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Interim Report On The Activities Of The Special
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Special Committee on Constitutional Reform

Interim Report on the Activities of the Special Committee

Hon. Stephen Kakfwi, M.L.A.,
Chairperson
March, 1992



Northwest Territories Legislative Assembly / ᓄᓇᓕᓕᓐᓂᓐ ᓂᓐᓂᓐᓂᓐ ᓂᓐᓂᓐᓂᓐ



March 11, 1992

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

I am pleased to submit this Interim Report of the Special Committee on Constitutional Reform on the activities of the Special Committee.

Respectfully submitted,

for Stephen Kakfwi, M.L.A.,
Chairperson.

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SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

The Special Committee on Constitutional Reform is pleased to present this Interim Report to inform the public as well as all Members of the activities the Committee has undertaken over the past four months. The process of constitutional change is a constant challenge and events that occur in other parts of Canada affect us in many ways. Your Committee has endeavored to participate where needed and to keep abreast of the ever-changing events. We would like to report on our activities to date and indicate some of the conclusions we have reached and to comment on the future activities of the Special Committee.

Report on Activities to Date

1. Presentation to Special Joint Parliamentary Committee on a Renewed Canada

The N.W.T. Committee made a presentation (Appendix A) to the Joint Parliamentary Committee ("Dobbie-Beaudoin Committee") on January 23, 1992. The presentation was delivered by the Committee's Chairperson, Stephen Kakfwi, with all other Committee Members in attendance. The presentation included a preliminary set of responses to the 28 Federal proposals contained in the Federal Government's document entitled "Shaping Canada's Future Together".

Reaction to the presentation from the Dobbie-Beaudoin Committee was positive.

2. Constitutional Conferences on a Renewed Canada

Five conferences were held between January 17th and February 16th with Members of the Special Committee attending all conferences with the exception of the Montreal conference on the economy. Staff members of the Special Committee attended all conferences.

A sixth conference on aboriginal issues is scheduled for March 13th-15th in Ottawa. Only one (1) delegate from each of the provinces and territories has been invited. Further details on time, location and agenda are attached as Appendix B.

commentary

The recent constitutional conference process which concluded in Vancouver on February 16th was a major success from Ottawa's perspective:

- a) the conferences were represented by the media and the conference organizers as revealing a wide degree of tolerance and latitude to solve Quebec's demands;
- b) the conferences were interpreted by some as giving the Federal Government a mandate to deal with Quebec's demands;
- c) they were interpreted as allowing special/different treatment of Quebec in the Constitution in such areas as division of powers, application of the Charter and perhaps a veto over constitutional amendments in some areas for Quebec alone.

A. Process

1. After the failure of the Meech Lake Accord, Premier **Bourassa** refused to negotiate with other provinces on constitutional issues. Although **he** has had some informal discussions with other Premiers, he continues to hold the position that he will only deal directly with Ottawa on a constitutional reform package.
2. In 1991 the Quebec Government passed "Bill 150" following the recommendations of the **Belanger-Campeau** Commission on Quebec's Future. This Act established two committees of the National Assembly, one to examine the impacts of sovereignty for Quebec, the other to examine "binding offers" from Canada for constitutional reform. The Act requires a referendum in **Quebec** on sovereignty in June or October, 1992. October is the generally accepted timeframe.
3. While Ottawa has insisted that they will not follow any process dictated by one province, they have so far followed Quebec's timetable and process very closely:

the Federal proposals were tabled in September, 1991;

the Joint Parliamentary Committee (Dobbie-Beaudoin Committee) examining these proposals was required to report by February 28, 1992. Its final report was released on March 1st;

- the constitutional conference process was designed (originally) to follow the timetable of the Dobbie-Beaudoin Committee. Under pressure, a conference on aboriginal issues was added for March 13-15, 1992;

the Federal Government intends to release revised proposals by April 15, 1992;

- Quebec will develop, between May and August, a question (or questions) for its referendum. (A Federal package was required in April so that Mr. **Bourassa** would have sufficient time to develop the Quebec position and amend Bill 150 if such amendments were considered necessary for whatever strategy Quebec/Ottawa are following). A Quebec Liberal Party Congress will be held in the spring or early summer to consider a revised federal package.
4. Officials from the other nine provinces have not been closely involved in determining this timetable. All provinces have expressed serious concern with Ottawa setting itself up as a broker/mediator between Quebec and other provinces.

