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***Report Of The Special Committee On
Constitutional Reform
Date of Report: 1991
Catalogue Number: 9-5-366***

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11th Assembly

**Report of the
Special Committee
on Constitutional
Reform**

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**Hon. Michael Ballantine, M.L.A.
Chairman**

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**Hon. Michael Ballantine, M.L.A.
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July 5, 1991

THE HONORABLE RICHARD NERYSOO, M.L.A.,
SPEAKER.

Your Special Committee on Constitutional Reform has the **honour** of presenting its
Report and commends it to the House for consideration.



Michael Ballantine, M.L.A.,
Chairman.

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Committee Members

Hon. Michael Ballantine, M.L.A.,
Yellowknife North,
Chairman

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Sahtu

Mr. John **Ningark**, M.L.A.
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Report of the Special Committee on Constitutional Reform

INTRODUCTION

The Special Committee on Constitutional Reform last reported to the House on March 15, 1991. Your Special **Committee is** pleased to submit this report on its activities since its last report. Several developments **in** relation to national constitutional issues are summarized below. In addition this **report** details the presentations made by your Special Committee to the Senate and House of Commons Special Joint Committee on the Process for Amending the Constitution of Canada, and provides draft principles for the consideration of the Legislative Assembly of the Northwest Territories **in** respect of the ongoing constitutional reform process in Canada [APPENDIX **G**].

TERMS OF REFERENCE

The terms of reference for the Special Committee on Constitutional Reform which were recommended in its report in November, 1990 and adopted by the Legislative Assembly during that session, are as follows:

1. The Committee shall continue to monitor developments in other jurisdictions **relating to** constitutional reform resulting from expiry of the Meech Lake Accord, in particular, any proposals, suggestions or matters which have been proposed or which may be proposed by the Government of Canada, provincial governments, or the Yukon government, and which may affect constitutional reform in Canada and the Northwest Territories.
2. **The** Committee shall continue with its mandate under its terms of reference to undertake such consultations, discussions or meetings that are necessary with authorized federal and provincial bodies and appropriate territorial bodies that have the responsibility to consider matters arising from the failure of the Meech Lake Accord.
3. Prior to the dissolution of the 11th Assembly, the Committee shall prepare reports with recommendations to the Legislative Assembly on a strategy for the Legislative Assembly to deal with any proposals for reform of, or amendments to, the Constitution of Canada.

RECENT DEVELOPMENTS

Discussions on national constitutional **reform** revolve around three main issues:

the process of reform, which includes the amending formulas, public participation, territorial participation, and aboriginal participation;

the substance of reform, which includes division of powers, aboriginal self-government, Senate Reform, Quebec's distinctiveness and the **status** of the territories in the federation;

timina of reform, (recent developments indicate that the federal government and the other provinces will **have** to respond to a timetable established in part by Quebec and in part by the next federal election).

1. Commission on the **Political** and Constitutional Future of Quebec (**Belanger-Campeau** Commission)

The Belanger-Campeau **Comission** released its report on March 27, 1991. This report recommended the adoption of legislation by the National Assembly of **Quebec** to establish a process by which Quebec can determine its political and constitutional future. This legislation was adopted on June 20, 1991. It calls for a referendum on sovereignty in June or October, 1992, and provides for the creation of two legislative committees. One committee will study the consequences of Quebec sovereignty. The other will study any "formally **binding**" proposals for a renewed federalism which might be made by the federal government.

If a referendum is held and a positive outcome is received, the legislation states that this will "constitute a proposal that Quebec acquire the status of a sovereign **state** one year to the day" after the referendum.

Attached as APPENDIX **A** are the Conclusions and Recommendations of the Belanger-Campeau Commission.

2. **Royal** Commission on Aboriginal Peoples

In April, 1991 the Prime Minister appointed former Supreme Court chief justice Brian Dickson to set the terms of reference for a royal commission on aboriginal peoples and to select the commissioners.

The former chief justice will be making recommendations in July on the mandate and membership of the Commission. Mr. Dickson has indicated that the Commission will commence work in the summer of 1991 and report within

eighteen months. The relationship between the work of this Commission and other bodies studying constitutional reform options is not clearly defined at this time.

3. Special Committee of Parliament on National Unity

In June, 1991 the federal government established a Special Joint Committee of the Senate and the House of Commons to inquire into and make recommendations to Parliament on the federal government's proposals for a renewed Canada. The federal government intends to put forward such proposals in September, 1991. The Special Joint Committee is required to report to Parliament by February 28, 1992.

This Special Committee will have fifteen members from the House of Commons and ten from the Senate. Included in its mandate are provisions which state:

That the Committee provide Canadians with an opportunity to participate fully in the development of the Government of Canada's plan for a renewed Canada;

That the **Committee** have the power to hold joint sittings with the committees of legislatures or individual members of provincial and territorial legislatures;

That the Committee develop procedures to ensure aboriginal peoples participate fully in the development of the Government of **Canada's** plan for a renewed Canada and, in particular, on issues of special interest to them.

APPENDIX B contains the full terms of reference of the Special Parliamentary Committee.

4. Report on the Amending Formula (Beaudoin-Edwards Committee)

On June 6, 1991 the Special Joint Committee of the Senate and House of Commons (Beaudoin-Edwards Committee) released its report entitled The Process for Amending the Constitution of Canada.

Your Committee made two presentations to the **Beaudoin-Edwards Committee**: one on March **19, 1991** in **Yellowknife**, and the other on May 1, 1991 in Ottawa.

APPENDIX C contains the March 19th presentation.
APPENDIX D contains the May 1st presentation.

Your Committee is very pleased to report that virtually all of the recommendations put to the Beaudoin-Edwards Committee were adopted in its report, in particular the following items:

Aboriginal Peoples

that any amendments to the Constitution of Canada directly affecting the aboriginal peoples require the consent of the aboriginal peoples of Canada;

that representatives of the aboriginal peoples of Canada be invited to participate in all future constitutional conferences;

that the Constitution of Canada provide for a process of biennial constitutional conferences to address the rights of aboriginal peoples.

Territories

that the extension of existing provinces into the territories require the consent of the legislature of any territory and any province affected, and the Parliament of Canada;

that the creation of new provinces in the territories require only the consent of the legislature of any territory affected, and the Parliament of Canada. [The Special Joint Committee added a proviso that the amending procedure be reviewed when new provinces were created] ;

that the territorial governments be invited to participate in all future constitutional conferences.

These recommendations are significant because they recognize the need to address outstanding aboriginal issues, and the need for participation by aboriginal peoples and territories in matters that directly affect them.

APPENDIX E contains a summary of all the recommendations of the Beaudoin-Edwards Committee.

5. Citizens' Forum on Canada's Future (Spicer Commission)

The **Spicer** Commission report was released on June 27, 1991. The Commission was mandated to conduct a "dialogue and discussion with and among Canadians" to determine values and characteristics fundamental to the well-being of Canada.

Of Particular interest to the people of the Northwest Territories were the following observations contained in Chairman **Spicer's** foreword:

Aboriginal peoples were also a high priority in our consultation. We have listened attentively to those few we could reach and we listened respectfully to the silence of the others. It too told us things you will read here.

For some time I have believed that the First Nations - far from being only a moral challenge and a "problem" for Canada - must be a prominent part of our solutions.

First, because they can help us grasp the huge land we share, and teach us how to respect it. Next, because normally aboriginal tend to take a more consensual, less adversarial, approach to settling differences - an approach we can only dream our politicians might learn. Finally, with their rich and varied culture, aboriginal peoples can bring us to a deeper sense of spirituality about our life and destiny in Canada

Our northern territories. The Yukon and Northwest Territories **remain** our last frontier, **with** very few people but an almost ungraspable potential. We need ways to allow the people living there to be heard more **in** Ottawa and at the constitutional table. **We** need, for the sake of all Canadians, to make a concerted effort to learn much more about the unique challenges, opportunities and

culture of the North. And we need to **bring the idea** of the North more vividly into the imagination of Canadians as a unifying factor. Canada is a northern country.

APPENDIX F contains the "Findings and Suggestions" from the **Spicer** Commission Report.

ANALYSIS

The range of approaches to the constitutional reform process, and the myriad of substantive changes being put forward by individuals, political parties, business associations, **citizen's** coalitions, provincial governments, and so on, are too numerous to list here.

PROCESS:

In general, the central issue surrounding PROCESS is the manner and degree of public participation in the reform process. Advocates of a constituent assembly approach want elected and private citizens to work together to prepare principles for a new constitution. These principles would then possibly be referred to Parliament and the provincial legislatures for further consideration and drafting into a constitutional document. Some proponents of a constituent assembly also want any new constitution to be put to the Canadian **public** in a referendum.

Opponents of a constituent assembly see this process as too divisive and too difficult to control. The federal government has, to date, rejected the idea of a constituent assembly in favour of the Parliamentary Committee which is described elsewhere in this Report. This Committee would be charged with conducting wide ranging hearings, but its mandate is not to design a new constitution. Instead, the Committee will comment on the federal government's proposal for a renewed federation.

In addition, a central issue in relation to PROCESS is whether or not the amending formulas should be changed, and if so, how new formulas should differ from the current formulas.

SUBSTANCE

The central issues surrounding the nature of a renewed federation appear to be 1) decentralization versus a strong federal government; and 2) equality of the provinces versus asymmetrical federalism. There are numerous other issues

which also fall into this category such as the distinctiveness of Quebec, Senate reform, aboriginal self-government, minority languages, equal application of the Charter of Rights, the **"notwithstanding" clause, provincial vetoes, the status of territories, constitutional conferences,** other federal institutions such as the Supreme Court of Canada, and so on.

The federal government and several provincial governments appear to be proceeding on the assumption that decentralization is necessary, or at least that the current division of powers between Parliament and the provinces must be reformed. Small provinces such as Manitoba and Newfoundland are opposed to a radical change in the division of powers which would lead to a decentralized Canada and the anticipated erosion of national standards and national programs.

The recent Beaudoin-Edwards Report and the Spicer Commission Report have pointed out that provinces have always been treated differently under the Canadian constitution. Further asymmetry among provinces can be anticipated as a central issue in upcoming negotiations.

TIMING

With the Special Joint Committee of Parliament reporting by February 28, 1992, the stage will be set to push forward negotiations with Quebec in the Spring of 1992. Quebec's recent legislation calls for a referendum in June, 1992 or October, 1992, but the legislation also requires that before Quebec will consider proposals for a renewed federalism, the proposals must be formally-binding on the federal government and the other provincial governments. This seems to imply that Parliament and the other provincial legislatures would have to pass resolutions supporting constitutional amendments before Quebec will consider the proposals. This would be a very awkward process without Quebec being involved in the drafting of any such constitutional amendments.

The timing issue will continue to overshadow discussions on substantive issues. In addition, the Quebec legislation creates uncertainties of process that will need to be addressed in particular, the provision which requires reform proposals to be Informally binding on the Government of Canada and the other provinces".

RECONMENDATIONS

Your Committee recommends for consideration and discussion by members of this and the Twelfth Assembly, the draft principles contained in APPENDIX **G** to guide ongoing discussions on national constitutional **issues**.

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APPENDIX A

A commission such as ours could not confine its discussions to a narrow definition of the political and constitutional future of Quebec. One cannot examine the future political relations in the nation without inevitably focusing on the human, social and cultural facets of the life of the people. In drawing our conclusions, we would first like to stress a number of important dimensions of our future, on which light would not otherwise be shed through the main process we are proposing.

Québec is a society open to social change, which enjoys a high standard of living. Even in such societies, not everyone has the same opportunity for social advancement; an extensive system of income support and social protection measures does not prevent the standard of living of some people from declining or others from experiencing sustained poverty. The problem of poverty in the cities and outlying regions, which are less prosperous in some instances, was stressed before the Commission. It was suggested that the problem should be solved **before** or at the same time that we redefine the political and constitutional status of **Québec**. We believe that poverty and inequality are fundamental problems to which governments must respond with thorough reflection and enlightened action. However, we feel that there is nothing to suggest that such problems would be better settled were we to avoid discussing the constitution, no more than they would be by simply amending the current status or through a change of status. The dynamics of social change influences and is influenced by changes in modern democracies.

While it may be slowed by authoritarian, closed regimes, it does not necessarily find an immediate solution in open systems such as ours.

In our society, Quebec women have achieved equality in principle; they must now strive to attain equality in everyday life. The political field has broadened considerably in the 20th century, drawing into the public domain what were hitherto deemed to be private matters. Women have been particularly affected by these changes. State intervention in the education and health sectors, among others, are major political factors for women as they are tied to changes in the role of the family and the imperative of achieving equality between women and men. Several women's groups reminded us of this fact by emphasizing that it was time to halt the under-representation of women in political institutions.

The English-speaking community has been historically part of **Québec's** reality. Its significant contribution to **Québec's** development must be stressed and continue to be recognized. As a linguistic minority in **Québec**, it is seeking, with French-speaking **Quebecers** who are themselves a minority in Canada, the development of respectful, harmonious relations, and this goal has largely been attained. A number of differences persist; both sides must endeavour to resolve them in a spirit of openness. With respect to the political and constitutional future of **Québec**, it is important to maintain, in collaboration with the English-speaking community, legal guarantees which ensure the

complete protection of its rights and institutions, and its full participation in Quebec society.

The issue of the rights and claims of the aboriginal peoples is a different matter altogether. The problems experienced by the 60 000 **Amerinds** and **Inuit** of Quebec may indeed be examined against the backdrop of social change. However, the problem is also political, and is tied to the existence of the historic rights of the descendants of the oldest inhabitants of our territory. The issues of concern to the aboriginal nations must be dealt with now. Indeed, the current arrangements governing the aboriginal peoples **do not satisfy** their desire for self-affirmation and self-government in regard **to their** internal affairs. This situation cannot be prolonged unduly while waiting for a final answer to the question of the political and constitutional future of **Québec**. To the **contrary**, we believe it is urgent to specify the manner in which we intend to realize aboriginal self-government. Negotiations to this end must be conducted promptly and vigorously, in a spirit of openness and rigour, with representatives of the **Québec** aboriginal peoples. Such negotiations, focused on the future, will only be more fruitful if a process for settling existing disputes is quickly adopted, in consultation with the aboriginal peoples.

The public hearings of the Commission took us **all** over Quebec and enabled us to better comprehend the diversity of **Quebecers'** concerns. However, we would like here to emphasize the similarity of viewpoints presented to us, by

individuals and businesses in the regions, by municipalities and other regional and local governments, on the importance of drawing public administrators and **Québec** residents closer together. Broader authority and more extensive resources are requested for the benefit of various regional organizations in the fields for which they are responsible; the reorganization of various structures is also demanded. We have decided not to include in our report recommendations concerning regional and **local** governments. While the question is indeed an important one, we feel that the situation can change more quickly and efficiently through normal democratic channels than it will if it is included in a constitutional debate.

It should be stressed that possible changes in the political and constitutional status of **Québec** could have a particular effect on the **Outaouais** region in **Québec**. Indeed, were a significant number of federal sectors or services to become **Québec's** responsibility, employment and economic activity in the region could be seriously affected. The same is true, undoubtedly to an even greater degree, were **Québec** to attain sovereignty. Regardless of the course **Québec** adopts, it **will** be necessary and urgent to implement specific programs aimed at maintaining employment and economic activity in this region.

One striking difference between the regions of **Québec** is the concentration in the **Montréal** metropolitan area of the greatest proportion of **Quebecers** of non-French or non-British origin. A number of these cultural communities have been established for a long time in Quebec and have happily settled in,

while contributing their customs, talent and vibrant creative energy to the social fabric. Others have arrived more recently and come from more remote regions, creating an even greater ethnic diversity. The principle of equal rights enshrined in the *Québec Charter of human rights and freedoms* must not mask the tensions, indeed the discrimination, which new **Quebecers** may feel. The **Québec** cultural communities expressed their willingness to participate in the Quebec society when they appeared before the Commission. In our view, in collaboration with members of the cultural communities, efforts must be stepped up to ensure that **Quebecers** of all origins enjoy genuinely equal opportunities and participate fully in all spheres of activity.

Elsewhere in Canada, French-speaking Canadians are often perceived as representatives of one of the many cultures which make up Canada's multicultural heritage, a culture which is entitled to **preserve** its ways and customs and speak its language in private, but which must in essence live socially in English, as do other cultural groups. The development of **French-speaking** people outside **Québec** is thus limited in fact, wrongly no doubt, through the misunderstanding of **multiculturalism** as a reflection of social life everywhere in Canada. This development, while it is sustained namely by a number of provisions in the 1982 Constitution, is the object of constant legal battles. These conflicts before the courts, in which the federal government often appears as the sole source of support of French-speaking groups against the provincial governments, give rise to another misunderstanding. In the name of fraternity and a common culture, French-speaking groups would like

Quebec to support their position. For reasons related to its own linguistic and constitutional position, it is not possible for **Québec** to take up the cause of French-speaking groups in all of their legal undertakings. Were **Québec** institutions and the **Québec** government to more actively support the initiatives of French-speaking people outside Quebec other than through support before the courts, Quebec and **Quebecers** would contribute more fully to the vitality of the French-speaking community in Canada.

All of the matters we have just set out reflect concerns raised before the Commission. However, the very essence of the questions raised by our mandate demands that we focus exclusively on the **political** and constitutional status of **Québec**, which we do in the following section,

History has witnessed **Québec** society's long and patient pursuit of a political arrangement which accurately reflects its identity. Culture is at once the sum of the creative expression of a collective imagination and the actions, words, songs and accents which characterize the day-to-day life of a people. It is its culture, fed and sustained by creators and researchers, nourished by artists, experienced by one and all, which animates the identity of the people of Quebec. Through their culture, they are able to revive their roots and strive to surpass themselves, which demands that their political status reflect their identity. While defining Quebec's political future does not require indeed that we concomitantly define its cultural future, doing so requires that we clearly state that only a **living**, proud culture gives a people a sufficiently

strong, distinctive face and spirit to sustain a promising future. This perspective has guided our reflection and given it all its meaning.

All **Quebecers** share a number of fundamental objectives: all of them want the society in which they live, **Québec**, to enjoy freedom and prosperity, based on justice and fairness, a respect for differences, growth and openness to the world.

Various social and political models are put **forward** to serve as a foundation for the progress and development of **Québec** society. When such models are discussed, any one of them may strike some people as inadequate; **everyone** seeks to highlight the advantages of the social and political framework he **favours** to gain the support of others. One fact remains: determining the political and constitutional framework of a society, of a people, is a political exercise, to the extent that democratic processes are imperative in **the** expression of fundamental choices.

Québec's relationship with the rest of Canada, within the political system and the constitutional order which govern them, has reached a stalemate. After several years of constitutional demands which have expressed **Québec's** fundamental needs and aspirations, Canada adopted a new Constitution Act in 1982, without the consent of the **Québec** government and the National Assembly. This Act did not satisfy **Québec's** requests. Moreover, for the first time since 1867, it meant that one province, **Québec**, lost powers as a

result of arrangements agreed upon by the other parties, in its absence and without its consent. In 1990, the minimal conditions Quebec put forward to ensure its formal acceptance of the *Constitution Act*, 1982, were rejected.

It is pointless to refuse to acknowledge the current conflict: doing so will only cause the further deterioration of the political foundations of our societies and of the relations between **Quebecers** and Canadians. Allowing the situation to drag on will lead to the same result, thereby exacerbating dissatisfaction, uncertainty and instability.

