

## APPENDIX "A"

(See p. 6046)

## LEGAL AND CONSTITUTIONAL AFFAIRS

REPORT OF STANDING SENATE COMMITTEE ON SUBJECT MATTER  
OF THE CONSTITUTION AMENDMENT PROCLAMATION, 1983

Thursday, October 13, 1983

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred the subject-matter of the Constitution Amendment Proclamation, 1983, has, in obedience to the Order of Reference of June 29, 1983, examined the said subject-matter and now submits its report.

Your Committee invited comments from the national groups representing the native people, from the provincial premiers and from the government leaders in the two territories. Both the Minister of Justice and the Minister of Indian Affairs and Northern Development appeared before your Committee and gave evidence. A number of native groups requested to appear and subsequently testified while some forwarded written submissions. A list of witnesses and others who submitted briefs and letters commenting on the substance of the proposed Amendment is attached as an appendix to this report.

The Assembly of First Nations did not take the opportunity afforded it to appear, although it did submit a written brief. Some of the native groups who are members of the Assembly did appear before your Committee and the Committee believes that these groups expressed generally the views of their colleagues.

Honourable Senators are aware that the proposed Amendment is a result of an Accord signed at a First Ministers' conference held on March 15-16, 1983, in Ottawa. It was executed by the Prime Minister of Canada and all the provincial premiers with the exception of the Premier of the Province of Quebec. The government leaders of the two territories and certain native groups signified their participation in the discussions leading up to the Accord by also signing it. The native groups which did so were The Assembly of First Nations, Inuit Committee on National Issues, Métis National Council and the Native Council of Canada.

The proposed Amendment to the Constitution which the Senate is now considering flows from that Constitutional Accord.

It should be noted that, contrary to the impression which was left with your Committee by some witnesses that the proposed Amendment must be passed by the government signatories prior to December 31, 1983, the Accord only requires that the proposed Amendment be laid before the applicable legislative bodies prior to December 31, 1983, since the First Ministers cannot bind Parliament or their legislatures

to any Accord or agreement which requires legislative sanction.

Your Committee has ascertained that, to date, the following legislatures have passed the proposed Amendment: Nova Scotia on May 31, 1983; Alberta on June 3, 1983, Prince Edward Island on June 16, 1983; New Brunswick on June 28, 1983; and Manitoba on August 18, 1983.

Your Committee reports that, with the exception of the Coalition of First Nations, all witnesses and all correspondence directed to your Committee urged speedy approval, even though most native groups expressed concern as to the meaning of the two substantive sections of the proposed Amendment. Their insistence on its passage stems from the inclusion within the proposed Amendment of the requirement to hold two further Constitutional Conferences which the native people regard as being vital since they commit governments to negotiate aboriginal issues within a definite time frame. The Coalition of First Nations representing approximately 70,000 people from bands in British Columbia, Alberta, Manitoba, Quebec, and the Maritime Provinces object to it on the principle that discussions relating to aboriginal and treaty rights should occur only between the Government of Canada and the First Nations.

*The Constitution Amendment Proclamation, 1983*

The proposed Amendment deals with two specific matters of substance in addition to the procedural requirements to hold future constitutional conferences. In the first place, there is the broadening of the meaning of the phrase "existing treaty rights" to include existing or future land claims agreements. The second substantive amendment guarantees those existing aboriginal and treaty rights equally to male and female persons.

*Definition of Existing Rights*

The definition of "treaty rights" highlights a problem resulting from the use of the word "existing" to modify both aboriginal and treaty rights in section 35(1) of the *Constitution Act, 1982*. Neither the representatives of the native groups nor the two Ministers appearing before your Committee could agree on the meaning of "existing". Because they were unable or unwilling to attach a specific meaning to the word and were concerned that governments might attach a restrictive interpretation to it, all the native groups who addressed this issue would simply prefer to see the word removed. On the other hand, the federal government took the