Provinces are particularly concerned about Ottawa constructing anew package for April based only on brief "consultations" with nine provinces.

5. A number of provinces, including Ontario and British Columbia, are putting pressure on Ottawa to define the process it intends to follow after the release of the Dobbie-Beaudoin Report. The Prime Minister has called a meeting of federal, provincial, territorial and aboriginal representatives for March 12th in Ottawa. The Honorable Stephen **Kakwi** and Mr. Ernie **Bernhardt** will attend this meeting on behalf of this Assembly's Special Committee on Constitutional Reform.
6. **The** Federal proposals tried to avoid constitutional amendments that would require unanimous consent. They want to avoid the Meech Lake situation where one province could stop the amendments. Most of the Federal package would require the so-called "7 and 50" formula.
7. It is not yet **clear** how the negotiation of the constitutional amendments will proceed. There is some speculation that there will not be a single package, but rather several packages with related matters in them. For example, a core package might contain distinct society clauses, inherent aboriginal **self**-government, division of powers and a process for Senate reform. A second package might include the Social Charter and economic union proposals, and so on.

8. The aboriginal "parallel process" has not yet completed its work. There is no clear process for integrating aboriginal demands into a final package.

B. Substance

1. The 28 Federal proposals for constitutional reform released in September, 1991 were very general in nature. Only the "distinct society clause" to be inserted in the Charter and two "economic union" clauses were in draft legal language. Therefore, it was very difficult to determine the substantive effects of the proposals. The wording and placement of clauses in the Constitution will have significant implications,
2. The 5 constitutional conferences recently held to review the 28 Federal proposals did not deal with the important subtleties involved in drafting complex, new constitutional arrangements.

The conferences mainly created a "mood" of more tolerance and helped to give the Dobbie-Beaudoin Committee some preview of the potential reactions to their report if they were to make wide-ranging recommendations to deal with Quebec.

3. Premier **Bourassa** encouraged the Dobbie-Beaudoin Committee to supply "fine print" in its recommendations, The Dobbie-Beaudoin Committee provided the draft legal text for many of its recommendations. The Report is 130 pages long and contains over 40 recommendations. A summary of the recommendations is attached in Appendix C.
4. The process used to draft the text of constitutional amendments is crucial to the provinces. Provinces are unlikely to support a package they did not help draft. Numerous officials meetings and some ministerial meetings are likely before the Federal Government will risk a First Ministers' Conference.
5. Positions being taken by provinces on substantive issues at this point are intended to ensure that the agenda is not reduced unilaterally by Ottawa, to establish opening negotiation positions and to remind Ottawa that provinces must very soon be included in designing the post-February 28th process if their votes in the amending formula are to be counted on. Substantive positions will obviously be dependent on the final agenda of issues and the complex political and economic implications of radical changes to federal institutions, division of powers, and so on.

This process and package is far more complicated than the Meech Lake Accord.

Conclusions

1. Activity on the national constitutional front will accelerate in the next few weeks and months as a result of the tabling of the Dobbie-Beaudoin Report on February 28th so the G. N.W.T. must develop clear positions on both process and substance issues. process issues **will** be very important in the next few weeks and might overshadow substance for the moment.
2. **The** pressures to succeed in the current constitutional round will be tremendous and there are likely to be few opportunities for the G. N.W.T. to significantly shape the agenda. However, consistent and clear articulation on the G. N.W.T. positions on certain critical issues can build on significant public and provincial "support" developed during the **Meech** Lake process, particularly on matters of participation in negotiations and the amending formula.
3. There appears to be a willingness by Ottawa and the provinces to include the G. N.W.T. in all levels of intergovernmental discussions in the coming weeks. Building further creditability in this round will contribute to the long range status of the Territories in intergovernmental affairs.
4. **An** issue of direct importance to the constitutional development of the Territories, namely the amending formula for the creation of new provinces, will likely put the G. N.W.T. in direct opposition to Quebec's demand. Quebec's Minister **Remillard** stated in a speech at Whistler on February 24th the following on Quebec's demand for a veto over the creation of new provinces:

