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COMMITTEE REPORT NO. 3-1 2 (3) TABLED ON NOV 3 0 1992

FINAL REPORT OF THE SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

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Final Report of the Special Committee on Constitutional Reform

on the Charlottetown Accord and the October 26, 1992 National Referendum on Constitutional Reform

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JAN 1 6 1996 YELLOWKNIPE, N.W.T

Hon. Stephen Kakfwi, M.LA., Chairperson November, 1992





November 30, 1992

THE HONORABLE MICHAEL **BALLANTYNE** M.L.A., SPEAKER OF THE LEGISLATIVE ASSEMBLY.

I am pleased to submit the Final Report of the Special Committee on Constitutional Reform respecting the **Charlottetown** Accord and the October 26, 1992 National Referendum on Constitutional Reform.

Respectfully submitted,

Stephen **Kakfwi**, M.L.A-, **Chairperson**.

Special Committee on Constitutional Reform

Members

Hon. Stephen Kakfwi M.L.A., Sahtu Chairperson

Mr. Ernie Bernhardt M.L.A., Kitikmeot

Mr. Brian Lewis M.L.A., Yellowknife Centre Mr. Samuel Gargan M.L.A., Deh Cho

Hon. Dennis Patterson M.L.A., Iqaluit

Alternate Members

Mr. Silas Arngna'naaq M.L.A., Kivallivik Ms. Jeannie Marie-Jewell M.L.A., Thebacha

<u>Staff</u>

Mr. David Hamilton Committee Clerk

Mr. Geoffrey Bickert Legal Counsel

Mr. Bernard Funston Legal Counsel

Mr. George Braden Intergovernmental Affairs

SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

TERMS OF REFERENCE

The Special Committee on Constitutional Reform may on its own authority:

- 1. Review proposals for constitutional and institutional reform as outlined in the Government of Canada's document entitled "Shaping Canada's Future Together" and any additional national, federal, provincial, territorial and non-governmental materials and any other related matters.
- 2. Undertake or request any legal or economic analysis necessary to assist this Committee in the development of recommendations for the Legislative Assembly on matters relating to the substance and processes for constitutional and institutional reform.
- **3.** Undertake such consultations, discussions or meetings that are necessary with national Aboriginal organizations that have responsibility to consider constitutional and institutional reform in Canada.
- 4. Undertake such consultations, discussions or meetings that are necessary with such national, federal, provincial or territorial bodies that have responsibility to consider constitutional and institutional reform in Canada.
- 5. Make presentations on behalf of the Legislative Assembly and Government of the Northwest Territories to such bodies as the Committee agrees appropriate.
- 6. Prepare reports at times to be decided by the Committee and as appropriate to the progress of the national unity debate.
- 7. Review and recommend on any related matter referred to it by the Legislative Assembly.
- 8. Establish a quorum to be three Members, including the Chair.

REPORT TO THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES BY THE SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

I. **INTRODUCTION**

On October 26, 1992a majority of residents of the Northwest Territories voted "Yes" in the national referendum on constitutional reform. However, a majority of residents in six provinces voted against the constitutional reforms proposed by the Charlottetown Accord (Aug. 28,1992). This "No" vote registered by the majority of Canadians brought to an end the latest round of constitutional negotiations which had been launched on March **12**, 1992 in a meeting between federal, provincial, territorial and aboriginal representatives.

The Charlottetown Accord had proposed the most extensive package of amendments to the Constitution of Canada since 1867. As a result of the October 26th national referendum none of these proposed constitutional amendments will be proceeded with at this time.

In the Report of the Special Committee tabled April 01, 1992, [Committee Report No. 09-12(2)], the Committee had recommended that five major issues should be closely monitored in the current round of multilateral consultations. The five areas of particular importance to the Northwest Territories were:

- 1. <u>Territorial participation</u> in public and private meetings and conferences on constitutional, economic and aboriginal matters;
- 2. Constitutional recognition of an inherent **right** to **aboriginal** <u>self-government;</u>
- 3. <u>The effects of the constitutional amending formula</u> on future political and constitutional development of the Northwest Territories;
- 4. The implications for the territories of <u>the Canadian economic union</u> proposals and the mechanisms for <u>decentralization of the federation</u>;
- 5. Constitutional amendments relating to <u>national institutions</u> such as the Senate and the Supreme Court of Canada.