Relations between societies are also of other types, particularly economic. Quebec, **like** Canada as a whole, has an open economy fully integrated into the main world trends, especially North American currents. The close economic interdependence which characterizes Canada indicates that the reciprocal benefits of ensuring the free movement of persons, goods, services and capital are advantageous to everyone concerned and should, as far as possible, be maintained, regardless of the political and constitutional status **Québec** adopts. Moreover, Quebec is not calling into question the economic and financial commitments and ties it has established with its Canadian and foreign partners.

With regard to political and constitutional relations, the consensus expressed during the Commission's deliberations is **clear**: profound changes must be made to Quebec's political and constitutional status. Regardless of the solutions

adopted, they must promptly and permanently dissipate the uncertainty and instability resulting from the current stalemate.

Two courses are open to **Québec** with respect to the redefinition of its status, i.e. a new, ultimate attempt to redefine its status within the federal regime, and the attainment of sovereignty. Some people feel that the first course must be adopted and, should it **fail**, that **Québec** should achieve sovereignty. Other people prefer to adopt the second course of action immediately.

Should a **final** attempt to renew federalism fail, sovereignty would be the only course remaining. It is therefore important to focus immediately on all its implications and systematically **specify** the measures to be taken to efficiently implement it, especially should it be concluded that this is the only possible course **of** action, but also if it is deemed to be an imminent alternative,

The approach **Québec** chooses must have two objectives. First, it must solve the political and constitutional stalemate and ensure that satisfactory, durable results are achieved in the near future: clear deadlines must be stipulated. Second, the choice and its outcome must be clearly spelled out by Quebec and made known to its partners in the federation. In this way, the rest of Canada will be able to accurately assess what is at stake with regard to the redefinition of **Québec's** status and the seriousness of its process, and to make its own choices.

A final attempt to renew federalism cannot be meaningful unless Canada and the other provinces are prepared to participate efficiently in it. It is incumbent upon them to **inform** Quebec of the contents of possible arrangements to which they would adhere. **Québec**, free to determine its future, must ensure, without waiting to examine any offer or proposal whatever, that it is prepared to implement the option it chooses. Should the political climate so demand, preparatory measures would enable the process of acceding to sovereignty to be launched in an enlightened, orderly and predictable manner.

In this way, **Québec** could take advantage of the time available to it and current arrangements to bolster its position, while strengthening its negotiating power. The continued presence within the federal system of a **Québec** whose needs and aspirations are not satisfied and which is embarking upon fundamental changes is not the best guarantee for the smooth operation of the federal regime. This approach makes it possible to prepare for the attainment of sovereignty in a climate where there would be less uncertainty than if **Québec** waited for the outcome of a possible referendum before proceeding. Similarly, **Quebecers** would be better informed of what is at stake, in anticipation of making a choice.

As long as Quebec maintains its current status and remains a province within the Canadian federation, its relations and those of **Quebecers** with the rest of Canada will **continue** to be governed by the Canadian Constitution. A

positive, open attitude toward Quebec **would** preserve the principle of admissibility of any offer the rest of Canada might make.

For many **Quebecers** who appeared before the Commission, the question of their political future and status in relation to Canada and the rest of the world is tied to the exigencies of a global society, of a community which constitutes a distinct people.

The Commission has noted the extent and depth of the consensus expressed before it to the effect that the population of **Québec** unequivocally rejects the current state of affairs.

For a significant number of **Quebecers**, **Québec's** sovereignty is a concrete, economically viable alternative to Canadian federalism which, they believe, no longer efficiently contributes to **Québec's** political objectives.

Quebecers have high expectations: they want **Québec** to recover jurisdictions in all sectors, be they economic, social or cultural. They feel it is urgent to dispel uncertainty through a clear process which ends the stalemate and promptly produces results.

The Commission has also noted that **Quebecers** favour maintaining the reciprocal advantages resulting from various economic and **financial** commitments and ties between **Québec** and the rest of Canada.

Under the circumstances, the Commission is of the opinion that **Quebecers** will have to express themselves on the matter of their political and constitutional future through a formal, democratic consultation.

Quebecers must consider the following: an unequivocal assessment, two equally clear solutions, one of which can only be adopted if Quebec's partners also wish to do so, and the other which must be prepared regardless of the choice made. Bearing in mind its strengths and weaknesses with respect to its geography and its physical and human resources, **Québec** must now make a choice and implement it as quickly as possible.

The **Commission** recommends to the National **Assembly** the **adoption**, in the spring of 1991, of **a legislation establishing the process by which Québec determines its political and constitutional future.**

The legislation would contain three sections, that is, a preamble; a first part dealing with a referendum to be held on **Québec** sovereignty; and a second part dealing with the offer of a new partnership of constitutional nature.

"Preamble

1. Considering the report, the conclusions and the recommendations of the Commission on the Political and Constitutional Future of **Québec**;
2. Whereas **Quebecers** are free to assume their own destiny, to determine their political status and to assure their economic, social and **cultural** development;
3. Whereas **Quebecers** wish to play an active part in defining the **political** and constitutional future of **Québec**;
4. Whereas the *Constitution Act*, 1982, was proclaimed despite the opposition of the National Assembly;

5. Whereas the 1987 Agreement on the Constitution, the aim of which was to allow Quebec to become a party to the *Constitution Act*, 1982, has failed;
6. Whereas it is necessary to redefine the political and constitutional status of Quebec.

Part 1 of the Act: Referendum on Québec Sovereignty

The Act provides:

. that a referendum on **Québec** sovereignty is to be held, either between June 8 and 22, **1992**, or between October 12 and 26, 1992;

. that, should the outcome of the referendum be positive, **Québec** will acquire the status of a sovereign State one year, day for day, after the date of the referendum;

for the establishing of a special parliamentary commission of the National Assembly and for its membership, to examine matters related to Quebec's accession to sovereignty

. that the special parliamentary commission will study and **analyse** all matters related to -Quebec's accession to full sovereignty, that is, Quebec's

exclusive capacity, through its democratic institutions, to adopt laws, levy taxes within its territory and act on the international scene in order to conclude all manner of agreements or treaties with other independent States, and participate in various international organizations; that the commission will make recommendations in this respect to the National Assembly;

- . that the commission will also be responsible, should the Government of Canada make a formal offer respecting an economic partnership, for studying and **analysing** such an offer and making recommendations in this respect to the National Assembly;
- . that the commission will be granted a budget and authorized to have studies prepared and conduct whatever consultations it deems necessary, and to hear all interested persons and organizations.

Part 2 of the Act: Offer of a New Partnership of Constitutional Nature

The Act provides:

- . for the establishing of a special parliamentary commission of the National Assembly and for its membership, to assess any offer of a new partnership of constitutional nature made by the Government of Canada, and to make recommendations in this respect to the National Assembly;

that only an offer formally binding the Government of Canada and the provinces may be examined by the commission;

that the commission will be granted a budget and authorized to have studies prepared and conduct whatever consultations it deems necessary, and to hear all interested persons and organizations.”

The foregoing is a translation of the recommendations recorded in the minutes of the March 25, 1991 meeting of the Commission held in Quebec City.

APPENDIX B

GOVERNMENT ORDERS

[English]

NATIONAL UNITY

APPOINTMENT OF SPECIAL JOINT COMMITTEE

Right Hon. Joe Clark (President of the Queen's Privy Council for Canada and Minister Responsible for Constitutional Affairs) moved:

That a Special Joint Committee of the Senate and the House of Commons be appointed to inquire into and make recommendations to Parliament on the Government of Canada's proposals for renewed Canada contained in the documents to be referred to it by the Government;

That fifteen Members of the House of Commons and ten Members of the Senate be the Members of the Special Joint Committee: such Members on the part of the House of Commons to be designated upon the report of the Standing Committee on House Management, which report shall be deemed concurred in upon presentation or, if the House is not sitting at the time of such Standing Committee on House Management Report such report shall be deemed concurred in upon its being filed with the Clerk of the House of Commons.

That the **Committee have** the power to appoint from among its Members such sub-committees as maybe deemed advisable, and to delegate to such **sub-committees** all or **any** *of* its powers except the power to report directly to the House;

That the Committee have the power to sit during sittings and adjournments of the **House** of Commons

That the committee or sub-committees have the power to travel and to **hold public hearings within Canada;**

That the committee provide **Canadians** with an opportunity to **participate fully** in the **development** *of* the government of **Canada's** plan for a renewed **Canada;**

That the Committee have the power to **hold** joint sittings with the committees of legislatures or individual members of provincial and territorial **legislatures;**

That the Committee develop procedures to ensure aboriginal peoples **participate fully** in the **development** of the Government of Canada's plan for a renewed **Canada** and, in **particular**, on issues *of special interest* to them;

That **the** Committee **have** the power to send for persons, **papers** and records, and to examine **witnesses** and to print such papers and evidence **from** day to day as may be ordered by the Committee;

That the Committee be authorized to put in **place** mechanisms designed to encourage and facilitate the **participation** of individuals and groups *of* **Canadians;**

That the Committee be empowered to authorize television and radio broadcasting, as **it** deems appropriate, of any or all of its proceedings or of proceedings of its sub-committees, pursuant to the principles and practices governing the broadcasting of the proceedings of the **House of Commons;**

That the Committee **be** granted **allocations** for **expert** assistance;

That the **Committee** be empowered to retain the **service** of professional, clerical and stenographic staff as deemed advisable **by** the Joint **Chairs;**

That the Committee submit its report not later than **February 28, 1992, provided** that if the House *of* **Commons** is not sitting, the **report** will be deemed submitted on the day such **report** is deposited with the Clerk of **the** House *of* **Commons** and with **the** Clerk *of* **the** **Senate;**

That **changes** in membership of the Committee **be** effective immediately after a notification, signed by the Member **acting** as **Chief Whip** of any recognized **party**, has been **filed with** the Clerk of the **Committee;**

That the quorum of the Committee **be** thirteen Members whenever **a** vote, resolution or other decision is taken, so long **as** both **Houses** are **represented**, and the Joint Chairs are authorized to hold meetings, **to** receive **evidence** and to authorize the printing thereof, when **nine** Members are present so long as both Houses are represented and

That a Message be sent to the Senate requesting that House to unite with **this House** for the **above** purpose, and to select, if the **Senate** deems it **advisable**, ten senators to let on the **proposed** Special Joint Committee.

APPENDIX C

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES
PRESENTATION
TO
SENATE AND HOUSE OF COMMONS
SPECIAL JOINT COMMITTEE
ON THE PROCESS FOR
AMENDING THE CONSTITUTION OF CANADA

March 19, 1991
Yellowknife, N.W.T.

Check Against Delivery

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES
SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM
PRESENTATION TO
THE SPECIAL JOINT COMMITTEE
OF THE SENATE AND HOUSE OF COMMONS
ON THE PROCESS FOR AMENDING
THE CONSTITUTION OF CANADA

JOINT CHAIRMEN, SENATORS, MEMBERS OF PARLIAMENT, LADIES AND GENTLEMEN. ON BEHALF OF THE NORTHWEST TERRITORIES' SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM, I WOULD LIKE TO WELCOME YOU TO YELLOWKNIFE AND TO THE NORTHWEST TERRITORIES. I REALIZE YOUR VISIT HERE WILL ONLY BE A FEW HOURS, BUT I HOPE IT IS A PLEASANT AND INFORMATIVE ONE AND I HOPE YOU WILL COME BACK TO VISIT AGAIN SOON.

THE SPECIAL COMMITTEE DOES NOT WISH TO TAKE TOO MUCH OF YOUR TIME TODAY . YOU HAVE KINDLY AGREED TO ALLOW US TO MAKE A LONGER, MORE TECHNICAL PRESENTATION AT YOUR HEARINGS IN OTTAWA IN LATE APRIL OR EARLY MAY. WE BELIEVE YOU WILL WANT TO HEAR FROM THE PUBLIC AND OTHER ORGANIZATIONS AS MUCH AS POSSIBLE WHILE YOU ARE IN YELLOWKNIFE.

TODAY I WOULD LIKE TO LEAVE YOU WITH TWO SIMPLE MESSAGES: FIRST, THE PEOPLE, GOVERNMENT AND LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES MUST BE ADMITTED TO THE CONSTITUTIONAL COUNCILS OF CANADA , INCLUDING ALL DISCUSSIONS ON THE AMENDING FORMULA. CONSTITUTIONAL PROCESSES SUCH AS INTERGOVERNMENTAL MEETINGS OF OFFICIALS AND MINISTERS, FIRST MINISTERS' MEETINGS AND CONFERENCES,

AND ALL PUBLIC FORUMS THAT MAY OPERATE TO INCLUDE CANADIANS IN CONSTITUTIONAL REFORM ARE NOT COMPLETE UNLESS THE TWO TERRITORIES ARE REPRESENTED AT THE TABLE BY NORTHERNERS.

SECOND, ABORIGINAL PEOPLES MUST ALSO HAVE ACCESS TO GOVERNMENTAL AND EXECUTIVE DECISION MAKING ON ALL MATTERS THAT RELATE TO THE INTERESTS OF ABORIGINAL PEOPLES. A NATIONAL FORUM THAT BRINGS TOGETHER FIRST MINISTERS AND ABORIGINAL LEADERS IS NECESSARY, NOW MORE THAN EVER, TO CONTINUE THE DIALOGUE ON IDENTIFYING AND DEFINING CONSTITUTIONALLY PROTECTED RIGHTS OF ABORIGINAL PEOPLES.

ACCORDING TO ALMOST ALL COMMENTATORS, CANADA **IS** UNDERGOING FUNDAMENTAL AND INEVITABLE CHANGE IN ITS POLITICAL PROCESSES AND CONSTITUTIONAL STRUCTURE. IN APRIL 1990 OUR SPECIAL COMMITTEE APPEARED BEFORE THE CHAREST COMMITTEE WHEN IT VISITED YELLOWKNIFE. AT THAT TIME, WE STATED THAT IF THE MEECH LAKE ACCORD SHOULD FAIL, VERY SERIOUS THOUGHT MUST BE GIVEN TO MATTERS OF PROCESS BEFORE FURTHER CONSTITUTIONAL NEGOTIATIONS ON SUBSTANTIVE MATTERS OCCURRED .

WE RECOMMENDED THAT THE FOCUS SHIFT TO THE AMENDING FORMULA AND TO PROCESSES FOR PUBLIC PARTICIPATION IN CONSTITUTIONAL REFORM, SUCH AS REFERENDA OR PUBLIC HEARINGS.

IT WAS OUR VIEW THAT THE PROCESS OF AMENDMENT MUST BE LEGITIMIZED IN THE EYES OF CANADIANS BEFORE ANY NEW EFFORTS WERE MADE TO AMEND THE CONSTITUTION. AMENDMENTS MUST BE PRESENTED TO AND JUSTIFIED TO THE CANADIAN PEOPLE PRIOR TO THE ADOPTION OF ANY CONSTITUTIONAL RESOLUTION BY FIRST MINISTERS OR LEGISLATURES.

WE POINTED OUT BEFORE THE **CHAREST** COMMITTEE THAT A CONFERENCE TO REVIEW THE AMENDING FORMULA IS ALREADY PROVIDED FOR IN SECTION 49 OF THE CONSTITUTION ACT, 1982. THAT CONFERENCE WAS TO BE HELD BEFORE 1997 SO YOU ARE A FEW YEARS AHEAD OF THE GAME.

WE WANT TO STRESS AT THE OUTSET, HOWEVER, THAT THE NEED FOR CHANGE TO THE CONSTITUTIONAL TEXT SETTING OUT THE AMENDING FORMULA MUST BE CLEAR AND UNEQUIVOCAL BEFORE THE EXISTING PROVISIONS ARE TAMPERED WITH. IN OUR VIEW, THERE ARE SOME PROVISIONS IN THE PRESENT FORMULA THAT MUST BE ATTENDED TO IF THE NORTHWEST TERRITORIES AND THE YUKON ARE TO BE TREATED FAIRLY AND ARE TO PLAY A ROLE IN THE CANADA OF THE 21ST CENTURY. BUT THERE ARE ALSO SEVERAL UNWRITTEN ASPECTS OF THE AMENDING PROCESS THAT MUST BE CAREFULLY EXAMINED. WE BELIEVE A CLEAR DISTINCTION MUST BE DRAWN BETWEEN THESE WRITTEN AND UNWRITTEN ELEMENTS OF THE PROCESS.

CHANGES TO THE AMENDING FORMULA MUST NOT BE MADE SIMPLY TO ADDRESS CURRENT POLITICAL PROBLEMS. ANY CHANGES MUST BE SQUARELY GROUNDED IN WIDELY-SHARED PRINCIPLES AND MUST BE DURABLE.

I CAN BRIEFLY ILLUSTRATE WHAT I MEAN BY A PRINCIPLED APPROACH TO AMENDING THE CONSTITUTION USING THE EXAMPLE OF SECTION 38 WHICH IS THE **GENERAL** AMENDING FORMULA OFTEN REFERRED TO AS THE "7 AND 50" FORMULA . SECTION 38 REQUIRES AN AMENDMENT TO BE APPROVED BY PARLIAMENT AND THE LEGISLATIVE ASSEMBLIES OF TWO THIRDS OF THE PROVINCES THAT HAVE IN THE AGGREGATE ACCORDING TO THE LATEST CENSUS AT LEAST 50% OF THE POPULATION OF ALL THE PROVINCES. THE TERRITORIES ARE NOT PROVINCES SO THEIR POPULATION IS NOT COUNTED. WHEN A CANADIAN LIVING IN THE NORTHWEST TERRITORIES OR THE YUKON SEES A FORMULA LIKE THIS IT LEAVES THE IMPRESSION THAT THE CONSTITUTION BELONGS TO GOVERNMENTS NOT TO THE PEOPLE OF CANADA. NO MATTER WHAT THE POPULATION OF THE TWO TERRITORIES, CANADIANS LIVING HERE ARE NOT COUNTED FOR PURPOSES OF THIS GENERAL AMENDING FORMULA . DOES THE CONSTITUTION BELONG TO CANADIANS OR TO GOVERNMENTS IN CANADA?

A SECOND EXAMPLE ARISES FROM THE AMENDING FORMULA GOVERNING THE EXTENSION OF EXISTING PROVINCES INTO THE TERRITORIES AND THE CREATION OF NEW PROVINCES. AGAIN , THESE PROVISIONS APPEAR TO IGNORE CANADIANS WHO WILL BE DIRECTLY AFFECTED IF THESE PROVISIONS ARE EVER USED. THERE IS NO REQUIREMENT TO CONSULT WITH OR RECEIVE THE APPROVAL OF THE RESIDENTS OF THE TERRITORIES OR THEIR ELECTED REPRESENTATIVES PRIOR TO AN ANNEXATION OF THE TERRITORIES, OR EVEN PRIOR TO THE CREATION OF A NEW PROVINCE IN THE NORTHWEST TERRITORIES OR YUKON. IN FACT, IF THE UNANIMITY FORMULA IN THE

CONSTITUTIONAL AMENDMENTS SHOULD BE **RARE**, BUT THERE SEEMS TO BE INCREASING PRESSURE TO MAKE EVERY ISSUE A CONSTITUTIONAL ISSUE. THIS HAS WEAKENED OUR COUNTRY. POLITICAL LEADERS MOVE QUICKLY TO THE CONSTITUTIONAL FORUM WHEN ATTEMPTS AT POLITICAL COMPROMISE FAIL . ANY NEW FORMULA SHOULD NOT FACILITATE THIS **RAPID** ESCALATION.