"As for the matters dealt with in s.42 of the *Constitution Act, 1982* (central institutions, the Senate and creation of provinces), Quebec, as one of the major partners in the federation, is entitled to demand that it have a say in any amendment concerning these matters since they are at the **very** heart of the Federal compromises of 1867."

5. Aboriginal self-government is a central issue in this round, however, there is still an outstanding national conference on these issues (scheduled for March 13- 15) and the completion of the aboriginal "parallel process" that will have to be considered before aboriginal positions become clear.

Minister **Remillard**, in his speech of February 24, has stated the Quebec position that aboriginal self-government cannot threaten the "territorial integrity" of Quebec. Self-government should not be a justifiable right in Quebec's view. In Quebec it would have to be worked out in negotiated agreements approved by Quebec.

The Special Committee on Constitutional Reform will continue to report as developments warrant. In addition, Members of the Committee have expressed an interest in reviewing the Committee's Terms of Reference, particularly in relation to obtaining public input as the current round of national constitutional talks progresses. Recommendations in relation to its terms of reference will be contained in a future Report to the Assembly.

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I WOULD LIKE TO WELCOME THE MEMBERS OF THE COMMITTEE TO THE NORTHWEST TERRITORIES. WE IN THE NORTH HAVE BEEN VISITED BY PARLIAMENTARY AND CONSTITUTIONAL COMMISSIONS, COMMITTEES AND TASK FORCES OVER THE LAST FOUR YEARS AT AN ACCELERATING RATE. AND WHILE OUR MESSAGES ARE BEING REPORTED BACK SOUTH WITH INCREASING SENSITIVITY, WE NEED TO TRADE THAT PROXY SYSTEM FOR GUARANTEES THAT WE CAN DELIVER THE MESSAGE DIRECTLY, AT THE SAME TABLE WITH THE PARTNERS MAKING UP THIS CONFEDERATION.

SO THE MESSAGE I HAVE FOR YOU TODAY IS THIS: THE NORTHWEST TERRITORIES IS FACING FUNDAMENTAL POLITICAL AND CONSTITUTIONAL ISSUES UNIQUE IN CANADA, AT A TIME WHEN OUR FINANCIAL SITUATION AND OUR ABILITY TO CREATE A VIABLE ECONOMIC BASE ARE FAR FROM SECURE . WE CANNOT AFFORD, AND CANADA CANNOT AFFORD, TO IGNORE THESE REALITIES IN THE MONTHS AND YEARS AHEAD.

THE NORTH FACES ENORMOUS CHALLENGES. SOME OF THOSE CHALLENGES REFLECT THE NATIONAL ISSUES AND OTHERS ARE UNIQUE.

THE **INUIT** OF THE EASTERN AND HIGH ARCTIC ARE CONCLUDING A MASSIVE AND COMPLEX LAND CLAIM SETTLEMENT AND ARE AT THE SAME TIME PURSUING THE CREATION OF A NEW TERRITORY AND GOVERNMENT IN THE EAST - CALLED NUNAWT.

