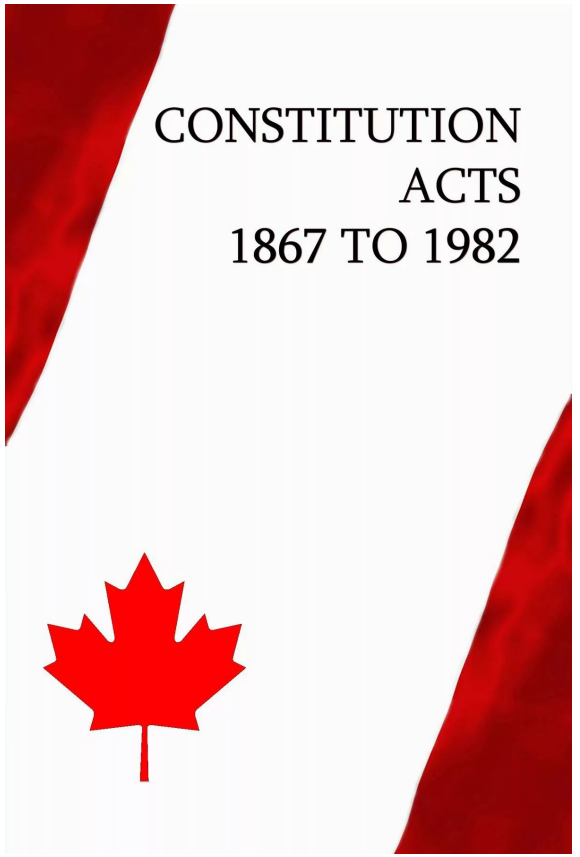
CONSTITUTION ACT, 1982

The Constitution Act, 1982 (French: Loi constitutionnelle de 1982) is a part of the Constitution of Canada.[a] The Act was introduced as part of Canada's process of patriating the constitution, introducing several amendments to the British North America Act, 1867, including re-naming it the Constitution Act, 1867.[b] In addition to patriating the Constitution, the Constitution Act, 1982 enacted the Canadian Charter of Rights and Freedoms; guaranteed rights of the Aboriginal peoples of Canada; provided for future constitutional conferences; and set out the procedures for amending the Constitution in the future.

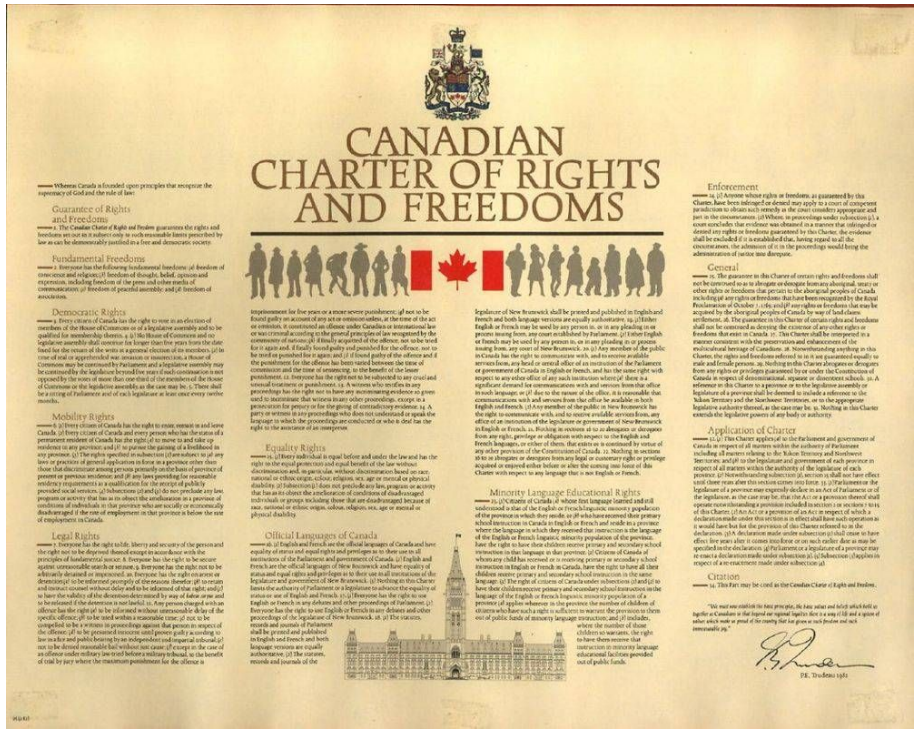
This process was necessary because, after the Statute of Westminster, 1931, Canada decided to allow the British Parliament to temporarily retain the power to amend Canada's constitution, on request from the Parliament of Canada. In 1981, the Parliament of Canada requested that the Parliament of the United Kingdom remove that authority from the UK. The passing of the UK's Canada Act 1982 in March 1982 confirmed the Patriation of the Constitution and transferred to Canada the power of amending its own Constitution.