IN OUR VIEW, THE ENTRENCHMENT OF ANNUAL FIRST MINISTERS' CONFERENCES ON THE CONSTITUTION WOULD BE A MISTAKE. CONSTITUTIONALIZING EXECUTIVE MEETINGS WOULD FURTHER REDUCE THE EFFECTIVENESS OF OUR LEGISLATURES AND PARLIAMENT TO DEBATE AND RESOLVE THE POLITICAL ISSUES OF THE DAY. IT WOULD ALSO TEMPT FIRST MINISTERS TO SEEK CONSTITUTIONAL SOLUTIONS TO PROBLEMS THAT SHOULD BE HANDLED ELSEWHERE.

FOR EXAMPLE, A SOLUTION TO CURRENT PROBLEMS MIGHT LIE AS MUCH IN THE REFORM OF THE PARTY SYSTEM IN CANADA AS IT DOES IN AMENDMENTS TO THE CONSTITUTION AND SPECIFICALLY TO THE AMENDING FORMULA. THE ROLE OF ELECTED REPRESENTATIVES IN THE CANADIAN SYSTEM IS BEING DIMINISHED AND MADE LESS RELEVANT AT AN ALARMING RATE. TOO OFTEN WE NOW FIND ACROSS CANADA THAT THE VOICE OF ELECTED REPRESENTATIVES HAS BEEN REPLACED BY COMMISSIONS, TASK FORCES AND OTHER APPOINTED BODIES .

THE CURRENT NATIONAL CLIMATE MAY NOT BE CONDUCIVE TO A PRINCIPLED APPROACH TO CONSTITUTIONAL REFORM. A PREOCCUPATION WITH POLITICAL TACTICS AND SELF-INTEREST SEEMS TO HAVE RESULTED IN A CRISIS OF

CONFIDENCE IN WHICH THE CANADIAN PEOPLE ARE SUSPICIOUS OF ELECTED REPRESENTATIVES AND LEADERS. CONSTITUTIONAL POLITICS SHOULD NOT BE A STRIFE OF SELF-INTERESTS MASQUERADING AS A CONTEST OF PRINCIPLES.

I WANT TO STRESS THAT I AM NOT SUGGESTING THAT YOUR COMMITTEE DO NOTHING OR THAT WE SIMPLY RIDE OUT THE CURRENT STORM. RATHER, I AM SUGGESTING THAT WE FOCUS THE SEARCH FOR SOLUTIONS IN AREAS WHICH APPEAR TO BE CAUSING THE REAL PROBLEMS. WE SHOULD MOVE TO AMEND THE CONSTITUTION ONLY WHEN WE ARE VERY CERTAIN THAT THE CONSTITUTION IS THE PROBLEM. WHEN I REVIEW **SOME** OF THE COMPLAINTS WITH THE CURRENT FEDERAL SYSTEM, IT APPEARS TO ME THAT POLITICAL **INTRANSIGENCE** IS TO BLAME FOR OUR CURRENT PROBLEMS RATHER THAN OUR CONSTITUTIONAL STRUCTURE. I NOTE, FOR EXAMPLE, THAT AMENDMENTS TO THE IMMIGRATION PROVISIONS OF THE CONSTITUTION RECOMMENDED BY THE **MEECH** LAKE ACCORD HAVE IN PART BEEN SATISFIED THROUGH A PROCESS THAT DOES NOT REQUIRE AN AMENDMENT TO THE CONSTITUTION **OF CANADA**.

POLITICAL LEADERS HAVE NOT BEEN GIVEN A MANDATE TO TAKE CANADA TO THE BRINK OF DESTRUCTION. POLITICAL EGOS AND THE GHOSTS OF THE PAST ARE NOT A VALID MOTIVATION FOR AMENDING THE CONSTITUTION OF CANADA . MY POINT IS A SIMPLE ONE: BEFORE YOUR COMMITTEE RECOMMENDS CHANGES TO THE AMENDING FORMULA OR TO ANY OTHER PART OF THE CONSTITUTION THERE MUST BE A CLEARLY **DEMONSTRATED** NEED FOR CHANGE.

DOES THE FAILURE OF THE MEECH LAKE ACCORD REALLY ILLUSTRATE FLAWS IN THE WRITTEN PROVISIONS OF THE AMENDING FORMULA, OR RATHER DOES IT ILLUSTRATE FLAWS IN THE OPERATION OF OUR POLITICAL PROCESSES AND INSTITUTIONS?

DID THE ACCORD REALLY HAVE TO BE TREATED AS A SEAMLESS WEB? WAS THERE NEVER A POINT IN THE PROCESS WHERE THE VALID CONCERNS OF CANADIANS COULD HAVE BEEN ADDRESSED THROUGH COMPROMISE?

IN OUR VIEW, THE **MEECH** LAKE ACCORD FAILED NOT BECAUSE OF ANY OBVIOUS FLAW IN THE PROVISIONS OF PART FIVE OF THE CONSTITUTION, BUT BECAUSE CANADIANS WERE LEFT OUT OF THE PROCESS AND DENIED ACCESS WHEN THEY BECAME CONCERNED WITH A DEAL THAT HAD BEEN STRUCK BY FIRST MINISTERS. "

I MUST POINT OUT THAT THE AMENDING FORMULA WHICH FIRST MINISTERS ATTEMPTED TO USE IN THE MEECH LAKE PROCESS WAS A HYBRID NOT AUTHORIZED BY THE CONSTITUTION OF CANADA. IT WAS IN EFFECT A UNANIMITY FORMULA WITH A THREE YEAR TIME LIMIT. NO SUCH FORMULA EXISTS IN THE CONSTITUTION.

THERE WERE ALSO SOME SUGGESTIONS DURING THE FINAL DAYS OF THE MEECH LAKE ACCORD THAT THE PROBLEM WITH THE CURRENT AMENDING FORMULA WAS THAT IT MADE FIRST MINISTERS WAIT THREE YEARS BEFORE BRINGING IN AMENDMENTS. THIS IS A FUNDAMENTAL MISREADING OF THE EXISTING

GENERAL FORMULA WHICH ENCOURAGES EXPEDITIOUS AMENDMENTS AND THEREFORE SETS AN OUTSIDE LIMIT OF THREE YEARS WHEN THE GENERAL FORMULA IS EMPLOYED.

ONE FLAW IN THE CURRENT AMENDING PROCESS WHICH NEEDS TO BE ADDRESSED IS THE LACK OF A CLEAR BALANCING OF THE ROLES OF THE EXECUTIVE, LEGISLATIVE AND PUBLIC ELEMENTS IN THAT PROCESS. IN THE MEECH LAKE DEBATE FIRST MINISTERS USED PARTY DISCIPLINE AND THE SEAMLESS WEB TACTIC TO PUSH FORWARD AN ACCORD THAT WAS NOT WELL UNDERSTOOD BY THE CANADIAN PEOPLE. THE CURRENT WRITTEN PROVISIONS DO NOT CONTAIN A CLEAR ROLE FOR FIRST MINISTERS IN THE AMENDING PROCESS AND THEREFORE FIRST MINISTERS WERE ABLE TO PROVIDE THEIR OWN INTERPRETATION OF THEIR ROLE.

FURTHERMORE, THE CURRENT PROCESS HAS NO REQUIREMENT FOR PUBLIC INPUT OTHER THAN THROUGH THE DULY ELECTED REPRESENTATIVES IN THE LEGISLATURES AND IN PARLIAMENT. PARTY DISCIPLINE OPERATED TO PREVENT CONSTRUCTIVE CHANGES TO THE MEECH LAKE ACCORD. THE MINIMAL ROLE PLAYED BY ELECTED REPRESENTATIVES IN CONSTITUTIONAL AMENDMENTS WILL CONTINUE UNLESS THERE ARE FUNDAMENTAL REFORMS IN THE PARTY SYSTEM IN CANADA.

SO THE HYBRID FORMULA DESIGNED BY FIRST MINISTERS FOR THE MEECH LAKE AMENDMENTS MAY HAVE PLAYED SOME PART IN THE FAILURE OF THE ACCORD . BUT DOES THIS STAND AS AN INDICTMENT OF THE AMENDING FORMULA PROVISIONS GENERALLY?

AS YOUR COMMITTEE IS WELL AWARE OTHER PROVISIONS IN PART FIVE HAVE BEEN SUCCESSFULLY USED. FOR EXAMPLE, THE SO CALLED "7 AND 50" AMENDING FORMULA WAS SUCCESSFULLY USED IN 1983 TO ADD PROVISIONS TO THE CONSTITUTION IN RELATION TO ABORIGINAL MATTERS. THIS BRING US TO OUR SECOND MAIN POINT TODAY - THE ROLE OF ABORIGINAL PEOPLES IN THE ONGOING CONSTITUTIONAL PROCESS. THE CONSTITUTION (S.35.1) EVEN NOW REQUIRES THAT ABORIGINAL LEADERS BE INVOLVED IN ANY DISCUSSIONS THAT WOULD LEAD TO AMENDMENTS IN RELATION TO PARTICULAR SECTIONS OF THE CONSTITUTION ACTS AFFECTING ABORIGINAL PEOPLES. SO, FOR EXAMPLE, IF FIRST MINISTERS PURSUE DISCUSSIONS WITH QUEBEC ON THE ALLAIRE REPORT RECOMMENDATION FOR SHARED JURISDICTION OVER ABORIGINAL PEOPLES, UNDER SECTION 35.1 THERE MUST BE A FIRST MINISTERS' CONFERENCE INVOLVING ABORIGINAL LEADERS. THIS DOES NOT GIVE ABORIGINAL PEOPLES "A FORMAL VOTE IN THE CURRENT AMENDING **FORMULA** BUT IT HIGHLIGHTS A CONSTITUTIONAL OBLIGATION TO KEEP ABORIGINAL PEOPLES INVOLVED IN THE AMENDMENT PROCESS.

THERE IS ALSO THE UNFINISHED BUSINESS OF IDENTIFYING AND DEFINING ABORIGINAL AND TREATY RIGHTS FOR THE PURPOSES OF SECTION 35 OF THE CONSTITUTION ACT, 1982. THIS IS ONE AREA WHERE WE WOULD SUPPORT DEVIATION FROM OUR SUGGESTION AGAINST ENTRENCHING FIRST MINISTERS CONFERENCES . A CONSTITUTIONAL PROCESS SIMILAR TO THE CONFERENCES ORIGINALLY ESTABLISHED BY SECTION 37 AND SECTION 37.1 SHOULD BE RESUMED, OR SOME AGREED UPON ALTERNATIVE SHOULD BE CONSIDERED.

CONSIDERATION MUST ALSO BE GIVEN TO ESTABLISHING A PROCESS FOR INVOLVING THE GENERAL ABORIGINAL POPULATION IN ANY AMENDMENTS THAT DIRECTLY AFFECT THEM. IN OTHER WORDS, BEFORE CONSTITUTIONAL AMENDMENTS ON ABORIGINAL MATTERS ARE MADE IT MUST BE CLEAR THAT ABORIGINAL LEADERS AND THE MAJORITY OF ABORIGINAL PEOPLE SUPPORT THEM .

IN CLOSING, I WOULD ENCOURAGE YOUR COMMITTEE TO WEIGH VERY CAREFULLY THE QUESTION OF WHETHER OR NOT THE CURRENT WRITTEN PROVISIONS OF THE AMENDING FORMULA ARE THE PROBLEM AND WHETHER OR NOT THEY CAN BE **CHANGED** USING A PRINCIPLED, DURABLE APPROACH GIVEN OUR CURRENT NATIONAL CLIMATE. WE DO SEE IN THE CURRENT WRITTEN PROVISIONS, AND IN THE AMENDING PROCESS **GENERALLY**, AN UNJUSTIFIED BIAS AGAINST THE TWO TERRITORIES IN PARTICULAR, AND AGAINST CANADIANS LIVING IN THESE JURISDICTIONS. WE WILL SPEAK TO ALL THESE ISSUES IN SOME DETAIL WHEN WE APPEAR BEFORE YOU IN OTTAWA. I HAVE AN OUTLINE OF THAT PRESENTATION AVAILABLE TODAY WHICH I WILL LEAVE FOR YOUR COMMITTEE. THE NORTHWEST TERRITORIES SPECIAL COMMITTEE WOULD ALSO BE PLEASED TO EXTEND ASSISTANCE TO YOUR COMMITTEE BY WAY OF FURTHER RESEARCH PAPERS OR ANALYSIS RELATING TO THE AMENDING FORMULA AND ITS APPLICATION TO THE NORTHWEST TERRITORIES .

THANK YOU.

APPENDIX D

A PRESENTATION BY THE LEGISLATIVE
ASSEMBLY OF THE NORTHWEST TERRITORIES
SPECIAL COMMITTEE ON
CONSTITUTIONAL REFORM

TO THE

SENATE AND HOUSE OF COMMONS
SPECIAL JOINT **COMMITTEE**
ON THE PROCESS FOR AMENDING
THE CONSTITUTION OF CANADA

BY
THE HONORABLE MICHAEL BALLANTINE, CHAIRMAN
THE HONORABLE RICHARD NERY SOO,
AND
MR. JOHN NINGARK, M.L.A.

MAY 01, 1991
OTTAWA, ONTARIO

A PRESENTATION BY THE LEGISLATIVE-ASSEMBLY
OF THE NORTHWEST TERRITORIES
SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

TO THE

SENATE AND HOUSE OF COMMONS
SPECIAL JOINT COMMITTEE
ON THE PROCESS FOR AMENDING
THE CONSTITUTION OF CANADA

CHAIRMEN, SENATORS, MEMBERS OF PARLIAMENT AND LADIES AND GENTLEMEN. I WOULD LIKE TO INTRODUCE THE MEMBERS OF THE NORTHWEST TERRITORIES SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM WHO ARE WITH ME TODAY. THE HONOURABLE RICHARD NERYSOO IS THE SPEAKER OF OUR LEGISLATIVE ASSEMBLY. MR. JOHN NINGARK IS THE M.L.A. FOR THE RIDING OF NATILIKMIOT. I AM MICHAEL BALLANTYNE, CHAIRMAN OF THE SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM. I AM ALSO MINISTER OF JUSTICE AND MINISTER OF FINANCE FOR THE NORTHWEST TERRITORIES.

WE ARE VERY PLEASED TO BE HERE TODAY TO FURTHER DEVELOP THE PRESENTATION WHICH I GAVE BEFORE YOUR COMMITTEE IN YELLOWKNIFE ON MARCH 19TH. AT THAT TIME A NUMBER OF YOU HAD QUESTIONS WHICH I HOPE WILL BE ANSWERED IN OUR PRESENTATION TODAY.

SUMMARY OF YELLOWKNIFE PRESENTATION

I WILL QUICKLY SUMMARIZE OUR EARLIER PRESENTATION FOR YOU. OUR POSITION WAS THAT BEFORE ANY CONSTITUTIONAL REFORM PROCEEDS, THE PROCESS OF REFORM MUST BE LEGITIMIZED IN THE EYES OF CANADIANS. IN PARTICULAR, OUR SPECIAL COMMITTEE WANTS TO MAKE IT VERY CLEAR THAT TERRITORIAL RESIDENTS, PARTICULARLY ABORIGINAL PEOPLES, AND THE ELECTED REPRESENTATIVES FROM THE NORTHWEST TERRITORIES, MUST BE INVOLVED IN ANY PROCESSES DESIGNED TO SEEK CONSTITUTIONAL REFORM. WE ARE NOT SATISFIED WITH BEING CONSULTED AFTER AGREEMENTS HAVE BEEN REACHED AND RATIFIED BY OTHER GOVERNMENTS AND LEGISLATIVE

ASSEMBLIES, WE ARE DETERMINED TO BE AT THE **TABLE** WHENEVER CONSTITUTIONAL **ISSUES** OF NATIONAL IMPORTANCE ARE BEING DISCUSSED.

IN SAYING THAT THE AMENDING PROCESS MUST BE LEGITIMIZED WE DRAW A DISTINCTION BETWEEN THE WRITTEN AND UNWRITTEN ASPECTS OF THE PROCESS. WE HAVE NOT HEARD PERSUASIVE EVIDENCE THAT THE CURRENT WRITTEN FORMULA SHOULD BE DRAMATICALLY CHANGED. (THROUGHOUT THIS PRESENTATION I WILL **USE** THE WORD "FORMULA" RECOGNIZING THAT THERE ARE ACTUALLY FIVE DIFFERENT ONES.) THE FAILURE OF MEECH LAKE IN OUR VIEW IS AN INDICTMENT OF THE UNWRITTEN ASPECTS OF THE FORMULA WHICH WERE ALMOST ENTIRELY WITHIN THE HANDS OF FIRST MINISTERS TO CONTROL.

THE CURRENT POLITICAL CLIMATE

BEFORE DISCUSSING THE DETAILS OF THE AMENDING FORMULA I WISH TO SAY JUST A FEW WORDS ABOUT THE STATE OF THE NATION.

IN THE LAST THREE OR FOUR **YEARS** EVERY **ISSUE SEEMS** TO HAVE BECOME A CONSTITUTIONAL ISSUE. CHANGE IS ON EVERYONE'S LIPS. I HAVE HEARD MANY HEARTFELT STATEMENTS BY CANADIANS **ABOUT** THE NEED FOR CHANGE. UNFORTUNATELY, FIRST MINISTERS MAY BE MISTAKENLY INTERPRETING THIS TO MEAN "CONSTITUTIONAL" CHANGE. I THINK CANADIANS ARE ASKING FOR A CHANGE IN POLITICAL **BEHAVIOUR**. I TRULY BELIEVE THAT VERY FEW CANADIANS **SEE** ANY NECESSITY FOR RADICAL CHANGE IN THE AMENDING FORMULA OR IN THE DIVISION OF POWERS. THE SORTS OF CHANGES THAT MOST CANADIANS ARE LOOKING FOR DO NOT REQUIRE CONSTITUTIONAL **AMENDMENTS. THEY ARE** ASKING FOR DRAMATIC IMPROVEMENTS IN THE CANADIAN **ECONOMY** AND MEASURES TO IMPROVE OUR COMPETITIVENESS IN THE EMERGING **GLOBAL** ECONOMY, AND THAT THE FUNDAMENTAL SOCIAL FRAMEWORK **OF OUR** COUNTRY IS PROTECTED.

HOWEVER, AMONG MANY POLITICIANS AND INTEREST GROUPS THERE SEEMS TO BE A MENTALITY THAT NUMEROUS AND FREQUENT CONSTITUTIONAL

AMENDMENTS ARE NEEDED IN CANADA IN THE COMING YEARS. TO A GREAT EXTENT THE CONSTITUTION OF THE COUNTRY HAS BEEN REDUCED TO THE LEVEL OF AN ORDINARY DOCUMENT. WE ARE DEALING WITH IT AS THOUGH IT WERE A COLLECTIVE AGREEMENT **TO** BE RE-NEGOTIATED EVERY FEW YEARS. PERHAPS THERE IS JUST TOO MUCH FASCINATION WITH THE NEW POWER TO ORCHESTRATE CHANGE WHICH IS CONTAINED **IN** A DOMESTIC AMENDING FORMULA. **IN** OTHER WORDS, THE SIMPLE EXISTENCE OF AN AMENDING FORMULA WITHIN REACH OF **OUR** CURRENT LEADERS HAS EXCITED AN INTEREST IN USING IT.

WE DO NOT THINK THE **EXISTING** AMENDING **FORMULA** IS THE FUNDAMENTAL PROBLEM WE THINK THE **PROBLEM** IS A **LACK** OF ABILITY TO RESIST USING IT. WE ALL LIKE TO THINK **OF OURSELVES AS NATION BUILDERS**, **BUT** IN TRUTH, VERY FEW ARE SO QUALIFIED. **IN FACT AS** ANY BUDDING HOME REPAIR ENTHUSIAST KNOWS, **YOU QUICKLY GET INTO TROUBLE** WHEN **YOU** TAMPER WITH THE WIRING **OR** THE **PLUMBING**, **OR** GOD FORBID, THE FOUNDATION OF YOUR HOME.