IN THE WEST, FOLLOWING THE COLLAPSE OF THE DENE AND METIS COMPREHENSIVE LAND CLAIM, THE SETTLEMENT OF LAND CLAIMS IS BEING PURSUED BY SOME ON A REGIONAL BASIS. OTHER REGIONS HAVE REJECTED

THE CLAIM BECAUSE OF ITS ABORIGINAL RIGHTS' EXTINGUISHMENT CLAUSES AND BECAUSE THE CLAIM DID NOT CONTAIN GUARANTEES WITH RESPECT TO SELF-GOVERNMENT. WHILE THE WESTERN ARCTIC IS THE SUBJECT OF TREATIES, TREATY LAND ENTITLEMENTS OR A RESERVE SYSTEM UNDER THE INDIAN ACT HAVE NOT BEEN GENERALLY PURSUED, AND OUR COMMUNITIES EMBRACE BOTH ABORIGINAL AND NON-ABORIGINAL NORTHERNERS .

TO ADDRESS THE CHALLENGE OF ESTABLISHING POLITICAL AND CONSTITUTIONAL RELATIONSHIPS BETWEEN ABORIGINAL AND NON-ABORIGINAL RESIDENTS OF THE WEST AFTER DIVISION, A WESTERN CONSTITUTIONAL COMMISSION WAS STRUCK BY OUR LEGISLATURE. WHILE ITS WORK IS FAR FROM COMPLETE, THE RECOMMENDATIONS AND CONCERNS EXPRESSED BY THE GENERAL PUBLIC AND REPRESENTATIVE BODIES COVER A RANGE AS BROAD AND DIVERSE AS THOSE HEARD BY YOUR COMMITTEE.

I WILL SPEAK IN A MOMENT IN MORE DETAIL ABOUT THE POLITICAL, ECONOMIC AND CONSTITUTIONAL CHALLENGES WE FACE IN THE NORTH. BUT FIRST I WANT TO GIVE YOU A SENSE OF OUR PAST ISOLATION FROM THE NATIONAL DIALOGUE, DIALOGUE WHICH HAS BEEN SO CRITICAL TO OUR NATION'S HEALTH. AND I WANT TO URGE UPON YOU THE REASONS WHY WE NEED TO TRADE THAT ISOLATION FOR PARTICIPATION IN THE DEBATE OVER CANADA'S SURVIVAL.

THE OTHER DAY, PREMIER JOE GHIZ SPOKE ELOQUENTLY OF THE COMMON CAUSE BETWEEN PRINCE EDWARD ISLANDERS AND ABORIGINAL PEOPLES WHEN

HE SAID (AND I QUOTE):

THE CONCERN OF ISLANDERS IS SIMPLY THIS: IF CANADA CANNOT ACCOMMODATE UNITS OF ABORIGINAL GOVERNMENT, - WHICH ARE SMALL SOCIETIES WITH SPECIAL ECONOMIC, POLITICAL AND SOCIAL NEEDS, - THEN **CANADA** MAY NOT BE ABLE IN THE FUTURE, TO ACCOMMODATE PRINCE EDWARD ISLAND AS A SEPARATE AND VIABLE CONSTITUTIONAL ENTITY. (END QUOTE)

WE SHARE THAT CONCERN, BOTH FOR ABORIGINAL GOVERNMENTS IN THE REST OF THE COUNTRY AND FOR THE KIND OF GOVERNMENT OR GOVERNMENTS WE WILL DEVELOP FOR THE NORTH; GOVERNMENTS THAT MUST BE RECOGNIZED AS VIABLE CONSTITUTIONAL ENTITIES.

HISTORICALLY, MEMBERSHIP IN THE CANADIAN FEDERATION HAS BEEN GRANTED BASED ON THE SIZE OR SIGNIFICANCE OF THE NON-ABORIGINAL POPULATION, IN **IGNORANCE** OR DISREGARD OF THE ORIGINAL INHABITANTS . THE VAST NORTH-WEST TERRITORY OF **PRE-CONFEDERATION** TIMES WAS PURCHASED BY CANADA FOR FUTURE PURPOSES, WITH THE SOUTHERN BITS ESSENTIALLY BEING CHIPPED OFF AND GRANTED MEMBERSHIP IN THE CLUB ONCE THE NON-ABORIGINAL POPULATIONS PREDOMINATED .

