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National Indian Brotherhood
ASSEMBLY OF FIRST NATIONS

Proposals
for
Amendments and Additions
to
The Constitution Act, 1982

Presented by:

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on behalf of

THE ASSEMBLY OF FIRST NATIONS

First Ministers Constitutional Conference
On Aboriginal Rights

15 March 1983

OTTAWA

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ASSEMBLY OF FIRST NATIONS

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Explanatory Note:

The Amendments and Additions proposed by the Assembly of First Nations represent a consolidation of documents presented by the Assembly of First Nations during the recent Federal/Provincial/Territorial/Aboriginal meetings.

These documents include:

- 1) A Declaration of the First Nations and Treaty and Aboriginal Rights Principles (Conference Document #830-120/019) tabled January 31, 1983.
- 2) Proposed Amendment of Part II of the Constitution Act, 1982 (Conference Document #830-120/019) tabled January 31, 1983.
- 3) Assembly of First Nations -- Constitutional Principles (Conference Document #830-120/026) tabled January 31, 1983.
- 4) Statement on Aboriginal and Treaty Rights by Grand Chief Billy Diamond, Grand Council of the Crees (Conference Document #830-126/009) tabled February 28, 1983.
- 5) Proposal for an amendment to Part V to provide a Mechanism for Aboriginal Consent to Amendments (Conference Document #830-126/013) tabled February 28, 1983.

AGENDA ITEM: PREAMBLE

TEXT: Preamble to Part II:
"The Rights of the First Nations"

Whereas First Nations see the presence of the Great Spirit underlying the diversity of man and nature, it is hereby recognized and affirmed that our aboriginal and treaty rights are the foundations upon which the integrity and wholeness of First Nations and their governments are based.

Whereas it is recognized that the First Nations are distinct peoples who have occupied and controlled their land since time immemorial, and who have their own languages, cultures and forms of government; and

Whereas it is recognized that the First Nations have the right to self-government within the Canadian Confederation; and

Whereas it is recognized that the First Nations have a right to use their traditional territories for the practice of their traditional livelihoods and as the basis for their self-sufficiency and for the development of their communities and families.

AGENDA ITEM: Charter of Rights of the First Nations

SUB ITEM: REMOVE "EXISTING"

TEXT: The word "existing" in Section 35(1) of the Constitution Act, 1982, is hereby deleted.

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AGENDA ITEM: Charter of Rights of the First Nations.

SUB ITEM: Treaties: Recognition of Modern Treaties, pre- and post-Confederation treaties and treaties signed outside of Canada.

TEXT: Addition to Section 35

- A) For the purpose of this Act, treaty means any existing or future treaty and includes any agreements respecting aboriginal rights or aboriginal title, or historic rights and titles, or other rights of the aboriginal peoples, entered into prior to or after the coming into force of this Act.
- B) For the purpose of this Act, the James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement are treaties.
- C) For the purpose of this Act, treaty also includes any treaty or agreement respecting territory between the aboriginal peoples of Canada or their ancestors and the Crown or predecessor sovereigns, as well as any treaty, agreement, solemn undertaking or grant in which any benefit with respect to territory was or is stipulated in favour of the aboriginal peoples or their ancestors by the Crown or predecessor sovereigns.
- D) At the request of the First Nations concerned, any treaty shall be added to Schedule 1 of the Constitution Act 1982 to the extent that it applies to the particular First Nations.
- E) The rights of movement of persons and goods recognized in the Jay Treaty are guaranteed to all First Nations.

NOTE:

See also Assembly of First Nations amendment #5.8 "Interpretation" to be added to Section 35 for the ability to use oral and other materials in the interpretation of treaties.

ASSEMBLY OF FIRST NATIONS

5.3 (A)

AGENDA ITEM: Royal Proclamation 1763

TEXT: Amend Section 25(a) to read:

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763, particularly aboriginal title to lands throughout Canada.

NOTE:

See also the Assembly of First Nations proposed addition to Section 35 of the Constitution Act, 1981:

"The title and rights of the First Nations of Canada referred to include but are not limited to:
1) those rights confirmed by the Royal Proclamation of October 7, 1763, particularly aboriginal title to lands throughout Canada."

AGENDA ITEM: Charter of Rights of Aboriginal Peoples

SUB ITEM: ABORIGINAL TITLE

TEXT: Amendment to Section 35

1. "The aboriginal title, aboriginal rights and treaty rights of the aboriginal peoples of Canada are hereby recognized, affirmed and guaranteed."

AGENDA ITEM: Charter of Rights of the First Nations

SUB ITEM: STATEMENT OF PARTICULAR RIGHTS
OF THE FIRST NATIONS

TEXT: Addition to Section 35

The title and rights of the First Nations referred to include, but are not limited to:

1. Those rights confirmed by the Royal Proclamation of October 7, 1763; particularly aboriginal title to lands throughout Canada;
2. Those rights or freedoms confirmed or acquired by treaties or agreements entered into prior or subsequent to the Constitution Act, 1867 in Canada and those signed outside of Canada which directly affect the First Nations of Canada;
3. Those rights or freedoms that may be confirmed or acquired by way of treaties, land claims settlements or other agreements;
4. Their rights and titles to land based on their traditional and historic use or occupation;
5. The right of the First Nations to their own self-identity, including the right to determine our own citizenship and forms of government;
6. Their right to determine their own institutions;
7. The right of their governments to make laws and to govern their members and the affairs of their people and to make laws in relation to management, administration, and use of their lands and resources;
8. Their right to hunt, to fish, to trap fish and game, and to gather and barter and trade at all times of the year, and to participate in resource management;
9. Their right and freedom to practise their religions;
10. Their right and freedom to practice their own customs and traditions;
11. Their right to use, retain and develop their own languages, and to retain and develop their own cultures;
12. Their right to benefit from and participate in economic and renewable and non-renewable resource developments;
13. Subject only to their governments, their right to exemption from any direct or indirect taxation levied by other governments;
14. Their right to move freely within their traditional lands regardless of territorial, provincial, or international boundaries; and
15. Their right to fiscal relationships with other governments.