On April 17, 1982, Queen Elizabeth II and Prime Minister Pierre Trudeau, as well as the Minister of Justice, Jean Chrétien, and André Ouellet, the Registrar General, signed the Proclamation which brought the Constitution Act, 1982 into force. The proclamation confirmed that Canada had formally assumed authority over its constitution, the final step to full sovereignty. As of 2020, the government of Quebec has never formally approved of the enactment of the act, though the Supreme Court concluded that Quebec's formal consent was never necessary and 15 years after ratification the government of Quebec "passed a resolution authorizing an amendment." Nonetheless, the lack of formal approval has remained a persistent political issue in Quebec. The Meech Lake and Charlottetown Accords were designed to secure approval from Quebec, but both efforts failed to do so.

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The Canadian Charter of Rights and Freedoms is the first Part of the Constitution Act, 1982. The Charter is a bill of rights to protect certain political rights, legal rights and human rights of people in Canada from the policies and actions of all levels of government. An additional goal of the Charter is to unify Canadians around a set of principles that embody those rights. The Charter was preceded by the Canadian Bill of Rights, which was introduced by the government of John Diefenbaker in 1960. However, the Bill of Rights was only a federal statute, rather than a constitutional document. Therefore, it was limited in scope and was easily amendable. This motivated some within government to improve rights protections in Canada. The movement for human rights and freedoms that emerged after World War II also wanted to entrench the principles enunciated in the Universal Declaration of Human Rights. The Charter was drafted by the federal government with consultations with the provincial governments in the years leading up to the passage of the Constitution Act, 1982.