IN ITS CURRENT FORM, THE NORTHWEST TERRITORIES, WITH AN ABORIGINAL MAJORITY, HAS BEEN OUTSIDE THE CONSTITUTIONAL

PARTNERSHIP FOR 87 YEARS. IN 1982, THE "PARTNERSHIP RULES", IF YOU WILL, WERE TIGHTENED TO GIVE SEVEN PROVINCES, COMPRISING FIFTY PERCENT OF THE POPULATION, A VETO OVER OUR FUTURE PROVINCEHOOD . THOSE PROVINCES FACED NO SUCH HURDLE WHEN THEY JOINED . MEECH LAKE WOULD HAVE MADE IT WORSE, BY GIVING EACH OF THE TEN PROVINCES A VETO OVER THE ATTAINMENT OF PROVINCEHOOD BY NORTHERN CANADIANS. NON-CANADIANS, ON THE OTHER HAND, WERE WELCOMED AS PROVINCIAL PARTNERS AS RECENTLY AS 1949, WHEN THE RULES FOR NATION-BUILDING WERE DESIGNED TO **EMBRACE** CHANGE, RATHER THAN TO DEFEND AGAINST IT.

IN THE MEANTIME, IN THE NORTHWEST TERRITORIES OUR ECONOMIC AND POLITICAL DEVELOPMENT, OUR RESOURCES AND AFFAIRS, ARE BY STATUTE AT LEAST THE RESPONSIBILITY OF THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT. EVEN WITH BEST EFFORTS ON BOTH SIDES, THIS IS AN UNHAPPY RELATIONSHIP FOR NOW AND FOR THE FUTURE.

CANADA MUST BE GENEROUS ENOUGH AND CONFIDENT ENOUGH TO ACCEPT NORTHERN GOVERNMENTS AS FULL PARTNERS IN THE NATION-BUILDING PROCESSES - STARTING NOW RATHER THAN LATER - BY REMOVING THE LEGAL, CONSTITUTIONAL AND POLITICAL OBSTACLES TO OUR ACCEPTANCE AS SEPARATE AND VIABLE ENTITIES.

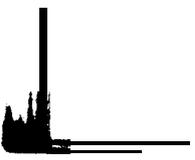
IT IS ESSENTIAL TO THIS ACCEPTANCE OF NORTHERNERS THAT THE INHERENT RIGHT TO SELF-GOVERNMENT BE RECOGNIZED. CONSTITUTIONAL RECOGNITION OF ABORIGINAL SELF-GOVERNMENT AND OF NORTHERN

GOVERNMENTS ARE, FOR US, BOTH ESSENTIAL AND MUST GO HAND IN HAND. WE MUST NOT LOSE SIGHT OF THE FACT THAT THE GOVERNING RELATIONSHIPS WHICH ABORIGINAL AND NON-ABORIGINAL NORTHERNERS WORK OUT AMONG THEMSELVES MAY LOOK QUITE DIFFERENT FROM MODELS IN THE PROVINCES. AT A MINIMUM, LAND CLAIMS WILL NECESSITATE A DIFFERENCE, THROUGH CONSTITUTIONAL **GUARANTEES** THAT ABORIGINAL PEOPLES WILL HAVE EQUAL PARTNERSHIP IN THE PUBLIC GOVERNMENT INSTITUTIONS WHICH WILL MANAGE LAND AND WATER, WILDLIFE AND THE ENVIRONMENT THROUGHOUT THE TERRITORIES.

WE NEED TO FIND WAYS TO ENSURE THE SURVIVAL OF OUR LANGUAGES AND CULTURES, AND, IN SOME CASES, THE REVIVAL OF OUR CUSTOMS AND LAWS . WE NEED TO PRESERVE AND PROMOTE OUR DISTINCT COLLECTIVE RIGHTS AND INTERESTS WHILE RESPECTING THE DEMOCRATIC AND INDIVIDUAL RIGHTS OF ALL NORTHERNERS. AND WE HAVE TO DEVELOP THE ECONOMIC INSTRUMENTS TO PROVIDE FOR OUR NEEDS.