WE ARE APPREHENSIVE ABOUT ANY constitutional AMENDING FORMULA THAT MAKES AMENDMENTS **EASY**. By COMPARISON THE SITUATION IN THE UNITED STATES IS THAT LITERALLY THOUSANDS OF AMENDMENTS HAVE BEEN PROPOSED AND ONLY A HANDFUL HAVE EVER **SUCCEEDED**. LIKE SOME OF THE OTHER PEOPLE THAT HAVE APPEARED BEFORE **YOU**, WE ARE CONCERNED THAT AN AMENDING FORMULA **SHOULD NOT** BE DESIGNED TO SATISFY A SHORT-TERM POLITICAL AGENDA. AN AMENDING FORMULA SHOULD BE A RARELY USED DEVICE WHICH FILTERS **OUT** ALL **BUT** THE FINEST GRADE OF MATERIAL. WE TRIVIALIZE **OUR COUNTRY** AND **OUR** VALUES IF WE THINK THAT EVERY GOVERNING PARTY AND **EVERY** GENERATION OF POLITICIANS MUST LEAVE THEIR MARK ON THE CONSTITUTION.

THE CONSTITUTIONAL REFORMS **OF 1982** USHERED IN A NEW ERA THAT HAS LED, PERHAPS MORE RAPIDLY THAN EXPECTED, **TO** A CONFRONTATION BETWEEN GOVERNMENTS AND INDIVIDUALS. CANADIANS WERE OFTEN CHARACTERIZED AS BEING CONTENT **TO** LET GOVERNMENTS MAKE ALL THE

DECISIONS, ALLOWING THEIR GOVERNMENTS TO **MANAGE** AFFAIRS UNHINDERED, EXCEPT FOR THE OCCASIONAL SPREE OF **VOTING** EVERY FIVE YEARS.

THE MEECH LAKE ACCORD MAY WELL HAVE FAILED BECAUSE IT WAS PERCEIVED BY MANY TO BE A CHARTER OF "GOVERNMENT RIGHTS". THIS THEME CAME UP FROM TIME TO TIME IN THE THREE YEARS OF CLOSE SCRUTINY OF THE ACCORD. MANY **CANADIANS** SENSED WITHOUT REALLY KNOWING FOR CERTAIN THAT THIS IS WHAT THE MEECH LAKE ACCORD REPRESENTED.

SO IT IS COMMON THESE DAYS TO HEAR INDIVIDUALS AND GOVERNMENTS DIVIDING THEMSELVES INTO GROUPS OF DISTINCT "RIGHTS HOLDERS". I HAVE LISTENED VERY CAREFULLY BUT I HAVE HEARD VERY FEW THAT SEE THEMSELVES AS HAVING ANY PARTICULAR obligation TO ANYONE ELSE OR TO THE COUNTRY. FOR EVERY RIGHT THERE MUST BE A COUNTER-BALANCING OBLIGATION **OR RESPONSIBILITY**. IF THERE IS NOT, THE COUNTRY WILL BE TORN APART IN A FRENZY OF "ME **FIRSTERS**". WE BELIEVE, HOWEVER, THAT THE NATION HAS A SPECIAL RESPONSIBILITY TO ITS ORIGINAL PEOPLES TO DEFINE AND PROTECT THEIR RIGHTS AND TO ENSURE THAT THEY ARE FULL PARTNERS IN THE CANADIAN CONSTITUTIONAL FAMILY.

THE DEMAND FOR RIGHTS BY INDIVIDUALS AND COLLECTIVES MUST BE TEMPERED BY SOME SENSE OF **DUTY**, RESPONSIBILITY AND OBLIGATION, TO ENSURE THAT WE CAN ALL ENJOY THESE RIGHTS IN A SOCIETY THAT DOES NOT USE RIGHTS LIKE **WEAPONS**. IN **OTHER** WORDS, EVERY CONSTITUTIONAL AMENDMENT, **AND CERTAINLY ANY** FUNDAMENTAL CHANGE TO OUR CONSTITUTION, HAS TO HAVE A BALANCE OF RIGHTS AND RESPONSIBILITIES. AND WHEN THAT BALANCE **IS** ACHIEVED, ALL **MUST** AFFIRM THEIR COMMITMENT TO THE NATION AS A WHOLE.

I WOULD LIKE NOW TO TURN TO A MORE DETAILED EXAMINATION OF SOME OF THE AMENDING PROCESS ISSUES.

WE BELIEVE THE **FIRST QUESTION** WHICH MUST BE ADDRESSED BY YOUR COMMITTEE IS THAT OF "MANDATE". THE SECOND IS HOW TO DEVELOP A REFORM PACKAGE. **THE THIRD** IS HOW TO RATIFY ANY PROPOSED PACKAGE. WE WILL DEAL WITH **EACH** OF THE QUESTIONS IN TURN.

MANDATE: LEGITIMIZING CONSTITUTIONAL REFORM

ONE OF THE THRESHOLD QUESTIONS YOU MUST ASK, IS "WHAT IS THE BEST METHOD FOR OBTAINING THE CONSENT OF CANADIANS TO OPEN UP AND CHANGE THE AMENDING FORMULA?". IN OUR VIEW, **CANADIANS MUST HAVE A VOICE** IN THIS CRUCIAL QUESTION, **JUST AS** THEY MUST HAVE A VOICE IN ANY NEW PACKAGE OF **REFORMS WHICH MIGHT BE PROPOSED FOR OTHER PARTS** OF THE CONSTITUTION. **YOUR PUBLIC HEARINGS, IN OUR VIEW, ARE A HELPFUL MECHANISM FOR INTRODUCING CANADIANS TO SOME OF THE ISSUES, BUT SHOULD NOT BE TAKEN AS A MANDATE TO CHANGE THE EXISTING FORMULAS.**

THERE ARE A NUMBER OF WAYS THAT A MANDATE TO AMEND THE AMENDING FORMULA COULD BE **SOUGHT**. OBVIOUSLY, ELECTIONS COULD BE CALLED ON THE ISSUE BUT THIS WOULD BE **UNWIELDY** AND INCONCLUSIVE.

ALTERNATIVELY, NATIONAL AND PROVINCIAL REFERENDA ON THIS QUESTION COULD BE HELD. WE HAVE **SOME RESERVATIONS ABOUT** RECOMMENDING SUCH AN APPROACH BECAUSE OF **THE DIFFICULTIES** OF DRAFTING THE QUESTIONS AND BECAUSE OF THE POTENTIAL **FOR** COMPOUNDING REGIONAL DIFFERENCES, OR IGNORING MINORITY RIGHTS. WHILE A PLEBISCITE COULD ALSO LEAD TO THESE DIFFICULTIES, WE BELIEVE THAT THE NON-BINDING NATURE OF A PLEBISCITE MIGHT MAKE IT A MORE FLEXIBLE MECHANISM. A NATIONAL PLEBISCITE **ON THE QUESTION** OF WHETHER THE AMENDING FORMULA SHOULD BE AMENDED **WOULD AT LEAST GIVE** CANADIANS A CHANCE TO EXPRESS THEIR **VIEWS ABOUT** A MATTER **ON WHICH** MANY FIRST MINISTERS APPEAR TO HAVE ALREADY MADE **UP** THEIR MINDS. IN PRESENTATIONS

BEFORE YOU MANY PEOPLE HAVE SAID THAT THE **AMENDING** FORMULA IS NOT THE PROBLEM.

DEVELOPING A NEW AMENDING FORMULA PACKAGE

ONCE THE ISSUE OF MANDATE **HAS** BEEN SETTLED, THE NEXT STEP IS TO DEVELOP A **PACKAGE OF AMENDMENTS FOR CANADIANS** AND THEIR GOVERNMENTS TO CONSIDER. WE UNDERSTAND THAT YOUR MAIN CONCERN IN THESE **HEARINGS** IS TO **DETERMINE HOW** THE AMENDING PROCESS SHOULD BE CHANGED TO FACILITATE THE RATIFICATION OF ANY SUCH PACKAGE.

IT IS OUR **POSITION** THAT ANY REFORM PACKAGE SHOULD HAVE TWO SEPARATE ASPECTS. THE FIRST SHOULD DEAL WITH ANY PROPOSED CHANGES TO THE AMENDING PROCESS ITSELF, IN **OTHER** WORDS, A "PROCESS" PACKAGE. THE SECOND **SHOULD PROPOSE ANY** SUBSTANTIVE CHANGES. OUR PREFERENCE WOULD BE TO HAVE ANY NEW PROCESS IN PLACE BEFORE SUBSTANTIVE CHANGES TO OTHER **PARTS** OF THE CONSTITUTION ARE CONSIDERED, OTHERWISE WE MUST **ASSUME** THAT ANY SUBSTANTIVE REFORM PACKAGE **WOULD** HAVE TO BE RATIFIED **UNDER** THE EXISTING FORMULA.

ANOTHER REASON FOR DEALING WITH **PROCESS** QUESTIONS SEPARATELY IS THAT THE EXISTING AMENDING FORMULA REQUIRES UNANIMOUS CONSENT TO AMEND THE AMENDING FORMULA. IT **WOULD** BE BEST TO AVOID THE SITUATION IN THE MEECH LAKE **ACCORD** WHEREBY FIRST MINISTERS CREATED A HYBRID FORMULA TO DEAL WITH A PACKAGE THAT CONTAINED AMENDMENTS IN BOTH THE "7 AND 50" AND UNANIMITY CATEGORIES.

WE STRESS THAT THE DEVELOPMENT **OF ANY REFORM** PACKAGE DEALING WITH PROCESS OR SUBSTANTIVE **ISSUES MUST** INCLUDE ABORIGINAL REPRESENTATIVES, AND REPRESENTATIVES **OF** THE TWO TERRITORIAL GOVERNMENTS. **AS** MOST OF YOU KNOW, WE HAVE BEEN IGNORED, OR WORSE, REJECTED, WHEN **CONSTITUTIONAL REFORMS WERE PROPOSED** THAT DIRECTLY AFFECTED OUR VITAL INTERESTS.

WE KNOW THAT A CONSTITUENT ASSEMBLY HAS BEEN-DISCUSSED EXTENSIVELY BEFORE YOUR COMMITTEE. **IF** REPRESENTATION ON SUCH AN ASSEMBLY WERE TO BE BASED ON EQUALITY OF THE PROVINCES, THE TWO NORTHERN TERRITORIES **SHOULD** BE TREATED EQUALLY WITH THE PROVINCES FOR THIS PURPOSE. ABORIGINAL PEOPLES SHOULD SIMILARLY BE INTEGRAL PARTICIPANTS. IF REPRESENTATION IS BASED ON THE REGIONS OF CANADA, THEN THE NORTH SHOULD BE GIVEN EQUAL STATUS AS ONE OF THE FIVE REGIONS ALONG WITH THE WEST, THE ATLANTIC, QUEBEC AND ONTARIO. A MODEL WHICH RELIES SOLELY ON REPRESENTATION BY POPULATION WOULD INEVITABLY UNDERVALUE IMPORTANT INTERESTS. WHATEVER THE MODEL CHOSEN, IT IS OF NO USE TO US IF THE LEGITIMATE INTERESTS OF TERRITORIES AND ABORIGINAL **PEOPLES** ARE LOST IN AMONGST A THOUSAND CLAMORING VOICES.

NEW PROPOSALS FOR **PROCESSES INVOLVING** AN EXPANDED PARLIAMENTARY COMMITTEE COUPLED WITH PUBLIC HEARINGS AND A REFERENDUM OR PLEBISCITE COULD IF DEVELOPED HAVE MERIT, PROVIDED COMPLAINTS WITH THE CURRENT. PROCESS ARE ADDRESSED, INCLUDING THE CONSTRAINTS OF PARTY DISCIPLINE IN MATTERS **OF PROFOUND** IMPORTANCE TO CANADA. A FREE VOTE IN PARLIAMENT AND THE LEGISLATURES IS ONE METHOD WHICH MIGHT HAVE MERIT IN THIS CONTEXT.

RATIFYING A REFORM PACKAGE

THE FINAL STEP WHICH WE BELIEVE **YOUR** COMMITTEE MUST ADDRESS IS RATIFICATION OF ANY **REFORM** PACKAGE THAT MAY BE DEVELOPED. WE HAVE SUGGESTED THAT **CHANGES** TO THE AMENDING FORMULA SHOULD PROCEED AS A SEPARATE PACKAGE AND CLEARLY THE CURRENT AMENDING FORMULA WOULD HAVE TO BE USED TO RATIFY THIS PACKAGE. UNANIMOUS CONSENT OF PARLIAMENT AND ALL provincial LEGISLATURES WOULD BE REQUIRED. THAT, IN OUR VIEW, IS NOT ENOUGH.

WE PROPOSE THAT BEFORE ANY SUCH **PROCESS** AMENDMENTS ARE MADE, **FIRST** MINISTERS SHOULD MEET **TO CONSIDER** Developing **AND** PASSING ORDINARY

MIRROR Legislation IN PARLIAMENT AND ALL PROVINCES AND TERRITORIES TO PROVIDE FOR PUBLIC HEARINGS OR SOME OTHER MECHANISMS FOR OBTAINING THE INPUT **OF CANADIANS**. WE BELIEVE THAT THIS WOULD BE THE MINIMUM **NECESSARY** TO ADDRESS THE DEFICIENCIES IN WHAT WE HAVE CALLED THE "UNWRITTEN" ELEMENTS OF THE CURRENT AMENDING PROCESS.

WE ANTICIPATE THAT ANY NEW AMENDING FORMULA WOULD EVENTUALLY ENTRENCH **PUBLIC HEARINGS OR SOME OTHER** MECHANISM FOR OBTAINING THE INPUT **OF CANADIANS**. IN OUR VIEW IF **FIRST MINISTERS** COULD ACHIEVE A PACKAGE OF "**PROCESS**" AMENDMENTS THAT IS SEEN BY CANADIANS AS LEGITIMATE, THIS WOULD SUBSTANTIALLY REDUCE THE DIFFICULTIES IN OBTAINING THE SUPPORT **OF CANADIANS** FOR A SUBSTANTIVE REFORM PACKAGE.

PRINCIPLES TO GOVERN AMENDMENT PROCESS

THERE **ARE SOME PRINCIPLES** WE BELIEVE SHOULD BE ADDRESSED IN ANY NEW AMENDING **PROCESS** THAT MIGHT BE ENTRENCHED. IN THE SHORT TERM THESE Principles **COULD** BE REFLECTED IN FEDERAL, PROVINCIAL AND TERRITORIAL LEGISLATION.

WE HAVE **GROUPED THESE** principles INTO **SIX DISTINCT** categories. THE LIST IS OBVIOUSLY NOT EXHAUSTIVE:

1. MANDATE:

- GOVERNMENTS MUST HAVE A **CLEAR** MANDATE TO PROCEED WITH ANY FUNDAMENTAL **CHANGES** TO THE CANADIAN CONSTITUTION.

2. ROLE OF THE PEOPLE

- ANY NEW AMENDING **FORMULA MUST** GUARANTEE THAT CANADIANS WILL BE INVOLVED AT ALL **STAGES OF SIGNIFICANT** CONSTITUTIONAL AMENDMENT.

3. ROLE OF LEGISLATURES

ANY NEW AMENDING FORMULA MUST ENSURE THAT A SIGNIFICANT MAJORITY OF MEMBERS OF EACH LEGISLATURE ARE REQUIRED TO RATIFY AMENDMENTS. I HAVE SUGGESTED A FREE VOTE AS A PART OF THIS APPROACH.

4. ROLE OF THE EXECUTIVE

ANY NEW AMENDING FORMULA MUST CLEARLY AND CAREFULLY BALANCE THE ROLE OF THE EXECUTIVE ARM OF GOVERNMENT WITH THE ROLE OF CANADIANS AND THEIR ELECTED REPRESENTATIVES SITTING IN LEGISLATURES.

5. ROLE OF ABORIGINAL NATIONS

ABORIGINAL NATIONS MUST HAVE A GUARANTEED ROLE IN ANY CONSTITUTIONAL AMENDMENT PROCESS THAT AFFECTS ABORIGINAL INTERESTS.

6. ROLE OF THE TERRITORIES

ANY CHANGES TO THE CURRENT AMENDING FORMULA OR ANY NEW FORMULA MUST PROVIDE FOR THE INVOLVEMENT OF TERRITORIAL RESIDENTS AND THEIR ELECTED REPRESENTATIVES IN MATTERS THAT DIRECTLY AFFECT CONSTITUTIONAL DEVELOPMENT IN THE TERRITORIES AND THE ROLE OF TERRITORIAL RESIDENTS IN NATIONAL AFFAIRS.

ANY NEW AMENDING FORMULA THAT MIGHT INVOLVE REGIONAL REPRESENTATION MUST RECOGNIZE THE NORTHERN TERRITORIES AS A DISTINCT REGION WITHIN CANADA, AND NOT AS AN INTEREST GROUP TO BE CONSULTED IN SOME OTHER, LESS FORMAL WAY.

IN ADDITION, WE WOULD LIKE TO OFFER THE FOLLOWING PRINCIPLES **AS A** GENERAL FRAMEWORK FOR SOME OTHER ELEMENTS OF THE AMENDING PROCESS:

INITIATING AMENDMENTS

- CONSTITUTIONAL AMENDMENTS SHOULD ONLY BE INITIATED WHERE IT IS CLEAR THAT STRUCTURAL OR INSTITUTIONAL REFORM IS REQUIRED AFTER ALL AVENUES FOR POLITICAL OR INTERGOVERNMENTAL COOPERATION HAVE BEEN TRIED AND HAVE FAILED.
- ANY NEW AMENDING FORMULA MUST ADDRESS THE ROLES OF CANADIANS, LEGISLATURES AND THE EXECUTIVE IN INITIATING CONSTITUTIONAL REFORM.

TIMING

- THE TIME FRAME FOR AMENDING VARIOUS PROVISIONS OF THE CONSTITUTION MUST BE ADEQUATE TO ALLOW INFORMED INVOLVEMENT OF CANADIANS AND THEIR ELECTED REPRESENTATIVES AT ALL STAGES OF A CONSTITUTIONAL AMENDMENT.

VETO

THE RIGHT OF ANY REGION OR PROVINCE TO A VETO IN CONSTITUTIONAL AMENDMENTS MUST BE CAREFULLY REVIEWED AND SUBSTANTIATED.

WE OFFER THESE Principles **NOT** As A FINAL WORD ON THE SUBJECT BUT SIMPLY TO CONTRIBUTE TO THE DEBATE. **I WOULD NOW** LIKE TO TURN THE FLOOR OVER TO THE HONORABLE RICHARD NERYSOO WHO WILL SAY A **FEW WORDS ABOUT THE** INVOLVEMENT **OF** ABORIGINAL **PEOPLES** IN THE AMENDING PROCESS.