The multilateral negotiations that began in March 1992 involved First Ministers, Ministers, and Aboriginal leaders in a process unique for its scope, complexity and duration. In the case of the Northwest Territories, the Special Committee members were the principal advisory body and were present during key negotiation sessions. The negotiations were the culmination of probably the most inclusive **process** of constitutional consultations in Canadian history **which** had spanned the two years following the failure of the **Meech** Lake Accord **in** June 1990. Numerous federal, provincial, territorial and Aboriginal processes had canvassed a wide range of public opinion during this two year period. It remains to be seen whether future talks on the **constitution**, or in the intergovernmental area generally, will continue the multilateral approach which included territorial and Aboriginal leaders in all levels of discussions.

II. <u>REVIEW OF NORTHWEST TERRITORIES ACHIEVEMENTS</u>

The principles and objectives which the Government of the Northwest Territories pursued in negotiations in relation to the above five matters were recommended by the Special Committee in the Committee's Report of April 01, 1992 and approved by the Assembly. These principles and objectives were achieved during the negotiations to a high degree. The content of the "Best-efforts" Legal Text and Political Accords released on October 12th confirms this. The referendum results in the Northwest Territories, where voters supported the Charlottetown package **by an** impressive 619%, provide a strong mandate for our Legislative Assembly and Government to continue pursuing the gains we made during the current round of talks.

Northern objectives which were achieved in the package which should be pursued include:

- the commitments to Territorial participation in all future First Ministers meetings and constitutional conferences;
- the recognition of the inherent right to self-government in the Territories through constitutional amendment, or through the claims, treaties or other mechanisms;

Further, other aspects of the Charlottetown package which should be pursued include:

• minimizing or eliminating, wherever possible, the negative effects on northern political and constitutional development, arising from the current amending formula for creating new provinces;

• protecting the Territories from negative impacts of future decentralization of the federation and from attacks on northern preference and economic development initiatives.

III. ' <u>REFERENDUM PROCESS</u>

Members of the Special Committee conducted an extensive public education campaign to explain to territorial residents the content and meaning of the Charlottetown Accord which included personal appearances in many communities as well as publications such as "A NORTHERN AGENDA THE REFERENDUM AND THE NORTHWEST TERRITORIES" which was widely circulated through the print media.

The national referendum results are susceptible to a wide range of interpretations. The Northwest Territories was one of only four jurisdictions that returned a "Yes" vote in the referendum. Some of the "No" results no doubt represent a lack of support for the content of all or part of the constitutional package. In some cases it may reflect a lack of support for any constitutional change at this time given the concerns of Canadians with the economy. In other cases the "no" vote may not be related directly to constitutional issues. APPENDICES **A**, B, and C contain the referendum results by province and territory, within the Northwest Territories, and for Aboriginal peoples across Canada.

Iv. CONCLUSIONS AND RECOMMENDATIONS

The five areas of importance to the Northwest Territories identified in Part I of **this** report formed the basis for the positions taken during this round of constitutional negotiations and some of the principles and objectives will no doubt continue to be important; however, governments and Aboriginal organizations are still assessing where to go from here. Canadians have expressed concerns with the economy. This will likely be the focus for most governments for the near future and a resumption of constitutional talks is unlikely in the short term.

The Government of the Northwest Territories and the Legislative Assembly have a direct interest in reform of the national constitution as it relates to the rights of aboriginal and non-aboriginal residents and the Territories' role and status within the Canadian federation. With the failure of the Charlottetown Accord other avenues for achieving territorial objectives in these areas will need to be explored. The committee recommends that the Government of the N.W.T. undertake a review and assessment of the NWT's national constitutional priorities and objectives and a medium and long term strategy should be developed to achieve them.