LET ME RUN THROUGH A LIST OF CURRENT TERRITORIAL CONSTITUTIONAL ISSUES WHICH ARE OCCUPYING MUCH OF OUR TIME THESE DAYS. FIRST IS THE SETTLEMENT AND IMPLEMENTATION OF LAND CLAIMS. IT IS IMPORTANT TO BEAR IN MIND THAT THE WHOLE OF THE TERRITORIES IS OR HAS BEEN UNDER CLAIMS BY ABORIGINAL GROUPS.

THE **TUNGAVIK FEDERATION** OF NUNAWT CLAIM WILL LEAD TO THE DIVISION OF THE NORTHWEST TERRITORIES AND THE CREATION OF A NUNAWT TERRITORY IN WHICH THE PEOPLE OF THE EASTERN AND HIGH



ARCTIC WILL TAKE THEIR PLACE IN **CONFEDERATION**. WE HELD A PLEBISCITE IN **1982** IN **WHICH** A MAJORITY OF RESIDENTS **SUPPORTED** DIVISION OF THE TERRITORY INTO TWO TERRITORIES. THIS LEGISLATIVE ASSEMBLY AND GOVERNMENT HAVE SUPPORTED DIVISION BECAUSE OF ITS IMPORTANCE TO MANY PEOPLE IN THE EASTERN PART OF THE TERRITORY. A COMMITMENT TO NUNAVUT WAS MADE BY THE FEDERAL AND TERRITORIAL GOVERNMENTS IN THE LAND CLAIM WITH THE **INUIT**. A CRITICAL ELEMENT OF OUR SUPPORT FOR THE CREATION OF **NUNAVUT** IS A COMMITMENT OF THE FEDERAL GOVERNMENT TO MAINTAINING THE LEVELS OF SERVICES TO THE PUBLIC IN BOTH TERRITORIES AFTER DIVISION.

A NEW TERRITORY WILL HAVE A "PUBLIC" GOVERNMENT, AS WE SAY IN THE NORTH, BUT IT WILL ALSO EXPRESS MANY OF THE **ASPIRATIONS** OF INUIT FOR SELF-GOVERNMENT. THEIR **CLAIM** AGREEMENT FASHIONS MANY "INSTITUTIONS OF PUBLIC GOVERNMENT" WHICH HAVE GUARANTEED ABORIGINAL REPRESENTATION. A PLEBISCITE ON A BOUNDARY TO DIVIDE THE TWO TERRITORIES IS SCHEDULED FOR MARCH OF THIS YEAR.

A CLAIM WAS SETTLED WITH THE **INUVIALUIT** IN 1984. THEIR COMMUNITIES ARE IN THE BEAUFORT SEA AREA AND ASPECTS OF THAT CLAIM ARE STILL BEING IMPLEMENTED.

IN SEPTEMBER OF 1988 THE DENE AND METIS OF THE WESTERN ARCTIC SIGNED AN AGREEMENT IN PRINCIPLE WITH THE FEDERAL GOVERNMENT PROVIDING FOR THE LARGEST LAND CLAIMS SETTLEMENT IN NORTH AMERICA. THAT CLAIM AGREEMENT EVENTUALLY COLLAPSED BECAUSE IT

EXTINGUISHED ABORIGINAL RIGHTS AND DID NOT CONTAIN **GUARANTEES** RELATING TO ABORIGINAL POLITICAL RIGHTS. AFTER THE FAILURE OF THE **DENE/METIS** CLAIM, THE FEDERAL GOVERNMENT APPROVED A REGIONAL APPROACH TO CLAIMS SETTLEMENT AND VERY RECENTLY THE **GWICH'IN** PEOPLE IN THE DELTA RATIFIED A REGIONAL CLAIM WITH THE FEDERAL GOVERNMENT. THAT AGREEMENT SETS UP A PROCESS FOR NEGOTIATING SELF-GOVERNMENT **ARRANGEMENTS** WITH THE **GWICH'IN**. ANOTHER REGIONAL CLAIM NEGOTIATION PROCESS RECENTLY STARTED FOR THE SAHTU REGION.

