



National Indian Brotherhood

**ASSEMBLY OF FIRST NATIONS**

MEMORANDUM CONCERNING THE RIGHTS OF THE FIRST NATIONS  
OF CANADA AND THE CANADIAN CONSTITUTION (16 JUNE 1982)

**“OURS TO BUILD — FORWARD IN UNITY”**

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Canada sprang from the lands of the First Nations. The Constitution Act, 1867, a main document in the Constitution of Canada, was agreed to by English and French descendents of European settlers in the formation of Canada.

The First Nations, prior, during and since have been distinct and permanent entities of this land. Proclamations, declarations, edicts, treaties, orders, agreements/settlements and legislation attest and give validity to the existence of the First Nations as integral parts of this country. Only the English, French and Indians are mentioned in the Constitution Act, 1867.

But, the First Nations (Indians) have been excluded, wilfully or negligently, as full participating partners from constitutional processes.

The proposal in this Memorandum seeks to rectify the exclusion of the First Nations from constitutional processes, and so make right to them by giving them full recognition, full participation and full inclusion in those processes.

On 18 November 1981 the Joint Council of the National Indian Brotherhood adopted the following Declaration and Principles, which were reaffirmed by the Assembly of First Nations on 22 April 1982:

# A Declaration of The First Nations

We the original peoples of this Land know the Creator put us here.

The Creator gave us Laws that govern all our relationships to live in harmony with nature and mankind.

The Laws of the Creator defined our rights and responsibilities.

The Creator gave us our spiritual beliefs, our Languages, our culture, and a place on Mother Earth which provided us with all our needs.

We have maintained our freedom, our Languages, and our traditions from time immemorial.

We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the Land upon which we were placed.

The Creator has given us the right to govern ourselves and the right to self-determination.

The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation.

## Treaty and Aboriginal Rights Principles

1. The aboriginal title, aboriginal rights and treaty rights of the aboriginal peoples of Canada, including:
  - (a) all rights recognized by the Royal Proclamation of October 7th, 1763;
  - (b) all rights recognized in treaties between the Crown and nations or tribes of Indians in Canada ensuring the spiritual concept of Treaties;
  - (c) all rights acquired by aboriginal peoples in settlements or agreements with the Crown on aboriginal rights and title;

are hereby recognized, confirmed, ratified and sanctioned.

2. "Aboriginal people" means the First Nations or Tribes of Indians in Canada and each Nation having the right to define its own Citizenship.

3. Those parts of the Royal Proclamation of October 7th, 1763, providing for the rights of the Nations or tribes of Indians are legally and politically binding on the Canadian and British Parliaments.

4. No Law of Canada or of the Provinces, including the Charter of Rights and Freedoms in the Constitution of Canada, shall hereafter be construed or applied so as to abrogate, abridge or diminish the rights specified in Sections 1 and 3 of this part.

5.

- (a) The Parliament and Government of Canada shall be committed to the negotiation of the full realization and implementation of the rights specified in Sections 1 and 3 of this Part.
- (b) Such negotiations shall be internationally supervised, if the aboriginal peoples parties to those negotiations so request.
- (c) Such negotiations, and any agreements concluded thereby, shall be with the full participation and the full consent of the aboriginal peoples affected.

6. Any amendments to the Constitution of Canada in relation to any constitutional matters which affect the aboriginal peoples, including the identification or definition of the rights of any of those peoples, shall be made only with the consent of the governing Council, Grand Council or Assembly of the aboriginal peoples affected by such amendment, identification or definition.

7. A Treaty and Aboriginal Rights Protection Office shall be established.

8. A declaration that Indian Governmental powers and responsibilities exist as a permanent, integral fact in the Canadian policy.

9. All pre-confederation treaties and treaties executed outside the present boundaries of Canada but which apply to the Indian Nations of Canada are international treaty agreements between sovereign nations. Any changes to the treaties requires the consent of the two parties to the treaties, who are the Indian Governments representing Indian Nations and the Crown represented by the British Government, the Canadian Government is only a third party and cannot institute any changes.

I. PRINCIPLE

The Joint Council of the National Indian Brotherhood on 18 February 1982, passed a unanimous resolution stating the desire of the First Nations "to pursue a political solution of the constitutional problem regarding the entrenchment and protection of aboriginal title and aboriginal and treaty rights".

II. PURPOSE OF THE MEMORANDUM

This Memorandum proposes a process to the Government of Canada for a resolution of the constitutional problem between the Government and the First Nations.

III. AGREEMENT PROCEDURES

It is proposed that upon agreement between the First Nations and the Government of Canada on the Memorandum, letters confirming that agreement be exchanged between the First Nations and the Government of Canada so stating.

IV. IMPENDING CANADIAN LEGISLATION AFFECTING INDIANS

The First Nations further propose that, immediately upon the exchange of letters between the First Nations and the Government of Canada, the latter shall desist from legislation affecting Indians, excepting such legislation as is mutually agreed within this proposed framework.

#### V. MECHANISM FOR POLITICAL RESOLUTION

The First Nations further propose that two negotiating teams be appointed: one by the First Nations, and one by the Government of Canada (representative of the Cabinet of the Government of Canada, the three major parties in the House of Commons, and the Senate).

It is further proposed that a Chairman be appointed or selected for or by each negotiating team who, in joint consultation, shall make the necessary arrangements for the respective teams in joint session.

It is further proposed that officials and staff of the First Nations and of the Government of Canada be designated to assist the respective negotiating teams in separate or in joint session so as to facilitate the negotiations.

#### VI. POWER OF THE NEGOTIATING TEAMS

The following power/authority is proposed by the First Nations:

- 1) To receive submissions, representations and/or positions orally or in writing from the First Nations and the Government of Canada.
- 2) To negotiate a proposed agreement.
- 3) To submit to the First Nations and the Government of Canada, in writing, any and all proposed agreements for proper review and ratification.

#### VII. PROTOCOL

The First Nations further propose that, upon an agreement mutually arrived at by the respective negotiating teams, a formal protocol be entered into by the respective authorities of the First Nations and the Government of Canada.

VIII. RATIFICATION OF PROTOCOL

The First Nations further propose that the protocol entered into by the respective authorities of the First Nations and the Government of Canada be ratified on behalf of the First Nations by the Assembly of First Nations duly assembled and by a joint resolution of the Parliament of Canada at a regular or special sitting.

IX. PROPOSED AREAS FOR DISCUSSION

Without prejudice to any other ideas, the following are proposed areas for discussion between the Indians and the Government of Canada:

- 1) To mutually explore the meaning and possible implications of Section 25 of the Constitution Act, 1982.
- 2) To mutually explore the meaning and possible implications of Section 35 of the Constitution Act, 1982.
- 3) To mutually explore the role and place of Indian Government within the Canadian polity.
- 4) To mutually explore the resources necessary and proper for the effective functioning of Indian Government within the Canadian polity.
- 5) To mutually explore ways and means to more effectively protect and enhance aboriginal title and aboriginal and treaty rights.
- 6) To mutually explore the establishment of an on-going process between the Indian Nations and the Government of Canada.