THE Honorable RICHARD NERYSOO:

HONORABLE SENATORS AND MEMBERS OF PARLIAMENT, I AM VERY PLEASED TO BE ABLE TO ADDRESS YOU TODAY. DISCUSSIONS ABOUT THE AMENDING FORMULA BY THEIR NATURE TEND TO BE LEGALISTIC AND TECHNICAL. HOWEVER, IN THE END IT IS ESSENTIAL TO REMEMBER THAT WE ARE TALKING ABOUT AMENDMENTS WHICH AFFECT INDIVIDUALS OR GROUPS OF PEOPLE, NOT JUST THEIR GOVERNMENTS. TOO OFTEN IN THESE DISCUSSIONS, THE FOCUS IS ON GOVERNMENT POWER AND GOVERNMENT CONTROL OF THE LIVES OF CANADIANS. I BELIEVE ONE THEME THAT HAS TO BE DEVELOPED IN YOUR REPORT IS THE NEED TO GIVE TO **CANADIANS MORE EFFECTIVE AND PRECISE CONTROL OF THEIR GOVERNMENTS** AND THEIR LEGISLATURES, IN RELATION TO MATTERS SO FUNDAMENTAL AS AMENDMENTS TO OUR CONSTITUTION. AS AN ABORIGINAL PERSON, I AM PARTICULARLY CONCERNED ABOUT THE ROLE OF ABORIGINAL PEOPLES IN THE CANADIAN CONSTITUTION.

MY ANCESTORS HAVE LIVED AND GOVERNED THEMSELVES IN THIS COUNTRY FOR TENS OF THOUSANDS OF YEARS. WE **PLAYED** A FUNDAMENTAL ROLE IN THE FUR **TRADE, CARRIED OUT BY EUROPEAN** SETTLERS OF BOTH FRENCH AND ENGLISH ORIGIN. OUR NATIONS ENTERED INTO PEACE AND FRIENDSHIP TREATIES AND SHARED THE **USE** AND OCCUPATION OF OUR TRADITIONAL LANDS.

IN THAT CONTEXT WE ARE OUTRAGED BY ANY CONCEPT OF TWO FOUNDING NATIONS, **WHICH DOES NOT INCLUDE** us AS ONE OF **THEM**. THIS CONCEPT AROSE AT A TIME WHEN ABORIGINAL **PEOPLES** WERE IN NO SENSE CONSIDERED EQUAL TO EURO-CANADIANS IF WE WERE CONSIDERED AT ALL. SOME WOULD TELL US THAT WE **SHOULD NOT** BE OFFENDED BY THE TWO **FOUNDING** NATIONS CONCEPT, **THAT IT ONLY RELATES TO A DISTINCT LEGAL** SYSTEM, COURTS AND CULTURE, AND DOES NOT **DIMINISH** RECOGNITION OF OUR PLACE IN CANADA.

BUT WE THINK **CANADA SHOULD TAKE A PAGE OUT OF THE PREAMBLE TO THE NORTHWEST TERRITORIES OFFICIAL LANGUAGES ACT**, WHICH DECLARES THE **EQUALITY OF STATUS OF SIX ABORIGINAL LANGUAGES ALONG WITH ENGLISH**

AND FRENCH. THAT PREAMBLE RECOGNIZES THAT **THE** EXISTENCE OF ABORIGINAL PEOPLES, CENTRED IN THE TERRITORIES FROM TIME IMMEMORIAL, **IS** A FUNDAMENTAL CHARACTERISTIC OF CANADA, AND THAT THE EXISTENCE OF ABORIGINAL PEOPLES, SPEAKING ABORIGINAL LANGUAGES, CONSTITUTES THE TERRITORIES **AS** A DISTINCT SOCIETY WITHIN CANADA.

IN THE NORTHWEST TERRITORIES WE ARE DEVELOPING A SYSTEM OF Government **WHICH** Accommodates Aboriginal PEOPLES AND BUILDS ON THEIR EXPERIENCE AND VALUES.

WE ARE PROUD **TO** BE LEADERS IN **THIS** FIELD. WE ARE THE FIRST JURISDICTION IN CANADA TO TREAT ABORIGINAL PEOPLES AS A FOUNDING PEOPLE **IN** THE PROCESS OF DEVELOPING NEW CONSTITUTIONS FOR TWO NEW TERRITORIES. WE ARE ATTEMPTING A MARRIAGE OF ABORIGINAL SELF-GOVERNMENT AND PARLIAMENTARY GOVERNMENT. THIS EXPERIENCE AND PERSPECTIVE SHOULD BE A **VERY STRONG REASON BY ITSELF** TO ENSURE THAT ABORIGINAL PEOPLES AND TERRITORIAL GOVERNMENTS ARE INCLUDED IN CANADA'S CONSTITUTIONAL COUNCILS.

I MUST **SAY A FEW WORDS ABOUT YOUR** COMMITTEE AND THE TASK IT HAS BEEN MANDATED TO CARRY **OUT**. THE AGENDA **FOR** CONSTITUTIONAL REFORM SEEMS TO BE GROWING AT AN ALARMING RATE. WHAT IS WORSE, WE SEEM TO BE STARTING OFF ON SOME PROJECTS AND THEN LEAVING THEM IN MID-STREAM TO MOVE ON TO OTHERS. WHEN THE CONSTITUTION WAS PATRIATED IN 1982, THERE **WAS** A REQUIREMENT FOR CONSTITUTIONAL CONFERENCES TO IDENTIFY AND DEFINE ABORIGINAL AND TREATY RIGHTS. **I** PERSONALLY PARTICIPATED IN MANY OF **THOSE** CONFERENCES ON BEHALF OF THE GOVERNMENT OF THE NORTHWEST TERRITORIES. WE SPENT FIVE YEARS AT THE TABLE. ONE AMENDMENT **WAS** ACHIEVED **USING** THE "7 AND 50" **FORMULA, BUT IN THE END AN AMENDMENT ON SELF-GOVERNMENT** WAS NOT MADE, BECAUSE OF A LACK OF POLITICAL WILL.

WHEN THE CONSTITUTIONALLY-MANDATED **PROCESS** CAME TO AN END IN 1987 THERE WAS NO NATIONAL **PANIC, NO NATIONAL OUTCRY** TO ACCOMMODATE

ABORIGINAL PEOPLES AND NO EFFORT TO DEAL WITH THEIR CLAIMS AS DISTINCT SOCIETIES WITHIN CANADA. IN FACT, THERE WAS PROBABLY SOMETHING CLOSER TO GENERAL RELIEF BY THE GOVERNMENTS INVOLVED BECAUSE THERE WAS NOW AN EXCUSE FOR MOVING ON TO OTHER ITEMS. ABORIGINAL PEOPLES WERE OBVIOUSLY STUNNED BY THIS FAILURE. BECAUSE, UNLIKE QUEBEC WHICH NOW PREOCCUPIES THE CONSTITUTIONAL STAGE, WE SEEM TO BE LEFT FURTHER AND FURTHER BEHIND.

SINCE 1982, WE HAVE FACED A GROWING LIST OF UNFINISHED BUSINESS AND WE ARE, AS MY COLLEAGUE MR. BALLANTINE HAS POINTED OUT, RAPIDLY TRIVIALIZING THE CONSTITUTIONAL PROCESS **AND THE CONSTITUTION ITSELF BY THE NUMEROUS FALSE STARTS WHICH** WE SEEM TO BE MAKING. FIRST IT WAS THE ABORIGINAL RIGHTS **PROCESS**, THEN IT WAS THE FAILURE OF MEECH LAKE, NOW IT IS DIVISION OF POWERS AND THE AMENDING FORMULA. WITH EACH OF THESE INITIATIVES WE GET FURTHER AND FURTHER AWAY FROM THE REAL PROBLEMS WHICH ARE FACING ABORIGINAL CANADIANS.

THE AMENDING FORMULA IS A LEGAL PROCESS FOR EFFECTING CHANGE. HOWEVER, THE REAL PROBLEM IN **OUR** COUNTRY IS THE POLITICAL PROCESS WHICH NO LONGER SEEMS TO BE ABLE TO ARTICULATE OR CARRY OUT THE WILL OF CANADIANS. RARELY, IF EVER, DID GOVERNMENTS TRULY ACCEPT THE FACT THAT ABORIGINAL PEOPLES ARE A DISTINCT AND INTEGRAL PART OF THIS COUNTRY, AND WANT SIMPLY TO BE RECOGNIZED FOR WHAT THEY HAVE CONTRIBUTED TO CANADA IN THE **PAST** AND ALLOWED TO CONTRIBUTE TO CANADA IN THE FUTURE. IT IS PERHAPS BECAUSE OF THIS THAT ABORIGINAL PEOPLES SO OFTEN FOCUS ON **PROCESS**.

LIKE OTHER CANADIANS, WE DO **NOT** HAVE ALL THE ANSWERS. WE HAVE NOT PRECISELY DEFINED ALL OF OUR VITAL INTERESTS NOR DO WE HAVE SOME PERFECT STRUCTURE GUARANTEED TO ACHIEVE THOSE INTERESTS.

WE, LIKE MANY OTHER CANADIANS, ARE STRUGGLING TO GAIN CONTROL OF OUR LIVES AND TO INSURE THAT **WE DO** NOT FALL BY THE WAYSIDE IN THE RAPID PACE OF LIFE WHICH THE MODERN WORLD DICTATES.

ONE OF THE CENTRAL PROCESSES FOR DEALING WITH-ABORIGINAL PEOPLES IN CANADA TODAY IS THE LAND CLAIMS PROCESS WHICH, AS YOU KNOW, IS LIMITED BY FEDERAL RESOURCES AND FEDERAL POLICY TO COVER ONLY A FEW GROUPS IN A FEW **PARTSOFCANADA.THE** PRIME MINISTER'S RECENT ANNOUNCEMENT OF **MEASURES TO** EXPAND AND SPEED UP THE LAND CLAIMS PROCESS IS A WELCOME, **LONG OVERDUE,** STEP FORWARD. HOWEVER, I MUST POINT OUT THAT WHILE FINANCIAL RESOURCES MAY ALLOW ADDITIONAL BANDS OR ABORIGINAL GRouPs To BEGIN NEGOTIATIONS, THE GOVERNMENT OF CANADA MUST ALSO BE PREPARED TO ADDRESS THE MATTER OF REVIEWING AND AMENDING THE FEDERAL CLAIMS POLICY. SUCCESS IN CONCLUDING ANY LAND **CLAIMS** AGREEMENTS WILL HINGE ON THE ABILITY OF PUBLIC POLICY TO RESPOND TO THE DIFFERENT ISSUES REQUIRED TO BE NEGOTIATED BETWEEN GOVERNMENTS AND THE ABORIGINAL PEOPLES. ALTHOUGH WE ARE NOT YET CERTAIN OF HOW HIS INITIATIVE WILL BE CARRIED OUT, THE PRIME MINISTER **WOULD DO WELL TO** APPOINT NORTHERNERS **TO HIS** RECENTLY **ANNOUNCED** LAND **CLAIMS** COMMISSION, PARTICULARLY **SINCE** WE HAVE DEVELOPED EXTENSIVE EXPERIENCE OVER THE LAST FIFTEEN **YEARS OF** LAND **CLAIMS** NEGOTIATION AND SETTLEMENT, INCLUDING THE IMPLEMENTATION **OF** THE INUVIALUIT CLAIM. IT IS FUNDAMENTAL THAT **CANADAPRESSFORWARDWITHTHE** SETTLEMENT OF SPECIFIC AND COMPREHENSIVE LAND CLAIMS IN **ORDER** TO REGAIN THE TRUST OF THE ABORIGINAL PEOPLES OF **CANADA.**

LAND CLAIMS AGREEMENTS ARE RECOGNIZED **BY SECTION 35** OF THE CONSTITUTION OF CANADA **AS MODERN** TREATIES AND TO THAT EXTENT THEY HAVE THE PROTECTION" **OF** THE CANADIAN CONSTITUTION. THESE AGREEMENTS THEREFORE **AMOUNT TO ONE FORM OF** CONSTITUTIONAL AMENDMENT.

ABORIGINAL PEOPLES **AS A DISTINCT GROUP OF** CANADIANS ARE CLEARLY RECOGNIZED UNDER **SECTION 35,** AND **THEY** ARE GIVEN CERTAIN PROTECTIONS AGAINST **CHARTER** INTERFERENCE BY SECTION 25 OF THE **CHARTER.** SECTION 35.1 PROVIDES THAT BEFORE ANY CHANGES CAN BE MADE

TO FEDERAL **POWERS OVER** ABORIGINAL PEOPLES THERE MUST BE A FIRST MINISTERS* CONFERENCE TO WHICH ABORIGINAL PEOPLES ARE INVITED.

WE THEREFORE **DO NOT THINK IT IS GOING** TOO FAR TO SUGGEST THAT THE **AMENDING PROCESS SHOULD INCLUDE** A ROLE FOR ABORIGINAL PEOPLE WHEREVER AN AMENDMENT **AFFECTS** THEIR INTERESTS, RECENT CASES FROM THE SUPREME COURT OF CANADA **APPEAR TO INDICATE THAT THE TREATIES, FOR EXAMPLE, CANNOT BE ALTERED UNILATERALLY OR WITHOUT THE CONSENT OF THE ABORIGINAL PEOPLES** WHO ARE PARTIES TO THEM.

SO IF INDEED YOUR GOAL **IS TO FIND** AN AMENDING FORMULA WHICH ALLOWS THE THREADS OF THE **COUNTRY TO BE PICKED UP ONCE MORE AND REWOVEN** INTO **A NEW NATIONAL FABRIC**, THEN WE THINK YOU MUST FIND A ROLE IN THE FORMAL AMENDING **FORMULA FOR ABORIGINAL PEOPLES.**

WHEN **DRAFTS OF THE NEW CONSTITUTION** WERE REVIEWED IN 1981 THE ENTIRE LEGISLATIVE **ASSEMBLY FLEW TO OTTAWA TO PROTEST** THE FACT THAT A **GUARANTEE FOR ABORIGINAL RIGHTS** HAD BEEN DROPPED FROM THE CONSTITUTION. WE **ALSO** PROTESTED PROVINCIAL INVOLVEMENT IN THE CREATION OF NEW PROVINCES. WHILE WE FAILED TO CHANGE THIS LATTER ASPECT, FIRST MINISTERS **FINALLY RE-INSERTED** AN ABORIGINAL RIGHTS CLAUSE. IF ABORIGINAL **CONSENT TO AMENDMENTS AFFECTING OUR VITAL INTERESTS WAS** ACCEPTED, THEN **FULL AND DIRECT PARTICIPATION BY ABORIGINAL PEOPLES WOULD** BE CONSTITUTIONALLY GUARANTEED.

THE PRIME MINISTER'S ANNOUNCEMENT THAT A **ROYAL COMMISSION** WILL BE ESTABLISHED **TO EXAMINE THE ECONOMIC, SOCIAL AND CULTURAL SITUATION** OF ABORIGINAL PEOPLES IS, IN THE **PRIME MINISTER'S OWN WORDS**, NO SUBSTITUTE FOR **CONSTITUTIONAL REFORM. NOR** SHOULD IT HINDER OR DELAY THE **CONSTITUTIONAL RECOGNITION OF** ABORIGINAL RIGHTS INCLUDING THE RIGHT **TO SELF-GOVERNMENT. HOWEVER, A ROYAL COMMISSION, PROPERLY STRUCTURED AND MANDATED COULD** PLAY AN IMPORTANT ROLE IN RESOLVING THE **WIDE RANGE OF** PROBLEMS FACING ABORIGINAL PEOPLES IN **CANADA TODAY. AGAIN, I BELIEVE THE NORTHWEST**

TERRITORIES COULD PROVIDE A WEALTH OF EXPERIENCE AND A VALUABLE PERSPECTIVE IN ANY SUCH COMMISSION.

CONSTITUENT ASSEMBLIES HAVE BEEN DISCUSSED IN MANY SUBMISSIONS TO YOUR COMMITTEE. WE HAVE A NUMBER OF RESERVATIONS ABOUT SUCH ASSEMBLIES. WE AGREE WITH THE ASSEMBLY OF FIRST NATIONS THAT CONSTITUENT ASSEMBLIES CANNOT RELIEVE CANADA OF THE OBLIGATION TO DEAL DIRECTLY WITH ABORIGINAL PEOPLES AND TO OBTAIN THEIR CONSENT TO CONSTITUTIONAL AMENDMENTS. MOREOVER IF THEY ARE BASED ON REPRESENTATION BY POPULATION, THE VOICE OF THE TERRITORIES WILL NOT BE ADEQUATELY HEARD.

MR. BALLANTYNE WILL NOW GIVE YOU A BRIEF ANALYSIS OF EXISTING AMENDING FORMULA PROVISIONS OF PARTICULAR CONCERN TO THE NORTHWEST TERRITORIES.

THE HONORABLE MICHAEL BALLANTINE:

I WILL MAKE A BRIEF ANALYSIS OF PART FIVE OF THE CONSTITUTION ACT IN A MOMENT. I SIMPLY POINT OUT HERE THAT AS THE AMENDING FORMULA PRESENTLY STANDS, THERE IS NO MENTION WHATSOEVER OF THE TWO TERRITORIES IN RELATION TO ANY TYPE OF AMENDMENT.

I MUST REMIND MEMBERS OF **YOUR** COMMITTEE THAT THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES **IS** RECOGNIZED IN OTHER PROVISIONS OF THE CONSTITUTION. FOR EXAMPLE, SECTION 3 OF THE CHARTER WHICH GUARANTEES THE RIGHT **TO VOTE** IN ELECTIONS OF A LEGISLATIVE ASSEMBLY MUST BE READ **TO INCLUDE** THE LEGISLATIVE ASSEMBLIES OF THE NORTHWEST TERRITORIES AND **YUKON** BY VIRTUE OF SECTION 30 OF THE CHARTER WHICH DEFINES THE **WORD** "PROVINCE" AND "LEGISLATURE" IN THE CHARTER TO INCLUDE THE NORTHWEST TERRITORIES AND YUKON.

IN ADDITION, CERTAIN PROVISIONS IN RELATION TO THE SENATE DEFINE THE WORD "PROVINCE" TO INCLUDE THE NORTHWEST TERRITORIES AND YUKON. I AM REFERRING TO THE PROVISIONS OF THE CONSTITUTION ACT (NO.2), 1975.

FURTHERMORE, DURING THE **CONSTITUTIONAL** CONFERENCES ON ABORIGINAL AFFAIRS FROM 1982 TO 1987 THERE WAS RECOGNITION IN THE CONSTITUTION THAT THE ELECTED REPRESENTATIVES OF THE TERRITORIAL GOVERNMENTS HAD A **DIRECT** INTEREST IN THOSE TALKS AND WERE TO BE INVITED TO PARTICIPATE BY THE PRIME MINISTER.

I SHOULD ALSO REMIND MEMBERS OF THE COMMITTEE THAT THE FINAL COMMUNIQUE ISSUED BY FIRST MINISTERS IN OTTAWA IN JUNE, 1990, CONTAINED NUMEROUS REFERENCES TO THE TERRITORIES. OUR PARTICIPATION IN SUCH MATTERS AS FUTURE CONSTITUTIONAL CONFERENCES, NOMINATING MEMBERS FOR THE SENATE AND THE SUPREME COURT OF CANADA, WOULD HAVE BEEN CONSTITUTIONALLY GUARANTEED HAD THE ACCORD SURVIVED.

MORE SPECIFICALLY THERE WAS RECOGNITION IN THE JUNE ACCORD THAT THE CURRENT AMENDING **FORMULA** IN RELATION TO THE CREATION OF NEW PROVINCES HAD TO BE RE-EXAMINED. THE FINAL COMMUNIQUE CONTAINED A COMMITMENT TO HOLD A **FIRST MINISTERS'** CONFERENCE TO DISCUSS THE APPROPRIATE FORMULA TO BE APPLIED IN ADMITTING A NEW PROVINCE, INCLUDING A CONSIDERATION OF THE FORMULA CONTAINED IN THE CONSTITUTION ACT, 1871 WHICH ALLOWS PARLIAMENT ALONE TO ESTABLISH NEW PROVINCES.