LAND CLAIMS HAVE AN ENORMOUS IMPACT ON THIS TERRITORY AND THE WAY TERRITORIAL GOVERNMENT IS EXERCISED. THE CLAIMS AGREEMENTS INCLUDE PROVISIONS WHICH WILL ESTABLISH "INSTITUTIONS OF PUBLIC GOVERNMENT ", WHICH WILL APPLY TO BOTH ABORIGINAL AND NON-ABORIGINAL PEOPLE. THE CLAIMS DOCUMENTS THEMSELVES WILL BE PROTECTED BY THE CONSTITUTION OF CANADA, AND WILL HAVE A HIGHER CONSTITUTIONAL STATUS THAN OUR TERRITORIAL CONSTITUTION, THE NORTHWEST TERRITORIES ACT.

SINCE THE TERRITORIAL GOVERNMENT LEFT SPARKS STREET IN OTTAWA IN 1967 AND TOOK UP RESIDENCE IN YELLOWKNIFE, WE HAVE BEEN IN AN ALMOST CONTINUOUS PROCESS OF CONSTITUTIONAL DEVELOPMENT.

THE EXISTING LEGISLATIVE ASSEMBLY AND GOVERNMENT OF THE TERRITORIES HAS BEEN EVOLVING RAPIDLY IN THE 1970'S AND 80'S AS IT MOVED TO A FULLY-ELECTED BODY AS RECENTLY AS 1975 AND GRADUALLY GAINED FROM OTTAWA PROVINCIAL TYPE POWERS AND

RESPONSIBILITIES . IT IS NOWHERE NEAR COMPLETE IN ITS EVOLUTION OR DEVELOPMENT.

IN PERSONAL TERMS, AS A DENE, ELECTED TO SERVE ALL THE PEOPLES IN THE TERRITORIES, I REJECT BOTH COLONIAL GOVERNMENT AND **ETHNIC** GOVERNMENT. BECAUSE WE ARE ALL IN THIS TOGETHER, I SUPPORT BOTH THE INHERENT RIGHT TO SELF-GOVERNMENT AND THE FULL PARTNERSHIP OF NORTHERN GOVERNMENTS IN NATIONAL DECISION-MAKING.

YOU CANNOT HAVE ONE WITHOUT THE OTHER: WHEN ABORIGINAL SELF-GOVERNMENT IS CONSTITUTIONALLY PROTECTED IT IS BOTH UNWORKABLE AND UNJUST IF TERRITORIAL GOVERNMENTS REMAIN CREATURES OF FEDERAL STATUTE OR WARDS OF THE INDIAN AFFAIRS DEPARTMENT. GOVERNING RELATIONSHIPS IN THE NORTH MUST COME THROUGH EQUITY AND SHARING RATHER THAN THROUGH CONSTITUTIONAL OR POLITICAL DOMINANCE BY ONE GROUP OVER ANOTHER.

WE HAVE CREATED AND CONTINUE TO PURSUE ARRANGEMENTS THAT ALLOW THE RESIDENTS OF THE NORTHWEST TERRITORIES TO GOVERN THEMSELVES EVEN THOUGH THEY COME FROM VERY DIFFERENT SOCIETIES WITH VERY DISTINCT TRADITIONS. THAT DIVERSITY IS REFLECTED IN ONE WAY BY THE FACT THAT THERE ARE EIGHT OFFICIAL LANGUAGES USED IN THE TERRITORIES AND IN OUR LEGISLATIVE ASSEMBLY AND RECOGNIZED IN OUR OFFICIAL LANGUAGES ACT.