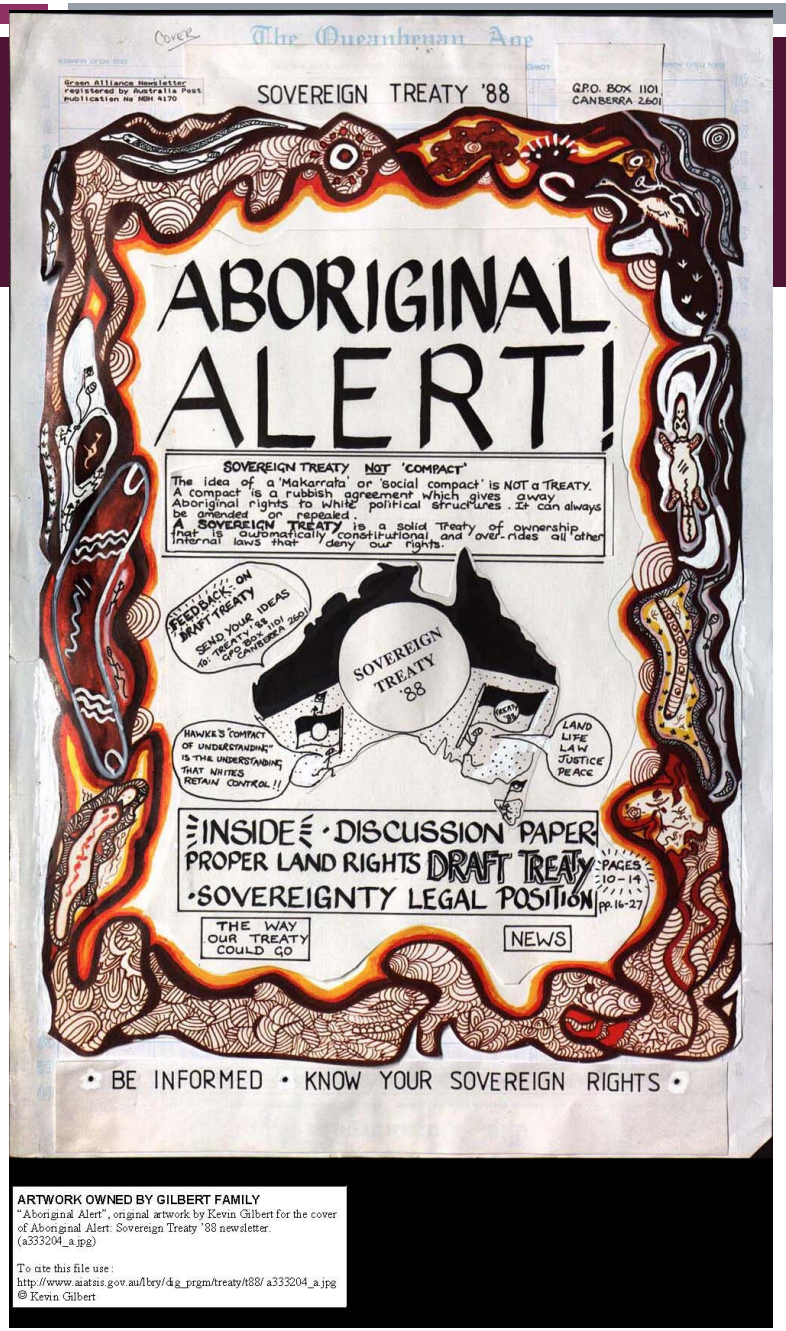


ABORIGINAL AND TREATY RIGHTS

Section 35 of the Constitution Act, 1982 "recognizes and affirms" the "existing" aboriginal and treaty rights in Canada. These aboriginal rights protect the activities, practice, or traditions that are integral to the distinct cultures of the aboriginal peoples. The treaty rights protect and enforce agreements between the Crown and aboriginal peoples. Section 35 also provides protection of aboriginal title which protects the use of land for traditional practices.

Subsection 35(2) provides that aboriginal and treaty rights extend to Indian, Inuit, and Métis peoples and subsection 35(4), which was added in 1983, ensures that they "are guaranteed equally to any male and female persons".

Subsection 35(3), which was also added in 1983, clarifies that "treaty rights" include "rights that now exist by way of land claims agreements or may be so acquired". As a result, by entering into land claims agreements, the government of Canada and members of an aboriginal people can establish new treaty rights, which are constitutionally recognized and affirmed.



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EQUALIZATION AND EQUAL OPPORTUNITY

Section 36 enshrines in the Constitution a value on equal opportunity for the Canadian people, economic development to support that equality, and government services available for public consumption. Subsection 2 goes further in recognizing a "principle" that the federal government should ensure equalization payments. Writing in 1982, Professor Peter Hogg expressed skepticism as to whether the courts could interpret and enforce this provision, noting its "political and moral, rather than legal" character. Other scholars[who?] have noted section 36 is too vague. Since the courts would not be of much use in interpreting the section, the section was nearly amended in 1992 with the Charlottetown Accord to make it enforceable. The Accord never came into effect.

SUPREMACY AND SCOPE OF THE CONSTITUTION

Subsection 52(1) of the Constitution Act, 1982 provides that the Constitution of Canada is the "supreme law of Canada", and that "any law inconsistent with the provisions of the Constitution of Canada is, to the extent of the inconsistency, of no force or effect." A law that is inconsistent with the Constitution is theoretically of no force or effect from the moment it is made. In practical terms, however, such a law is not seen to be invalid until a court declares it to be inconsistent with the provisions of the Constitution. The executive cannot enforce a law that a court has declared to be without force or effect.[citation needed] But only Parliament or a provincial legislature can repeal such a law.

Before the 1982 Act came into effect, the British North America Act, 1867 (now known as the Constitution Act, 1867) had been the supreme law of Canada. The supremacy of the 1867 Act had originally been established by virtue of s. 2 of the Colonial Laws Validity Act, a British Imperial statute declaring the invalidity of any colonial law that violated an Imperial statute extending to a colony. Since the British North America Act was an Imperial statute extending to Canada, any Canadian law violating the BNA Act was inoperative. Although there was no express provision giving the courts the power to decide that a Canadian law violated the BNA Act and was therefore inoperative, this power was implicit in s. 2 of the Colonial Laws Validity Act, which established the priority of statutes to be applied by the courts.

In 1931, the British Parliament enacted the Statute of Westminster, 1931. This Act provided that the Colonial Laws Validity Act no longer applied to the British Dominions, including Canada. However, it provided that Canada could not amend the British North America Act, which remained subject to amendment only by the British Parliament. This provision maintained the supremacy of the British North America Act in Canadian law until the enactment of the Constitution Act, 1982.