I RAISE THESE ISSUES **WITH YOUR COMMITTEE SIMPLY** TO HIGHLIGHT THE FACT THAT A CLOSER LOOK AT **THE AMENDING FORMULA** IS WARRANTED IN LIGHT OF THE **QUASI-PROVINCIAL STATUS WHICH** TERRITORIES NOW HOLD IN THE CANADIAN FEDERATION.

THE TWO FORMULAS REFERRED TO MOST OFTEN ARE THE SO-CALLED "7 AND 50" FORMULA (SS.38 AND 42) AND THE UNANIMITY FORMULA (S.41). GOVERNMENTS ARE USUALLY OBSESSED BY THE NUMBER OF PROVINCES NEEDED TO RATIFY AMENDMENTS UNDER THESE SECTIONS. HOWEVER, THIS MISSES THE MORE BASIC PURPOSE OF ALL THE AMENDING FORMULAS WHICH IS TO DEVELOP CHANGES TO THE **CANADIAN** CONSTITUTION WHICH ARE FAIR AND EQUITABLE AND ACCURATELY REFLECT **A CANADA OF WHICH CANADIANS CAN** BE PROUD.

WHILE NO ONE HAS GIVEN US ANY GOOD REASON WHY TERRITORIES SHOULD BE EXCLUDED FROM THAT PORTION OF THE RATIFICATION PROCESS, PRESCRIBED BY THE AMENDING FORMULA, THERE IS NO REASON TO EXCLUDE THE TERRITORIAL GOVERNMENTS FROM THE INTERGOVERNMENTAL DISCUSSIONS SURROUNDING PROPOSED AMENDMENTS UNDER THESE TWO FORMULAS. MEECH LAKE ILLUSTRATED THIS POINT. SEVERAL EMBARRASSING OMISSIONS IN THAT ACCORD REFLECTED BADLY ON CANADA.

FOR EXAMPLE, EXCLUDING CANADIANS IN THE TWO TERRITORIES FROM **A** NATIONAL INSTITUTION LIKE THE SUPREME **COURT** OF CANADA COULD NOT BE JUSTIFIED SIMPLY ON THE BASIS THAT THE TERRITORIES ARE NOT PROVINCES. DENYING INDIVIDUALS ANY REAL OPPORTUNITY TO BE NOMINATED **SIMPLY ON THE BASIS OF GEOGRAPHY** AND THE CONSTITUTIONAL STATUS OF THE JURISDICTION IN WHICH THEY HAPPEN TO BE LIVING, WAS TOTALLY UNFAIR.

THE TERRITORIES HAVE A ROLE IN ALL **OF THESE** INTERGOVERNMENTAL DISCUSSIONS ON CONSTITUTIONAL **REFORM**, IF ONLY TO REMIND FIRST MINISTERS TO CONSIDER **CANADA'S FIFTH REGION AND TO** ENSURE THAT SUCH OVERSIGHTS DO NOT HAPPEN IN THE FUTURE.

YOU ARE ALL NO DOUBT FAMILIAR WITH OUR DIFFICULTIES WITH THE SECTION 42 AMENDING FORMULA WHICH PROVIDES, AMONG OTHER THINGS, THAT AMENDMENTS TO THE CONSTITUTION **OF CANADA** IN RELATION TO

EXTENSION OF EXISTING PROVINCES INTO THE TERRITORIES, AND THE ESTABLISHMENT OF NEW PROVINCES, MUST BE MADE UNDER THE "7 AND 50" FORMULA.

SECTION 42 IS CONSIDERED TO **BE** A "NATIONAL INSTITUTIONS" CLAUSE AND MATTERS RELATING TO THE TWO TERRITORIES SHOULD NOT BE CONTAINED IN THIS SECTION. THE **ADMISSION** OF NEW PROVINCES TO CANADA WARRANTS A SEPARATE PROVISION IN ANY NEW AMENDING FORMULA. WE DO NOT AGREE THAT TERRITORIES **SHOULD** OR COULD BE CONSIDERED NATIONAL INSTITUTIONS IN THIS CONTEXT.

BECAUSE SENATOR **BEAUDOIN** ASTUTELY REFERRED IN YELLOWKNIFE TO THE EFFECT OF THE CONSTITUTION ACT, 1871 ON THE CREATION OF NEW PROVINCES OUT OF EXISTING TERRITORIES, WE HAVE INCLUDED A BRIEF DISCUSSION OF THAT IN AN APPENDIX TO THIS PRESENTATION RATHER THAN DWELLING ON IT HERE.

FINALLY, ONE BRIEF COMMENT ABOUT SECTION 42(1)(E) **WHICH ALLOWS** EXTENSION OF PROVINCIAL BOUNDARIES INTO THE TERRITORIES. WE FIND IT UNDEMOCRATIC THAT THE PROVINCES AND THE FEDERAL GOVERNMENT COULD AGREE TO EXTEND BOUNDARIES INTO A TERRITORY WITHOUT SO MUCH AS CONSULTING TERRITORIAL RESIDENTS AND THEIR ELECTED REPRESENTATIVES. THERE ARE LEGITIMATE, CONSTITUTIONALLY-RECOGNIZED DEMOCRATIC INSTITUTIONS IN EXISTENCE IN THE TERRITORIES AND IT IS PRESUMPTUOUS TO THINK THAT THESE COULD BE ELIMINATED AT THE INSTIGATION OF ANOTHER **PROVINCE, OR OUR NATIONAL GOVERNMENT**. WE DO NOT THINK THAT THE **CURRENT EXTENSION FORMULA** HAS ANY PLACE IN A MODERN DEMOCRATIC **NATION**. SECTION 42(1)(E) SHOULD BE DELETED, TOGETHER WITH THE COMPARABLE PROVISION IN THE CONSTITUTION ACT, 1871. THE SECTION 43 FORMULA WHICH ALLOWS BOUNDARY CHANGES ONLY WITH THE **APPROVAL OF THE AFFECTED PROVINCES SHOULD** INCLUDE SIMILAR SAFEGUARDS FOR THE TERRITORIES.

I WOULD NOW LIKE TO ASK MR. JOHN NINGARK TO MAKE SOME CONCLUDING REMARKS.

MR. NINGARK, M. L. A.:

[IN ENGLISH] THANK YOU. IT IS A PLEASURE TO APPEAR BEFORE YOU TODAY. AS AN **INUK**, I WILL SPEAK IN THE **LANGUAGE** OF MY PEOPLE, WHICH I REALIZE YOU ARE NOT SET UP TO HANDLE, SO MY WRITTEN TEXT IS IN ENGLISH AND FRENCH SO YOU CAN FOLLOW ALONG.

MY ANCESTORS **CAME TO CANADA** AND ESTABLISHED SOVEREIGNTY IN THE ARCTIC LONG BEFORE OTHER **CULTURES** EVEN THOUGHT ABOUT EXPLORING THIS GREAT LAND. WE HARVESTED AND CONTINUE TO HARVEST FOODS FROM LANDS AND WATERS CONSIDERED BARREN AND FRIGID BY OTHERS.

OUR LEGENDS AND TRADITIONS HAVE REMAINED INTACT OVER MANY CENTURIES. OUR CULTURAL ROOTS AND TRUST IN OUR TRADITIONAL PRACTICES AND ACCOMPLISHMENTS ARE **SOLID**. OUR CHOSEN LAND REQUIRED US TO MAINTAIN SMALL, WELL-FOCUSED SOCIAL UNITS, TO RESPECT THE ENVIRONMENT AND TO HOLD THE LANDS AND WATERS AND ALL THEY OFFERED AS A SACRED TRUST.

SO WE ARE DEEPLY TROUBLED BY THE AGRICULTURAL PESTICIDES AND INDUSTRIAL POLLUTANTS, **FROM THE RIVERS** AND FACTORIES OF EUROPE WHICH **NOW** TAIN T SEA **MAMMALS** AND CARIBOU, OUR PRIMARY FOOD SOURCES. CONSTITUTIONAL DISCUSSIONS ABOUT DIVISION OF POWERS AND THE RESPONSIBILITY FOR THE ENVIRONMENT **MUST** BE MINDFUL OF OUR VITAL INTERESTS.

THE NORTHWEST TERRITORIES IS A HOMELAND **FOR** A NATIVE MAJORITY THAT ENJOYS A SPECIAL **QUALITY OF LIFE** AND **SPIRIT** THAT IS UNIQUE TO NORTHERN **COUNTRIES**. **THIS QUALITY OF LIFE** IS CHARACTERIZED BY **AN** ATMOSPHERE OF PEACE AND FREEDOM, RESPECT FOR TRADITION,

ACCEPTANCE OF CULTURAL DIFFERENCES AND **AN** OPENNESS TO NEW WAYS,

IT IS A HOMELAND FOR **PEOPLE** WHO ARE DETERMINED TO EXERCISE CONTROL OVER THEIR OWN LAND AND THEIR OWN POLITICAL AND CONSTITUTIONAL FUTURES. THIS IS BEING REALIZED IN PART THROUGH THE SETTLEMENT OF A LAND CLAIM AMONG THE **INUIT** OF NUNAVUT.

THE NORTHWEST TERRITORIES IS A JURISDICTION WHICH WANTS TO TAKE ITS RIGHTFUL PLACE WITHIN CONFEDERATION - A JURISDICTION POPULATED BY PROUD CANADIANS EAGER TO TAKE THEIR FULL SHARE OF RESPONSIBILITY IN HELPING TO ENSURE CANADA'S SURVIVAL AND THE NORTHWEST TERRITORIES' PLACE IN IT.

UNLIKE SOUTHERN PROVINCES, WE DO NOT HAVE A GOVERNMENT THAT IS BASED ON A POLITICAL PARTY SYSTEM. OVER TWO THIRDS OF OUR LEGISLATURE IS OF Aboriginal **DESCENT** AND WE WORK TOGETHER WITH OUR NON-NATIVE Colleagues To MAKE DECISIONS AND RESOLVE CONFLICTS BY CONSENSUS.

IT IS BECAUSE **OF THIS** THAT WE BELIEVE **AMENDMENTS** To THE Constitution SHOULD NOT BE MADE ON THE **BASIS OF PARTY** DISCIPLINE IN PARLIAMENT OR IN THE VARIOUS LEGISLATURES **ACROSS** THE COUNTRY. THE FUTURE OF CANADA AND ITS **PLACE** WITHIN THE **GLOBAL COMMUNITY** IS TOO IMPORTANT TO BE DECIDED **ALONG PARTISAN LINES**.

WE SEE THE AMENDING **FORMULA** As A RELATIVELY UNTESTED PROCESS WHICH **SHOULD NOT BE CONDEMNED BECAUSE OF** A FAILURE OF ANY PARTICULAR INITIATIVE. ONE **PROBLEM** WITH THE EXISTING FORMULAS IS THAT THEY **LACK** A FORMAL METHOD **FOR INCLUDING** CANADIANS IN THE AMENDING **PROCESS**. WE BELIEVE GOVERNMENTS **CAN** RECTIFY THIS PROBLEM, IN THE SHORT TERM, BY LEGISLATION.

EVENTUALLY, WE BELIEVE THE AMENDING **FORMULA MUST** PROVIDE **A FAIR** PROCESS FOR TERRITORIES To ACHIEVE **PROVINCEHOOD**. THIS PROCESS

SHOULD ALLOW THE TERRITORY CONCERNED TO NEGOTIATE ITS CONSTITUTION WITH THE FEDERAL GOVERNMENT **IN** A BILATERAL MANNER. PROVINCIAL INPUT SHOULD ONLY OCCUR THROUGH A CONSTITUTIONAL CONFERENCE OR POSSIBLY IN A REFORMED SENATE.

IN ADDITION, THE TERRITORIES MUST BE GIVEN THE SAME PROTECTION FOR THEIR BOUNDARIES THAT PROVINCES HAVE UNDER THE EXISTING CONSTITUTION.

AS MR. NERYSOO STATED, WE FORM A DISTINCT SOCIETY WITHIN CANADA. IT IS A SOCIETY THAT HAS A LOT TO OFFER WITH RESPECT TO THE DEVELOPMENT OF A NEW AMENDING PROCESS AND CONSTITUTIONAL CHANGE - THE KIND OF CHANGE THAT IS REQUIRED TO ENSURE CANADA MOVES FORWARD IN A UNIFIED FASHION RATHER THAN IN THE CONFRONTATIONAL MANNER THAT IS CURRENTLY FRUSTRATING TO ALL OF US.

FINALLY, WE ARE READY To Do **OUR PART**. THE QUESTION THAT HAS TO BE ANSWERED IS WHETHER **CANADA IS BIG ENOUGH TO** LET US TAKE OUR PROPER PLACE AT THE TABLE. THANK YOU.

APPENDIX: ESTABLISHMENT OF NEW PROVINCES

IN OUR TECHNICAL BRIEF TO THE CHAREST COMMITTEE IN APRIL 1990, WE SUGGESTED THAT THERE ARE TWO POSSIBLE INTERPRETATIONS OF THE AMENDING FORMULA IN SECTION 42. THE FIRST IS ONE WE OFTEN FEEL COMPELLED TO RESPOND TO BEFORE COMMITTEES SUCH AS YOURS. THAT IS OF COURSE THE INTERPRETATION THAT THE SECTION 42 FORMULA REQUIRES THAT NEW PROVINCES **CAN** ONLY BE ESTABLISHED IF THE "7 AND 50" FORMULA IS EMPLOYED.

HOWEVER THERE IS ANOTHER WAY TO READ THIS PROVISION. SECTION 2 OF THE CONSTITUTION ACT, 1871 GIVES PARLIAMENT THE **EXCLUSIVE LEGISLATIVE AUTHORITY** TO **ESTABLISH** NEW PROVINCES IN THE TERRITORIES. THIS **CONTINUES** TO BE PART OF THE "CONSTITUTION OF CANADA" BY VIRTUE OF SECTION 52 OF THE 1982 ACT. THE RELATIONSHIPS BETWEEN PARLIAMENT'S UNILATERAL LEGISLATIVE **AUTHORITY** IN THE 1871 ACT, AND THE PROVINCIAL **ROLE** IN ESTABLISHING NEW **PROVINCES** UNDER SECTION 42, HAVE NOT BEEN ADEQUATELY EXPLORED.

FOR EXAMPLE, IT DOES **NOT APPEAR** THAT THE **CREATION** OF A NEW PROVINCE, **BY PARLIAMENT ACTING ALONE**, WOULD NECESSARILY REQUIRE ANY AMENDMENTS TO THE "CONSTITUTION OF CANADA" **SUCH THAT PROVINCIAL INTERESTS WOULD BE AFFECTED**. THE **PLAIN WORDING OF SECTION 42 IS** THAT **PROVINCES ONLY** NEED BE INVOLVED **IF** THERE IS AN AMENDMENT "TO THE CONSTITUTION OF CANADA". IN OUR VIEW THERE IS NO PROVISION OF THE CONSTITUTION **WHICH WOULD NECESSARILY HAVE TO BE CHANGED WHEN A NEW PROVINCE IS CREATED**. **SIMPLE FEDERAL LEGISLATION IS ALL THAT IS REQUIRED BY THE 1871 ACT**. IN OTHER WORDS, **PERHAPS PARLIAMENT'S UNILATERAL POWER TO CREATE NEW PROVINCES IS PRESERVED BY THE 1871 ACT AND INDEED IT WOULD REQUIRE SEVEN PROVINCES REPRESENTING ONE HALF OF THE POPULATION OF CANADA TO CHANGE OR REMOVE PARLIAMENT'S UNILATERAL POWER**.

NO PROVINCE HAS IDENTIFIED PRECISELY WHICH SECTIONS IN THE CONSTITUTION OF **CANADA** WOULD BE ALTERED BY THE CREATION OF A NEW PROVINCE. THE FACT THAT **CREATING** A NEW PROVINCE MAY HAVE AN EFFECT ON FISCAL RELATIONS OR EVEN THE CHEMISTRY OF THE "7 AND 50" FORMULA, CANNOT BE CONSTRUED **AS** AMENDMENTS TO "THE CONSTITUTION OF CANADA". EVEN THE "7 AND 50" FORMULA ITSELF IS ACTUALLY A "2/3 AND 50" FORMULA WHICH EASILY ACCOMMODATES THE NOTION THAT THERE MAY BE MORE THAN TEN PROVINCES.

THERE IS ALSO NO INDICATION IN SECTION 42 AS TO WHETHER PROVINCES MAY **INTRODUCE** AMENDMENTS **IN RELATION** TO THE PROPOSED CONSTITUTION OF A NEW PROVINCE OR WHETHER THE INTENTION IN THE "7 AND 50" FORMULA WAS TO GIVE EXISTING PROVINCES A SIMPLE "YES" OR "NO" CHOICE AS TO WHETHER A PROVINCE IS TO BE ADMITTED. PREMIER BOURASSA IN THE PAST HAS SAID VERY CLEARLY, **FOR** EXAMPLE, THAT HE HAS NO INTEREST, AND HAS NO RIGHT TO BE INTERESTED IN, WHAT OCCURS IN ALBERTA OR ONTARIO. HOWEVER, THAT MAY NOT BE A VIEW SHARED BY EVERYONE.

IF OUR VIEW OF THE CONTINUED VITALITY OF THE 1871 ACT IS WRONG THEN ONE OF THE OFFENSIVE **ASPECTS** ARISING OUT OF THE CREATION OF NEW PROVINCES WOULD BE INITIATING THE **WHOLE** PROCESS. UNDER SECTION 46 OF PART FIVE WE FIND THAT THE AMENDING **PROCESS** CAN BE INITIATED BY PARLIAMENT OR THE **PROVINCES, BUT NOT** BY THE TERRITORIES. THERE IS NO REFERENCE HERE TO A **TERRITORY WHICH SEEKS** TO BE A PROVINCE. WE DO NOT EVEN GET THE TREATMENT GIVEN TO COLONIES IN 1867. UNDER THE CONSTITUTION ACT, 1867 NEW "COLONIES OR PROVINCES" SUCH AS NEWFOUNDLAND, PRINCE EDWARD ISLAND AND **BRITISH** COLUMBIA, WERE ADMITTED PURSUANT TO **SECTION** 146. **THIS SECTION** AT LEAST REQUIRED JOINT ADDRESSES FROM PARLIAMENT AND **FROM** THE LEGISLATURE OF THE COLONY CONCERNED. **AND WHILE THE 1871 ACT DOES NOT** CONTEMPLATE ADDRESSES FROM TERRITORIAL Legislatures, IN **FACT** THE CREATION OF ALBERTA AND SASKATCHEWAN UNDER THE **1871 ACT** ONLY OCCURRED AFTER REPEATED REPRESENTATIONS **FROM** THE TERRITORIES' LEGISLATURE.

