

Constitution Act 1982

Implementation of Section 35 (1) and (2)

This document provides an examination of Section 35 (1) and (2) in order to provide the perspective of what Section 35 (1) and (2) recognizes and why it is a Full Box.

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Constitution Act 1982, Section 35

PART II

RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

Recognition of existing aboriginal and treaty rights

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of “aboriginal peoples of Canada”

(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

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.

The scope of the impact of Section 35 (1) and (2) requires comprehensive concurrent agendas and political/legal plans and strategies of the Crown in Right of Canada as represented by the Federal Government and the First Nation/Indigenous Nations and their respective Governments.

- What is Section (35) based on?
- Why is Section (35) a full box?
- What is the impact of section 35(1) and (2)?

This document provides an examination of Section 35 (1) and (2) in order to provide the perspective of what Section 35 (1) and (2) recognizes and why it is a Full Box.

1. Status of Section 35 (1)

Section 35 (1) provides the Constitutional recognition of Inherent Rights/Aboriginal Rights, Treaties and Treaty Rights.

Section 35 (1) and (2) impacts on both of the House of Commons and the Senate.

- The Office of the Prime Minister, Privy Council, Treasury Board, all Federal Departments and/or Agencies.

2. Why is Section 35 a full box?

Section 35 (1) and (2) is a "full box" that recognizes the following:

- a. First Nations/Indigenous Nations have "inherent sovereignty", inherent rights and power of self-determination that exists now and for the future.
- b. Inherent Rights and Title of First Nations/Indigenous Nations are "granted by the Creator"; they are not granted by any agreement, Treaty, Constitutions or Law and include:
 - Inherent rights to language, spirituality and culture.
 - Inherent rights of education, social and health.
 - Inherent rights to justice and economics.
 - Inherent rights to citizenship/citizens and membership.
 - Inherent right for fishing, hunting, trapping and gathering.
 - Inherent rights to Air and Water.
 - Inherent rights to Lands and Resources. (Renewable and Non-Renewable Resources, etc.)
 - Inherent rights and powers to self-determination.
- c. The Royal Proclamation of 1763 "issues royal instructions" that recognizes Inherent Rights and Title, Sovereignty of Indian Nations, National Treaty Making Powers of Indian Nations and the Treaty Making Process between Indian Nations and the Crown.

Section 25 (2) of the Constitution Act 1982 recognizes the Royal instructions and the Royal Proclamation of 1763. The Honorable Judge Dixon advised during a meeting that the Royal Proclamation of 1763 is the Crown's Charter of Rights recognizing our inherent rights and title, "but you will still need your own Charter of Rights under your laws".

- d. Treaties One to Eleven:
 - The "Treaties One to Eleven are International Treaties" between First Nations and the Crown in Right of England and Ireland. The "Novation of

the Crown Theory” transfers the responsibility of the Crown in right of England and Ireland to the Crown in Right of Canada.

- Both the Treaties and Treaty Rights exist and the Treaties provides for Treaty Relations.
- Treaties One to Eleven forms one major Treaty between Indian Nations and the Crown.

e. Inherent Rights and the Treaties:

- Inherent (Aboriginal) Rights are “reserved” by Treaty Making and the Treaties.
- Inherent (Aboriginal) Rights are “recognized” by Treaty Making and the Treaties.
- Inherent (Aboriginal) Rights are “confirmed” by Treaty Making and the Treaties.

f. Impact of Inherent (Aboriginal) Rights and Title, Treaties and Treaty Rights are recognized by Section 35 (1) and they have to be implemented in every sector.

g. Section 35 (1) and (2) expanded the federal legal, political and fiscal obligations under section 91(24) of the British North America Act 1867.

The Federal Government and Parliament are obligated to give Legal Effect to Inherent (Aboriginal) Rights, Treaties and Treaty Rights under a schedule of new Federal laws by sector that lawfully identifies the federal legal, fiscal, trust and jurisdiction by sector.

3. Section 35(2) recognizes Indian, Inuit and Métis peoples of Canada

This is a constitutional recognition under the Constitution Act 1982.

This is also citizenship recognition in the form of dual Canadian citizenship for Indians that will require amendments to the Citizenship Act of Canada and the Indian Act: Membership” provisions respecting:

- The First Nations/Indigenous Nations government, jurisdiction and laws that implement and enforce citizenship under the First Nations/Indigenous Nations Citizenship Acts and Citizens Codes.
- The Federal Government and Parliament’s Treaty and Constitutional requirements includes the need for new Federal Laws respecting the federal legal, fiscal, jurisdiction and trust obligations for the Inherent (Aboriginal) Rights, Treaties and Treaty Rights and enact laws for the lawful registration of Indians, Métis and Inuit with recognition of their respective status under their Citizenship Acts. Federal registration and laws must include recognition of the special status and rights with full benefits for Indians, Inuit and Metis.

4. Section 35 (1) and (2) provides for the recognition of the portability of the sovereignty, inherent rights and treaty rights of Indians (Metis/Inuit) nationally and internationally.

5. The comprehensive legal and political framework of “inherent rights and title, treaties, Royal Proclamation of 1763, the Constitution Act 1982, the British North American Act 1867, the International Laws and the United Nations Declaration on the Rights of Indigenous Peoples includes section 35 (1) and (2).
New legal and political institutions and structures of parliament, the federal government and Aboriginal governments are required.

6. The comprehensive legal and political framework that includes the treaties and section 35 recognizes the formal government-to-government bilateral relations having to be implemented between the Crown and Aboriginal Governments.