A fundamental element in intergovernmental and constitutional processes is territorial participation. The territory must continue to build bridges with other jurisdictions and contribute to national affairs through the existing intergovernmental forums. The current round of constitutional talks has demonstrated that the **Northwest** Territories can make positive contributions in national affairs **and** that its representatives bring a unique perspective to the table. The Committee recommends that the Government of the Northwest Territories should take any **necessary action** to the constitution, national institution reform and the economy in **Darticular**.

The Charlottetown Accord was a carefully balanced series of compromises which contained significant economic and fiscal implications for **all** governments. In many cases commitments contained in the Accord required cooperation from all levels of government in order to implement them.

<u>The context has now **changed**</u>. Aspects of the Charlottetown Accord such as the inherent right of aboriginal self-government will have to be realized through new approaches following close consultations with aboriginal peoples. Parliament has constitutional authority to recognize in the Territories the inherent right of **self**-government for Aboriginal peoples. Most of the Charlottetown Accord provisions on self-government could be implemented through constitutional amendment by Parliament acting alone, in relation to the Territories. The financial and other matters respecting implementation of the **right**, contained in proposed "political accords" adopted at Charlottetown, could similarly be accepted by the federal government for the Territories.

Similarly, the federal government has authority to recognize and implement inherent self-government as part of the land claims processor in a parallel process, or through renewal of existing Treaties 8 and 11. Recognition of the right, and some elaboration of the process of implementation, could be achieved through constitutional amendment within the context of existing section 35 of the **Constitution** Act, 1982. Financial and resource commitments could be enshrined in a legally enforceable agreement or through a political accord. A number of governments, including the federal government will be calling elections in the relatively near Some aboriginal organizations will be reviewing their priorities and future. mandates. The **Committee** recommends that **prior** to **pursuing** either constitutional or non-constitutional means of implementing any part or parts of the Charlottetown Accord. the Legislative Assembly and Government should consider. in the context of the strong mandate given in the Northern referendum results. the priorities and means for achieving our objectives. bearing in mind the political, social, economic and fiscal indications of this course of action.

The Special Committee would like to gratefully thank the many people who worked tirelessly throughout this process but also the families of these people who also had to give up many hours without them around. The Members of the Special Committee dedicated many long days to this process and without this team approach and the support of the **Legislative** Assembly, we **could** not have achieved the success we did.

With the presentation of this, our Final Report, the Special Committee is of the opinion that we have, to the best of our abilities, completed our work according to the mandate given by the Legislative Assembly. The work of this Special Committee, at this time, is complete but, as indicated in our recommendations, there will be a need to monitor and participate in the years ahead as there are still a lot of important areas to be addressed.

APPENDIX A. NATIONAL REFERENDUM RESULTS



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REFERENDUM RESULTS

Page 6

27-0ct-92

APPENDIX C: THE NATIONAL ABORIGINAL RESULTS

FEDERAL REFERENDUM:

UNOFFICIAL RESULTS BY SPECIFIC ABORIGINAL COMMUNITIES

Prepared by	Elections	Canada	28	Ott	1992,	10:05am
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PROVINCE	<u>TOTAL</u> <u>VOTES</u>	<u>TOTAL</u> <u>YES</u>	<u> </u>	<u>TOTAL</u> <u>NO</u>	<u> </u>	<u>TOTAL</u> <u>REJECT</u>	<u> 8 REJECTS</u>
Nfld .	317	235	74.1%	82	25.9%	0	0
N.S.	2537	986	38.9%	1542	60.8%	9	0.4%
P.E.I.	415	285	68.7%	127	30.6%	3	0.7%
New Brun.	3284	1892	57.6%	1363	41.5%	29	0.9%
Ont.	12986	4161	32%	8731	67.2%	94	0.7%
Man.	10554	1876	17.8%	8609	81.6%	69	0.7%
Sask.	12182	5660	46.5%	6464	53.1%	68	0.5%
Alta.	7263	1487	20.5%	5744	79.1%	32	0.4%
B.C.	41447	12279	29.6%	29020	70.0%	148	0.4%
Yukon	3049	1406	46.1%	1626	53.3%	17	0.6%
NWT	16981	11236	66.2%	5598	33.0%	147	0.9%
TOTAL :	111015	41503	37.4%	68906	62.1%	606	0.5%

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