ANY NEW AMENDING FORMULA REPLACING THE 1871 ACT **MUST INCLUDE A ROLE FOR THE TERRITORIES IN INITIATING PROVINCEHOOD. IN OUR VIEW, THE MATTER SHOULD BE BETWEEN PARLIAMENT AND THE TERRITORY, WE WOULD POINT OUT THAT PREMIER MCKENNA'S COMPANION ACCORD, WHICH WAS EXAMINED BY THE CHAREST COMMITTEE, TOOK THIS APPROACH. THERE MAY BE SOME RATIONALE FOR HAVING A FIRST MINISTERS' CONFERENCE PRIOR TO THE PASSAGE OF ANY ACT CREATING A NEW PROVINCE. IN THIS WAY ANY PROVINCIAL CONCERNS COULD AT LEAST BE DISCUSSED. MR. TRUDEAU HAD SUGGESTED THIS SORT OF CONFERENCE REQUIREMENT IN BILL C-60 IN THE LATE 1970'S. OR ALTERNATIVELY, PARLIAMENT COULD LEAVE TO A REFORMED SENATE THE ROLE OF EXAMINING REGIONAL INTERESTS, IF ANY, ARISING FROM ANY BILL PROPOSING TO CREATE A NEW PROVINCE. THE SENATE WAS DESIGNED TO ALLOW REGIONAL REPRESENTATION AND PROVINCIAL REPRESENTATION IN THE FEDERAL PARLIAMENT.**

ESTABLISHING A NEW **PROVINCE** IS A NATIONAL MATTER AND THE PROCESS SHOULD NOT ALLOW PROVINCIAL GOVERNMENTS TO **CREATE** LINKAGES WITH LOCAL OR PROVINCIAL ISSUES.

APPENDIX E

LIST OF RECOMMENDATIONS

A. Recommendations which require amendments to the Constitution:

Amending Formula (four regional vetoes)

1) We recommend that the amending formula contained in sections 38 and 42 of the **Constitution Act, 1982** (whereby the **approval** of the Senate, the House of Commons and at least two-thirds of the provinces representing at least 50 per cent of the population is required) and the amending formula in section 41 (whereby the approval of the Senate and the House of Commons and every province is required) be changed such that constitutional amendments would require the approval of the **Senate** and the House of Commons and each of the four regions of **Canada**, as follows:

- a) at least two of the following provinces Nova **Scotia**, New **Brunswick**, Prince Edward Island and **Newfoundland**;
- b) **Quebec**;
- c) **Ontario**; and
- d) at least two of **Manitoba**, British Columbia **Saskatchewan**, and **Alberta**, representing at least 50 per cent of the **population** of that region.

except that the requirement of unanimity should be retained respecting

- i) the use of the English or the **French** language (as contained in section 41(c) of the **Constitution Act, 1982**), including the rights of linguistic **minorities**;
- ii) the proprietary rights of **provinces**;
- iiii **the offices** of **the Queen, Governor General and Lieutenant Governor**;
- iv) any change to provisions i to **iii**,

and excepting provisions with respect to the territories and the aboriginal peoples contained in other **recommendations**.

2) In making this **recommendation**, the **Committee** realizes **that**, in practice, a new amending formula should be adopted only in the context of a substantial package of constitutional reform **including**, for **instance**, the reform of the Senate.

- 3) We recommend that the amending formula contained in sections 43,44 and 45 of the *Constitution Act, 1982* remain unchanged.

Ratification Period

- 4) We recommend that the maximum period for the ratification of proposed constitutional amendments be two years, beginning on the day on which a proposal **is** ratified by either a federal or provincial legislature.

Aboriginal Peoples

5) *In* order to protect the aboriginal and treaty rights which the Canadian Constitution guarantees to the aboriginal people of **Canada**, we recommend that any amendment to the Constitution of Canada directly affecting the aboriginal peoples require **the** consent of the aboriginal peoples of Canada.

- 6) We recommend that the Constitution of Canada provide for a process of biennial constitutional **conferences** to address the rights of aboriginal peoples, the first such conference to be convened no later than one year after the amendment comes into **force**.

Territories

- 7) We **recommend** that the extension of existing provinces into the territories require the consent of the legislature of any territory and any province affected, and the Parliament of **Canada**.

Creation of New Provinces

- 8) We **recommend**:

- a) that the creation of new provinces in the territories require only the consent of the legislature of any territory **affected**, and the Parliament of **Canada**; and
- b) that it be recognized that the creation of a new province may change the equilibrium **within** the federation and may require review of the existing amending procedure. Should the addition of a new province **require** a change in the amending **procedure**, such **change would be governed by the amending** procedure in effect at that time.

The Supreme Court of Canada

- 9) We recommend that the Constitution of Canada be amended to provide that at least three judges of the Supreme Court of Canada be appointed from among persons who, after having been admitted to the bar of **Quebec, have**, for a total of at least ten

years, been judges of any **court** of **Quebec** or of any court established by the Parliament of **Canada**, or members of **the bar** of Quebec. The other six judges would be appointed from other provinces and the territories.

Proprietary rights of provinces

- 10) We recommend that the **proprietary** rights of the provinces remain protected by the unanimity rule.

B. Recommendations which do not now require amendments to the Constitution:

Aboriginal Peoples

- 11) We recommend that representatives of the aboriginal peoples of Canada be invited to participate in **all** future institutional **conferences**.

Territories

- 12) We recommend that the territorial governments be invited to participate in all future constitutional conferences.

Delegation of Legislative Powers

- 13) **The delegation** of powers **between** Parliament and legislatures does not exist. Its existence should be provided for by constitutional **amendment**, and we strongly recommend that the next constitutional **committee** study that question in the framework of the division of **powers**.

Opting Out and Compensation

- 14) We **recommend** that the relationship between opting out and an amending procedure with four **regional vetoes** be studied by the next parliamentary committee. The next **committee** should also study in what fields a province should be able to **exercise** a right to opt out with compensation.

Referendum

- 15) We **recommend** that a federal law be **enacted** to enable the federal **government**, at its **discretion**, to hold a **consultative** referendum on a **institutional proposal**, either to **confirm** the **existence** of a national consensus or to facilitate the adoption of the required **amending resolutions**. The referendum should require a national majority and a majority in each of the four regions (**Atlantic, Quebec, Ontario** and the West).
- 16) **The** territories would participate in the **referendum**, after having selected the region in which they would be included for the purpose of calculating regional majorities.

Constituent Assemblies

17) We **recommend**:

- a) that the parliamentary committee, to be established presently by both Houses of Parliament to review the proposal of the Government of Canada for constitutional reform, **be** composed of members of the House of Commons and Senate, of sufficient number to be **representative** of the Canadian **population**;
- b) that the parliamentary committee create, **in consultation with** aboriginal leadership, a special task force to address issues of concern to aboriginal peoples, the membership of which would include representatives of the aboriginal **peoples** and would be chaired by a member of the parliamentary **committee**;
- c) that the parliamentary committee create similar task forces in other areas as it **deems appropriate**, each chaired by a member of the parliamentary **committee**; and
- d) that the committee **hold**, as appropriate, joint hearings with other committees that will have been established by provincial and territorial governments or legislatures.

Public Hearings

- 18) We **recommend** that Parliament's procedural **rules** be amended to make mandatory the holding of public hearings on any proposed **constitutional** amendment initiated **by the** Government of **Canada**, or to which the Government of Canada has given its agreement in **principle**, such hearings to be held early enough to allow for changes to the proposal
- 19) We recommend to the provincial and territorial legislatures that they consider adopting similar procedures.

APPENDIX F

them **will decide** our future u a country that can stand in the world with pride,

5. Findings and suggestions

On some issues, the consensus of Forum participants is clear. We will now (indicated in bold type) offer some opinions and suggestions rooted in citizens' views to address what we believe are the central problems. On other issues — many specific dilemmas facing Canadian government and society — no one yet has the detailed answers. Certainly, we do not. Many of these demand expert advice and research, and far more than the eight months we had,

Canada's Identity

Canadians see their country as prosperous, peaceful, tolerant, quiet, pristine and beautiful. If we were to open our borders to greater immigration, we would very rapidly hit whatever annual maximum we cared to set. And we would still have the problem of illegal immigration. In a world where most countries have large numbers of citizens wanting out, Canada is a country where millions of people desperately want to get in, sometimes even if it means risking life. Surely these people can't all be mistaken.

We have not, as Canadians, depended much on words to remind us of who we are. We do not recite oaths of allegiance. At least outside Quebec, we are not taught to quote the speeches of former political leaders, no matter how eloquent. None of us knows by memory the first words of our constitution. Perhaps we should. Perhaps in the search for constitutional renewal we should take time to find the words that will help to bind us, to remind us of what we have in common, of what we cherish. They should be modest and quiet, but they should resonate to that most central of values we all share: freedom and dignity in diversity,

Participants frequently and loudly told us they were dismayed at the government's perceived weakening of national institutions and symbols. This complaint ran the gamut from VIA Rail (for many outside Quebec) to

"My hope ... is for a unified, democratic, environmentally safe and peaceful country ... where people feel comfortable with each other, are tolerant and understanding... and where each person recognizes they have the same opportunities, responsibilities and privileges." (British Columbia)

"We have a wonderful country. Canadians ... forget to notice all the benefits - freedom, tolerance, freedom to criticize the government, wonderful countryside and wilderness areas." (Nova Scotia)

the CBC (for many in Quebec, and for English-speaking artists, intellectuals, many rural Canadians, aboriginal peoples and people wanting news from a national perspective) to turbans in the RCMP and to the post Office, especially rural offices.

We urge the government to review and coordinate its thinking on the whole range of national institutions and symbols — especially those with communications or historic value — to give them more evident importance and to void the impression among Canadians that they are losing their sense of country. In some cases such rethinking may mean merely better explanations, in others changes of policy. But since perception is reality, the government cannot ignore this issue without further destabilizing or weakening citizens' feeling of Canadian unity, especially among English-speaking Canadians.

Anyone trying to frame a new constitution should seriously consider a constitutional preamble enshrining simple, eloquent words that explain Canada's past, its identity and values, and Canadians' free commitment to the future.

Quebec

Among the issues of most concern to the Canadians who spoke to the Forum, Quebec and its role in Canada's future was of central importance. The great majority of citizens outside Quebec want Quebec to stay in the Canadian family — but not at any price. Even some proclaimed sovereigntists among our relatively small number of French-speaking Quebec participants spoke, often reluctantly, of preferring to work out a solution within some kind of Canada, but doubted this could be accomplished.

In this crucial area, as in so many others, Canadians both inside and outside Quebec admit they are grievously hampered by lack of knowledge: knowledge of our land, of our history, of our economic reality, of our fellow citizens — ultimately, of the hopes, fears and interests of other Canadians. For many people in Canada, the sheer size of the country precludes knowing the

"It is clear that the rest of Canada does not want us. It is therefore time for us to affirm ourselves." (Quebec)

"Without Quebec and their French language I would feel lost as a Canadian." (Ontario)

land extensively. While a number of popular historians have tried to broaden our knowledge of our history, it is clear that our schools have failed to teach many basic facts about the "other" Canada. Outside Quebec, the history of Quebec is little known. Inside Quebec, the history of other parts of Canada is equally untaught and equally unknown.

And it is frighteningly clear, all across Canada, that the economic consequences of Quebec separation are not appreciated in terms of what it would really mean for Canada and Quebec. We heard concern and uncertainty; vague threats and ultimatums, often with a flavour of bluff, and impatience and wounded pride.

Everywhere, with both Quebeckers and non-Quebeckers, we found an appalling and dangerous lack of knowledge of each other, Politicians and political journalists can cast deforming shadows, eclipsing the reality of ordinary human beings. Yet we found among participants an often hesitant eagerness to know real people from the "other" side. When the Forum was able to bring people together, by television or radio or in person, even these few brief contacts were seized on with hope and pleasure.

Further, we can say that — providing the word "distinct" does not mean "superior" or "superiorly entitled" — the expression "distinct society" as a description of Quebec seemed acceptable to some Forum participants. With a little probing, quite a few agreed that if "distinct" really meant "different but broadly equal," they could, in effect, echo "Vive la différence!"

As noted earlier, few participants knew that provinces are in fact not perfectly equal — that their various special needs were recognized when they joined confederation. Nor did they necessarily consider whether other parts of Canada might not have special need: in the future. So, we found ourselves going beyond what we were told. Just as we weighed what the people told us and concluded that Canada was in crisis, so we have weighed the options and concluded that perfect equality does not exist between provinces and never has, for the excellent reason that special needs must be met. Many provinces have a strong interest in offshore fisheries, for example — and arguably some have special needs

"If no one gives, if no one finds the solution, we will have the right to dismember the country: a situation much more disastrous than the balkanization of which some are quick to accuse us." (Quebec)

"If Quebec left it would be a humiliation and it would be psychologically devastating. We show the rest of the world we can live together - if is the basis of our own multicultural society. (British Columbia)"

— but it would be difficult to argue that special needs in offshore fisheries exist in Saskatchewan.

Given that provinces have entered confederation on different terms and operate under different provisions, we believe that special arrangements in provinces based on special needs are a fundamental principle of Canadian federalism. This principle would apply where needed to all provinces.

Within the Quebec context, we believe that if Canadians can be persuaded to place the emphasis on equity in the face of specific needs, then people outside Quebec could accept that Quebec should have the freedom and means to be itself - a unique society with its own distinctive place in a renewed Canadian family.

We recognize, among these specific needs, the vital importance for Quebecers of maintaining their French language and culture. We also recognize that English-speaking Quebecers receive constitutional guarantees of language rights which French-speaking Canadians outside Quebec do not have, except in Manitoba - and in New Brunswick, where constitutional guarantees go even further.

If the Canadian people can be persuaded to accept constitutional changes that would help Quebec to increase the protection of its language and culture, then we believe this in turn could lead to a greater willingness within Quebec to reform Bill 178, which is perceived outside Quebec as discriminatory.

We believe Canadians wish to be better informed about the possible consequences, for both Quebec and the rest of Canada, of Quebec independence. We believe that the federal and provincial governments, and the private sector, should take steps to ensure that all Canadians are made aware of the economic, political, social and international consequences of Quebec independence.

Official Languages

We have heard much discussion of "bilingualism" — a word with many meanings. It is vital to distinguish among them: for example, the federal government serving each citizen in his or her preferred official language (that is, serving them in the one they are taxed in); making it possible for people to work for the federal government in their preferred language; bilingual signs where really needed or posted for symbolic reasons; French immersion; grants to Quebec to assist English language education; youth language exchanges; civil service language training that is more or less appropriate; or the notorious bilingual Corn Flakes box initiated by W.F. Kellogg in the 1920s for apparently sensible commercial reasons.

We must also recognize that although French and English are official languages federally, there are other needs. Aboriginal languages are necessarily official throughout the north. And we must understand that other than in Quebec and New Brunswick, official language status provides an essential symbolic reassurance to francophones in other provinces that their plight is not hopeless, and that they can look to Canada to safeguard their efforts towards cultural well-being.

Canada's use of two official languages is widely seen as a fundamental and distinctive Canadian characteristic. Among many, especially the young, the ability to speak, read and write both French and English is accepted as a significant personal advantage. Even many parents who dislike "official bilingualism" are eager to enrol their children in French immersion.

On the other hand, we find that the application of the official languages policy is a major irritant outside Quebec, and not much appreciated inside Quebec. People outside Quebec saw with alarm that province's banning of languages other than French on public signs. They suffered a dramatic loss of faith in the equity of official bilingualism, because it seemed to them to make it a one-way street — even though English-speaking Quebecers enjoy many constitutional protections and have institutions for which there are few counter-

"The concept of bilingualism is also very much worth saving. It enriches us all, it defines Canada and has made huge strides in recent years However, it needs to be more clearly understood that bilingualism does not mean that everyone has to be able to speak both languages."
(Quebec)

"The cost of bilingualism with all its bonuses, grants and duplication is totally unproductive."
(Saskatchewan)

"We don't mind the two languages, but we feel it isn't fair that it is mandatory." (New Brunswick)

**"If... there are two official languages in Canada ... it should be mandatory that both languages be taught starting in the first grade in all schools ... from coast to coast."
(Ontario)**

parts for French-speaking citizens elsewhere in Canada, other than New Brunswick.

In spite of real and needed progress in linguistic fair play in federal institutions, a sometimes mechanical, overzealous, and unreasonably costly approach to the policy has led to decisions that have helped bring it into disrepute. Citizens tell us that bilingual bonuses, costly translation of technical manuals of very limited use, public servants' low use of hard-acquired French-language training, excessive designation of bilingual jobs, and a sometimes narrow, legalistic approach are sapping a principle which they would otherwise welcome as part of Canada's basic identity.

These weaknesses are creating a public perception of the policy which, in the absence of more positive information, inflates its real defects and errors.

An independent review of the application of the official languages policy is badly needed to clear the air — with a view to ensuring that it is fair and sensible. Otherwise, there is a risk that rising public dissatisfaction and misunderstanding will lead to rejection of the policy as a whole, with irreparable damage to the principle — that should command universal acceptance — of linguistic quality in federal institutions. One purpose of the review should be to make clear to Canadians the costs and benefits of official languages policy and activities, and explain far more clearly its goals and methods. Such a review should evaluate public information efforts as well as investigate all the public's expressed concerns.

In addition, Canadians expressed strong and positive views about our two official languages and their children.

We believe that all children should have the opportunity to learn both official languages in school.

Aboriginal peoples

Canadians want justice for the aboriginal peoples. On this, there is an astonishingly high degree of consensus — although also a potentially harmful ignorance of the

realities of aboriginal people's aspirations. We are glad that the federal government has recognized that significant action is urgently needed, before the situation worsens, and is taking steps to set up a royal commission.

Forum participants stated a clear desire to see longstanding territorial and treaty claims resolved in the best *mod*, social, and economic interests of all Canadians. Further procrastination would seem only to increase the costs of settlements and exacerbate existing tensions between native and non-native communities. Further, such inaction would greatly damage Canada's international reputation.

In the interests of a more equitable Canada, Forum participants recognized the need for First Nations people to have greater control over decisions which affect their future. The government of Canada has, on previous occasions, spoken of increasing the self-sufficiency and self-respect of the aboriginal peoples through the enlargement of aboriginal capacity for self-government, within the framework of the Canadian constitution. The concept of First Nations self-government serves to promote native dignity, respect, and economic independence. It is a key factor in the future determination of First Nations people as a distinct group and must be included in a review of confederation.

We join with the great majority of Canadians to demand prompt, fair settlement of the territorial and treaty claims of First Nations people, to secure their linguistic, cultural and spiritual needs in harmony with their environment.

We join with the Canadian people in their support for native self-government and believe that First Nations people should be actively involved in the definition and implementation of this concept.

We believe that the department administering Indian Affairs and the Indian Act should be phased out as self-government comes into reality,

"we have not adequately recognized the rights of the peoples who were living in this territory when it was settled."
(Quebec)

"Treaties must be honoured in full. Land claims must be dealt with in good faith."
(Ontario)

"We do not believe that we have special rights but... different rights ... help Canadians tired aboriginal issues."
(New Brunswick)

We believe that Canada should officially recognize the history and contribution of aboriginal peoples as the First Nations of Canada.

Cultural Diversity

While Canadians accept and value Canada's cultural diversity, they do not value many of the activities of the multicultural program of the federal government. These are seen as expensive and divisive in that they remind Canadians of their different origins rather than their shared symbols, society and future.

Ethnocultural groups in Canada certainly wish their backgrounds to be respected; and we, like most Canadians, enthusiastically agree. But those who wish to preserve and promote their languages and culture are, by and large, willing to underwrite the costs themselves. And most Canadians think they should. They believe it's one thing to promote and cherish diversity, and another for governments to entrench and fund remembrance of ethnocultural origins.

In relations between ethnocultural communities, citizens see far more need in two areas: (a) the clear, practical welcoming of newcomers into an evolving mainstream; and b) the reduction of racial discrimination through education and effective programs. Most citizens are concerned with what they think of as the much-needed better integration of newcomers: for example, eliminating long waiting lists for language training in English or French social orientation, and assistance in transferring foreign degrees and qualifications to meet Canadian standards. Equally important is the need for employment equity for all Canadians.

