this can be considered as notice of motion for tomorrow.

Hon. H. A. Olson (Leader of the Government): Honourable senators, I wonder if the Leader of the Opposition would reconsider his position, in view of what the deputy leader has said. The deputy leader could explain the resolution, on the understanding that he does not expect it to be adopted tonight. Not only would this save some time, but honourable senators would be better equipped to respond to those opening remarks if they are made tonight rather than tomorrow. That is all we are asking. The debate could be adjourned by the Leader of the Opposition, or whomever else he wishes to have adjourn it, after the deputy leader has made his opening comments.

Hon. Jack Marshall: You are treating us like a bunch of children.

Senator Flynn: The point is that, if I remember correctly and despite the objections that Senator Steuart had at that time, the Constitution Act, 1982 deprives the Senate of its right of veto in constitutional matters. Therefore, our adoption or non-adoption of any constitutional resolution means practically nothing, except when we know what the other place might have said about it. That is why I asked the deputy leader whether the Commons had approved it.

Senator Frith: Honourable senators, I have some better information on this point; in case the Leader of the Opposition wishes to make use of it for his intervention. The information I now have indicates that the aboriginal rights resolution was debated in the House of Commons this morning. It will be debated again on Wednesday between 4 o'clock and 4.45 p.m. Therefore, the resolution will be debated concurrently if we proceed with it either tonight or tomorrow.

Senator Flynn: In view of what I was saying about the provisions of the Constitution Act with respect to the powers, or the lack of powers, of the Senate respecting constitutional matters, it is really irrelevant for us to deal with this matter quickly. We could very well deal with it when we come back in the fall. I believe we have approximately six months in which to say yes or no. Even if we say no it means yes—

Senator Roblin: That is right.

Senator Flynn:—so what is the point of giving leave?

The Hon. the Speaker: Honourable senators, am I to understand that leave is not granted?

Some Hon. Senators: Yes.

Senator Frith: Then, honourable senators, I give notice of the motion for tomorrow.