AGENDA ITEM: Charter of Rights of the First Nations

SUB ITEM: ENFORCEMENT

TEXT: 35(A) Any person whose rights, as provided under this Part, have been infringed or denied may apply to a Court of competent jurisdiction to obtain such remedy as the court may deem appropriate and just in the circumstances.

(B) For the purposes of paragraph (a) "persons" includes any individual, band council, band or organization or other entity duly mandated to represent the aboriginal peoples of Canada so affected.

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AGENDA ITEM: Charter of Rights of the First Nations

SUB ITEM: INTERPRETATION

TEXT: Additions to Section 35

- A) The rights referred to in this Part shall be interpreted in a manner consistent with the preservation and enhancement of the heritage of the First Nations peoples.
- B) The rights in this Part shall be interpreted in accordance with the spirit and intent of the treaties and fulfillment of the recognition of rights and the consensual principle of the Royal Proclamation of 1763.
- C) Treaties, agreements, documents and practices pertaining to the First Nations shall be liberally construed. Doubtful or incomplete expressions shall be interpreted consistently with the understandings of the First Nations as evidenced by oral tradition and by contemporaneous Indian understandings of their political, economic, social and cultural rights.
- D) Nothing in this Part shall be construed as limiting in any manner the aboriginal title, aboriginal rights, treaty rights or other rights, privileges or freedoms of any of the First Nations of Canada.

AGENDA ITEM: First Nations' Consent

TEXT:

42.(3) No amendment affecting the rights and freedoms referred to in Part II of this Act, and no amendments affecting S.91(24) of the Constitution Act, 1867, S.25 or S.45(1) of this Act or to this section, shall be made under S.38, 41 or 42 of this Act unless

a) a constitutional conference composed of the Prime Minister of Canada, the first ministers of the provinces, and representatives of the First Nations of Canada has been convened that includes in its agenda an item relating to the amendment, and

b) the representative body of a First Nation affected has expressed its assent to the amendment by resolution.

42.(4) No amendment referred to in sub-section (3) shall have effect with respect to any First Nation which has expressed its dissent thereto prior to the issue of the amending proclamation, unless that body subsequently revokes its dissent and authorizes the amendment.

45(1) No amendment affecting the rights and freedoms referred to in Part II of this Act, and no amendment to S.91(24) of the Constitution Act, 1867, or S.25 of this Act shall be made under S.43, 44, or 45, unless the representative body of one or more of the First Nations affected has expressed its assent to the amendment by resolution.

(2) An amendment referred to in subsection (1) shall not have effect with respect to a First Nation which has expressed its dissent thereto prior to the issue of the amending proclamation of law, unless that body subsequently revokes its dissent and authorizes the amendments.

AGENDA ITEM: Amending Formula Revisions

SUB-ITEM: PROVINCIAL OPTING-OUT (SECTION 42)

TEXT: 42(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1) or in respect of amendments recognizing and reaffirming the rights and freedoms referred to in S.25 or Part II of this Act, or affecting S.91(24) of the Constitution Act, 1867.

AGENDA ITEM: Self-Government

TEXT: Addition to Section 35

Each First Nation has the right to its own self-identity, including the right to determine its own citizenship, forms of government and institutions.

AGENDA ITEM: Repeal of Section 42(1) (e) and (f):
PROVINCIAL BOUNDARIES AND THE CREATION OF NEW PROVINCES

- TEXT: 42(2) The creation of new provinces and the alternation of provincial boundaries may be made only in accordance with the Constitution Act, 1871, and with the consent of the First Nations affected.
- (3) Sections 42(1)(e) and (f) of the Constitution Act, 1982, are hereby repealed.

AGENDA ITEM: ON-GOING PROCESS

TEXT: AMENDMENT TO PART IV

37(1) Constitutional conferences composed of the Prime Minister of Canada, the first ministers of the provinces and representatives of the First Nations of Canada shall be convened by the Prime Minister of Canada in 1985, 1986 and every two years thereafter until 1990 to resolve the constitutional matters that directly affect the aboriginal peoples of Canada.

37(2) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories or their successors to participate in the discussions on any item on the agendas of the conferences convened under Subsection (1) which, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

37(3) Nothing in this section shall affect or limit section 35(1).

AGENDA ITEM: Implementation

- TEXT:
1. Parliament and the provincial legislatures, together with the governments, to the extent that each has jurisdiction, are committed to negotiate and conclude treaties or agreements with the First Nations of Canada for the specific implementation in the various regions of Canada of the rights of the first nations.
 2. Nothing herein shall affect or limit Section 35(1).
 3. Nothing in this Part extends the legislative powers or jurisdiction of the Parliament of Canada or the legislature of any province.

NOTE: We support the concept of international observation of the negotiating process. If it proves necessary, the following section is a possible provision, to be considered in the on-going process.

TEXT: First Nations may request the chairperson of the United Nations Working Group on Indigenous Populations or of the United Nations Human Rights Commission to appoint an individual or individuals to oversee negotiations between the aboriginal people and the federal or provincial governments, pursuant to this Act, and submit a report on the negotiations to the Secretary General of the United Nations.