Canada's ethnocultural people told the Forum that they want to play their full role in the country as equal members of society — no more and no less. Many of them feel they have not been treated historically as equals. They want to be treated as equals across the broad range of social activity: industry, media, government, the political process, decision making, @jobs'

Citizens spoke to us often of their desire to see a definition of being Canadian which can encompass the many different origins of our citizens,

"I speak as one whose heritage is basically north European - German, Russian, Danish and English - and I did not come to Canada to try to maintain those heritages, but to leave them behind and do what I could to be Canadian." (Ontario)

"Except for the aboriginal people, we are 80% immigrants who brought their traditions to this country. This can cause tension, but it also makes for a richer and more interesting society." (Nova Scotia)

We believe that federal government funding for multiculturalism activities other than those serving immigrant orientation, reduction of racial discrimination and promotion of equality should be eliminated, and the public funds saved be applied to these areas. The key goal of multiculturalism should be to welcome all Canadians to an evolving mainstream — and thus encourage real respect for diversity.

The department of multiculturalism in fact has moved substantially in this direction in recent years. The bulk of its budget goes to help new Canadians and minority communities to play an active role in Canadian society, and also to promote more harmonious race relations and cross-cultural understanding.

But this new thrust of the department has not been explained to Canada's people, who believe its activities are promoting divisions between Canadians and doing so at the taxpayers' expense,

We believe that the government should devise far clearer, bolder and more imaginative public information programs on the value and benefits of cultural diversity, explaining both the above refocusing and the enormous contribution of ethnocultural communities to Canada.

We believe that provincial education department perhaps sharing textbooks and methods more closely, should maintain some heritage courses, but only for young elementary school immigrant children. Such courses should be concise and be given for no more than a year or so for each immigrant child, to assist young newcomers' transition to their new land's culture and society.

Our Lack of Knowledge

We do not know enough about ourselves. Without a radically fresh approach to improving what we know about each other, our lack of knowledge of the basic realities of this country will continue to cripple efforts at accommodation. It will also leave such efforts ox-

**A massive
education ● od is
now needed ...
HELP US
UNDERSTAND!"
(Nova saw)**

**"... we u Canadians
should be better
educated - our
ignorance is the
root of our evils."
(Quebec)**

actly where citizens do not want them left: exclusively in the hands of elites, especially politicians and the mass media.

In the course of the Forum's work we have tried to expand public knowledge on key issues, but in the time available we could do little. A major responsibility rests with governments and the media. But some things are possible in which citizens can have a more direct hand.

Other nations - such as Sweden and France — have successfully developed programs to ensure that their citizens can know their own people and landscape better, and it is inexcusable that Canada should have virtually abandoned its efforts to do likewise.

We believe that the federal government should work with the private sector, the educational sector and the voluntary sector (especially sports and cultural organizations) to bring forward plans, preferably jointly, to create once again a vigorous network of travel and exchange programs, emphasizing but not confined to young people.

We believe that ● creative and innovative approach is needed to lessen the difficulties our geography imposes on Canadians in understanding and ● pprciating their country. We believe that the federal government should invite the travel industry to work out realistic and affordable plans to allow Canadians to visit other parts of Canada much more cheaply and conveniently.

We believe that Canadian students deserve a better understanding of their country's history, ● mbmclng all regions, at a much younger age. Such deeper understanding should include the history and cultures of aboriginal peoples and ethnocultural peoples. To that end, curriculum materials prepared in consultation with Canada's first peoples should ensure a fuller and historically more accurate description of the role of the ● borignsd peoples in this country's history. Provinces outside Quebec should consider a common history curriculum, at least in part. They should explore with Quebec any further degree of

coordination that respects the quit. different parts and perspectives.

Canada's Economy

Citizens repeatedly raised the subject of the economy throughout the Forum process. Indeed, in many cases economic concerns ranked higher, and were pressed more insistently, than any other. Canadians are right to be concerned about their economy, Chronic deficits and a high and rising national debt have contributed to high interest rates. These, together with a high foreign exchange rate have caused job losses, lost exports, missed job-creating investment opportunities and a sharper cyclical downturn than necessary.

As well, these events have led to federal/provincial disputes over allocating the burden of government expenditures, as governments are forced to cut spending. Participants think political squabbles have worsened their concerns, and angered people who are mainly worried about their Jobs and our values and traditions of sharing. Participants also worried about losing such cherished universal social security programmes health care and old-age pensions, or about seeing them weakened. They are right to be concerned. The burdens imposed by high tax rates and by competitive international investment and trade pressures must inevitably be relieved — one way or another.

Many participants still look to their governments to insulate them from international economic forces. despite the fact that many Canadian governments, including the federal government, have been emphasizing the need to adapt and adjust to market forces, privatization, deregulation, the Free Trade Agreement, the Mexican trade initiative and reinforced attempts to achieve expanded General Agreement on Tariffs and Trade arrangements are all cases in point.

As a result, many participants feel betrayed and bereft, and are confused and angry. Part of this is due to their sense that traditional Canadian values are being usurped by anonymous market forces and that governments are doing nothing to deal with these. Governments are in part responsible for these fears.

"This country, with all its riches, should be economically Number One in the world, but it is slipping deeper behind." (Ontario)

"We want our taxes to go to world programs, not corporate tax incentives ... one in four kids goes to school hungry in Newfoundland." (SL John's)

"What concerns people now is whether they'll have a job tomorrow. - (British Columbia)

which we believe come from misunderstandings that governments must clarify -or continue to pay a heavy price for, as will our country, -

Canada is a nation because it shares values and strives to preserve and advance common purposes and objectives. Governments have always played a major role in achieving our goals. The success of their endeavours has elevated the role for governments within the national mythology to the level of a dearly held value,

To be sure, governments have operated check by jowl with market forces in our mixed economy. At various times, government-inspired influences and market influences have waxed and waned, as circumstances dictated. But the images of a transcontinental railway, of a national health plan and of a universal pension plan are deeply imbedded in the collective psyche of Canadians. Not only are participants troubled, as we have said, about the survival of existing programs, they are wondering about the role — if any — that governments are going to play in the future, to help them to continue to prosper as international competitive pressures relentlessly increase. They also want to know if and how their taxes will help reduce the national deficit.

We believe governments must clarify these issues for Canadians. History plainly shows that governments have a constructive role to play redressing market imperfections, supplementing market initiatives, and preserving the country. They are the only entity which can house and nourish the widely shared values which give birth to our common purposes and objectives. Putting such actions in the broader world context that now prevails is among the most important challenges facing governments.

At the other end of the spectrum, we would note, participants appear to be unrealistically optimistic about governments' ability to insulate them from the often dramatic ups and downs of international competition.

We believe these developments place the burden of responsibility on w all — the private sector, the labour movement, small entrepreneurs, skilled and unskilled individuals to adapt and to invest our own time and our own efforts in ourselves, so that our society can compete. Only in this way can we continue to enjoy high living standards by producing goods and services which bring us all greater profits and prosperity,

Improving Federalism

We were not charged with reinventing federalism or rewriting the constitution. But, based on participants' comments, we can offer some thoughts for making today's federalism work somewhat better.

In all parts of Canada, participants see overlapping government services as part of the problem, in that federal and provincial governments very often duplicate each other's activities — and thus spending — and for that reason are often inefficient. Further, citizens see governments as often too far from the people they serve. Also, there are challenges arising from globalization of the economy and its impact on our national needs and values.

Quebec is not alone in pressing for a streamlined and rebalanced division of powers between the federal and provincial levels. This viewpoint need not imply any wholesale move towards decentralization; nor does it necessitate the gutting of national standards nor the discrimination of citizens' social programs from one jurisdiction to the next. Rather, it requires that both levels of government place themselves unequivocally in a position to show the common taxpayer the most efficient use of any tax dollar.

In seeking to address these concerns, both levels of government must seek a greater degree of functionalism: who is in the best position to do what? Perhaps, quite often, policy can be established centrally — with serious provincial input — but delivering programs may best be done close to the people. This provides for equity and national standards, while ensuring flexibility to meet local conditions and needs.

"A loose federation of provinces would satisfy our particular needs. We still need a federal government for certain needs but void the present overlap .."
(British Columbia)

"I want Canada to stay together. This requires a strong central government — there must be a national agenda particularly regarding the resources of our country, environment, education and medicare." (British Columbia)

"Simply transferring power en masse to the provinces will never solve our problems; it will only reinforce the regionalism that ... is at the root of our current problems."
(Nova Scotia)

We heard much from participants about national standards, especially in education. This is a sensitive issue — especially in Quebec — because of Traditional provincial jurisdiction, and we can only flag it as a challenge for future action. It cannot be neglected, however, because we can only hope to meet the effects of globalization with a workforce that is continuously upgraded and trained in new skills to internationally accepted levels.

A start can be made now at a serious, credible effort to address duplication and inefficiency.

We believe that in its efforts at national renewal the federal government should place a high priority on working with other governments to eliminate, wherever possible, overlapping jurisdictions and programs, and to identify government efficiency as a major goal, bearing in mind that effectiveness can be increased by placing programs as close as practical to the people.

Further, we believe that the federal government must ensure that fundamental social values and essential national institutions be protected in revising structures and processes necessary to achieve efficiency.

Leadership and Democracy

Throughout the work of the Forum, participants constantly and urgently raised with us their fears and their anger about leadership and the process of government. In their anger, they denounced the existing political leadership.

Yet this anger is not merely directed at politicians. The mass media are equally swept up in it. Their interaction with politicians is seen as too often exaggerating a normal political adversarial system. One example is the media's tendency to cover the House of Commons' daily Question Period mainly for its posturing, theatrical value, instead of covering thoroughly the more demanding, yet revealing, committee meetings where MPs analyze proposed laws in detail.

"People rejected Meach Lake because it was a secretive, elitist process. Politicians have to learn they are elected to serve the people, not to help themselves with the spoils of power."
(New Brunswick)

Participants went on to suggest an array of remedies, many of them new to, or rarely used in, our parliamentary system: referenda, impeachment, recall, proportional representation, free votes, an elected or abolished Senate, fixed or limited terms of office, the direct election of the prime minister, the convening of a constituent assembly. All originate in a desire for a more responsive and open political system, whose leaders — they think — are not merely accountable at election time but should be disciplined swiftly if they transgress greatly.

In an important sense, the failure of constitutional negotiations in the last decade points up an important aspect of the way our national political system works: its inadequacy in its present condition as a means for settling conflicts. Regions and factions within Canada inevitably disagree, but their conflicts are not seen to be resolved in the House of Commons. They are resolved in secret — in caucus rooms, Cabinet offices and federal-provincial conclaves. Canadians dislike secrecy.

Participants in the Forum know well that compromises must be made and deals struck. If they cannot see into the secret meetings, they can force their leaders in front of the cameras and microphones. But a price is paid for this rough contribution to direct accountability: sound bites and TV clips and the hunt for headline-making quotes may often trap politicians into even more gross simplification and confrontation than a healthy democracy demands.

Obviously, there is a need for the political system to respond better. That need is at the heart of our country's problem. Politicians must prove that the system can be more responsive. Otherwise, the pressure from citizens for radical changes to the system will become more insistent.

We heard that a constituent assembly followed by a national referendum on a new constitution would be attractive to many people. However, given the very wide variety of scenarios for that approach, we must have a group leave serious analysis of that method to specialists with more expertise and time than we have.

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*"We elect people to represent us to government. Instead, they wind up representing government to us. Something has gone wrong."
(British Columbia)*

We concur with the vast majority of Canadians who believe that the Senate should either be fundamentally reformed or abolished. . .

We Join with Forum participants in deploring the mindless, and sometimes disgraceful, behaviour of members of both Houses in bringing the parliamentary system into disrepute. We agree with the Forum's participants who have pointed constantly to the fact that our system is too partisan and far too adversarial. In particular, we would urge a careful review of the Question Period and how it is organized, with an eye on the more productive Question Periods in other parliamentary systems.

We agree with the many Forum's participants who have pointed to the fact that our system is too subject to an iron party discipline. Shorter sessions so that members of parliament can spend more time listening to their constituents, more free votes - both should be seriously considered.

As earlier noted, a long menu of other possible changes in our way of governance was proposed by participants. We have not the expertise to analyze them. But given the large number of Canadians who have expressed interest in them, the government owes citizens the dignity of seriously considering their ideas.

We have found that the people of Canada have developed a great appetite for the kind of discussion and dialogue the Forum stimulated.

We think that the government, over the period of national rebuilding, should consider how it can best encourage and nurture the kind of dialogue started by the Forum and make use of some of the methods we have used.

The government should also consider using such methods on an on-going basis for major issues, or for any issues put forth by citizens.

We believe that politicians of all parties should consider using some of our techniques to greatly increase their grassroots consultations in developing Ideas, policies and programs, or in solving problems which affect citizens directly, even if this means spending less time in parliament and more with their constituents.

Citizen input may also be essential before policies are implemented. Nothing in this is contrary to our parliamentary tradition; rather it enhances and safeguards the essence of that tradition. The challenge to government is to create a continuing climate for true dialogue. The means are at hand; it would be a pity — indeed, unwise — not to use them.

6. Conclusion

Our work with the Forum has been a stirring and mind-stretching experience for us all. What we heard from the peoples of Canada at times shocked us, sometimes saddened us, always interested us, very often moved us. In many ways, it also changed us. We come out of this phase — for it is no more — of Canada's national renewal with a clear message to those who put us here.

We have tried as best we could to collect and focus what the people told us. If we have misunderstood and thus made errors or omissions, these are honest, and on them the people will judge us.

We won't conclude with our own words, but with one last thought from a citizen. This sums up a warning about the fate of this report which thousands asked us to convey to the government and to all politicians:

No hyperbole or political hedge can screen any member of any legislature who thwarts the will of the people on this matter. The voters are watching and waiting.

June 27, 1991

APPENDIX G

LEGISLATIVE ASSEMBLY
OF THE
NORTHWEST TERRITORIES

SPECIAL COMMITTEE ON
CONSTITUTIONAL REFORM

DRAFT PRINCIPLES FOR CONSTITUTIONAL REFORM IN CANADA

FOR DISCUSSION

INTRODUCTION:

The following principles are based on the assumption that Canadians generally support a strong central government. If aboriginal affairs and territorial constitutional development are dependant on shared federal-provincial powers (either in the division of powers or in the amending formula) , this would likely complicate and retard achievement of territorial and aboriginal goals.

Any new constitution must recognize the emerging roles of aboriginal peoples and the territories in Canada and must contain equitable provisions that allow the evolution of these new roles to continue.

The principles below are intended to be very broad. The development of more specific positions and principles is contemplated as the upcoming constitutional debate unfolds. After each principle a number of possible issues are listed. Consideration of these issues will assist the development of more specific positions and principles. The issues listed are not exhaustive.

1. NWT Concerns

- a) Constitutional reforms must ensure that residents of the Northwest Territories have the opportunity, as do all other Canadians, to participate in national institutions.

Parliament
Senate
Supreme Court of Canada.

- b) Elected representatives in the Northwest Territories must be permitted to represent the interests of the residents of the territories in all national constitutional matters that affect the territory.

participation at First Ministers' Meetings and Conferences
development of responsible government
federal relationship to the NWT.

- c) Constitutional reforms must allow the people of the Northwest Territories to pursue and attain political and constitutional development in their region according to the equitable principles which governed the entry of other regions as full partners within the federation.

the amending formulae/provincehood/extension of provincial boundaries

equalization, and financial dimensions of territorial development
aboriginal rights and northern constitutions
provincial involvement **in** territorial development.

2. Aboriginal Concerns

-) **Any** reforms to the Constitution **must** address the concerns of-aboriginal peoples and lead to a clearer definition of the rights of aboriginal peoples including means for implementing these rights.

Canada's first peoples/bilateral relationship
self-government
guaranteed representation
claims and extinguishment of rights
unique status of aboriginal peoples under the Constitution
collective versus individual rights

- b **Aboriginal peoples** must be **parties** to discussions **relating to constitutional matters which** directly affect them, or to matters of particular interest to them.

commission on aboriginal affairs
aboriginal self-government **forum**
independent **claims commission**
First Ministers' Conferences and meetings
review of federal claims policy
aboriginal-federal relations agency to replace
DIAND .

3. Relationship of Government to Individuals

- a) Any reforms must respect and maintain the essential **rights** and freedoms guaranteed to **individuals** by the Charter of Rights.

relationship of Charter to **rights** of aboriginal peoples
equality **rights**
linguistic rights
minority rights
collective versus **individual rights**
distinct societies
multicultural issues
the "**notwithstanding** clause"

- b) Any reforms must be based on the **principle** that the government **exists for the good of the people and is founded on their will only and therefore must be accessible to the people.** Government derives its authority from the people and does not hold rights for its own purposes.

institutional reform
representativeness of elected officials
party discipline/need for reform
referenda and plebiscites
role of the press
electoral reform

- c) The Constitution belongs to the people of Canada, and reforms must only be made with the consent of the Canadian people, which consent must be clearly and unequivocally **given** after informative and meaningful public consultation.

referenda and plebiscites
constitutional conventions
executive federalism
First Ministers Conferences
constituent assemblies
entrenched consultation process
entrenched time frame for consultation.

4. Relationship Between Government

- a) Reform must respect the essential equality of the provinces and territories and the regions within Canada deriving from the essential equality of Canadians wherever they may live in Canada.

role of territories in matters that directly affect them
provincial vetoes
mobility
trade and other barriers to goods and people

- b) Any new division of powers must enable federal and provincial governments to meet the needs of Canadians in a manner that promotes a national sense of community.

strong central government
Canadians **first**
common national goals
special powers for some provinces
environment

**economic powers and equalization
immigration**

- c) National Standards must be maintainable **in** essential matters such as health care, education and the environment.

fiscal ability of federal government to deliver
minimum standards with regional adjustments
federal spending power
equalization
corporate Canada

- d) Changes **in** Canada's **institutions** and constitutional structure must be warranted and substantiated and must be commensurate **with** the gravity and nature of the problem.

is constitutional change needed
intergovernmental agreements
policy as a vehicle of change
constitutional reform as a way of life
initiating the amending formula, who and how

- e) **Territories must** be included **in** intergovernmental affairs at all levels as evolving *regions in* the **community of governments that comprises the Canadian federal system. Their evolution must be governed by equitable principles consistent with the manner by which other regions achieved provincehood.**

5. **Responsibilities of Citizens**

- a) Reforms must **strive** to create an environment **which** encourages Canadians to pledge themselves to duties of citizenship at the community and national levels.

a Charter of obligations, (legal v. non-legal)
compulsory voting
new symbols needed to **unite** Canadians
building on values of **First Nations**
the environment
role of the press

- b) Canadians must bear equally the benefits and burdens of citizenship.

taxation
economic union with Quebec
regional development
individual rights

6. Relationship Between Individuals

- a) Reform must **not** lead to **splintering** of the Canadian community according to **distinct** categories of **rights-holders**, it must reinforce the essential equality of Canadians.

distinct societies
aboriginal **rights**
linguistic **rights**
asymmetrical federalism
equality of opportunity
multicultural **rights**
cultural **rights**

- b) The essential equality of Canadians must be maintained regardless of the provincial or territorial governments to which they are subject.

strong/weak provinces in a new division of powers
qualification in national institutions
special powers for some provinces

7. Relationship of Constitutional Reform to the Economy

- a) Reform must lead to opportunities for prosperity in all provinces and territories for all Canadians.

protectionism v. free trade
affirmative action
limits on spending power and debt.

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