WE DO NOT SEE ANY REAL PROSPECT OF RESOLVING ALL 28 ITEMS IN THE FEDERAL PACKAGE IN THE CURRENT ROUND OF CONSTITUTIONAL DEBATE. SO WE ARE NOT HERE TO REFLECT DETAILED VIEWS OF OUR GOVERNMENT ON ALL OF THOSE FEDERAL PROPOSALS. THE GOVERNMENT OF THE NORTHWEST TERRITORIES EXPECTS TO DO THAT IN ANY NEGOTIATIONS WHICH OCCUR IN THE COMING MONTHS. WE HAVE, HOWEVER, PROVIDED YOUR COMMITTEE WITH SOME PRELIMINARY WRITTEN COMMENTS ON THE FEDERAL PACKAGE.

THERE IS NOT YET ANY OVERALL CONSENSUS IN THE NORTH IN HOW TO CHART OUR FUTURE. BUT WE ALL TALK AND TOGETHER WE ARE MOVING FORWARD . NATIONAL CONSTITUTIONAL TALKS MUST NOT THREATEN THE PROGRESS WE HAVE MADE TO RESOLVE THESE VERY IMPORTANT ISSUES. THE THREAT COMES FROM IGNORING THE CIRCUMSTANCES IN THE NORTH, FROM OVERLOOKING OUR EXPERIENCE AND OUR PROGRESS ON ISSUES LIKE ABORIGINAL RIGHTS. SOME OF OUR PROGRESS IS SIMPLY THE PROCESSES WE HAVE CREATED TO KEEP OUR DIFFERENT PEOPLES TALKING TO EACH OTHER AND LEARNING FROM EACH OTHER. IN A WORD, TOLERANCE - WE ARE LEARNING **TOLERANCE** FOR EACH OTHERS' WAYS.

EVEN OUR GOVERNING PROCESSES ARE UNIQUE IN THE NORTHWEST TERRITORIES, AND HERE I AM SPEAKING OF OUR CONSENSUS FORM OF GOVERNMENT. ELECTIONS ARE NOT CONTESTED ON PARTY LINES AND THE LEGISLATIVE ASSEMBLY DOES NOT FUNCTION BASED ON POLITICAL PARTIES . MEMBERS SIT IN THE HOUSE AS INDEPENDENTS. THE CABINET IS ELECTED BY A SECRET BALLOT OF ALL THE ELECTED MEMBERS, AND

CAUCUS **MEETINGS** INCLUDE ALL MEMBERS, INCLUDING THE MINISTERS AND THE GOVERNMENT LEADER.

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IN OUR CONSENSUS GOVERNMENT, EVERY MEMBER OF THE HOUSE HAS AN EQUAL VOICE. OUR CABINET MUST MAINTAIN THE CONFIDENCE OF THE ORDINARY MEMBERS OF THE HOUSE, WHO CONSTITUTE A MAJORITY TO WHOM THE CABINET MUST BE ATTENTIVE AND RESPONSIVE.

THE LACK OF PARTIES AND PARTY DISCIPLINE HAS CAUSED SOME COMMENTATORS TO JUDGE OUR SYSTEM LESS DEVELOPED THAN SYSTEMS BASED ON ADVERSARIES, ON WINNERS AND LOSERS. WHILE OUR SYSTEM IS NOT WITHOUT ITS OWN DIFFICULTIES FROM TIME TO TIME, WE BELIEVE IT HAS ADVANTAGES WHICH MUST NOT BE LOST SIGHT OF IN THE NATIONAL CONTEXT. FOR INSTANCE, PREMIER **RAE'S** CONCERN THAT A "TRIPLE E" SENATE WOULD IGNORE THE IMPORTANCE OF POLITICAL PARTIES AS A FUNDAMENTAL REALITY OF OUR POLITICAL SYSTEMS, IS NOT A CONCERN AND DOES NOT REFLECT A REALITY FOR US IN OUR SYSTEM.

CURRENTLY IN CANADA THERE IS MUCH DEBATE BETWEEN FEDERAL AND PROVINCIAL GOVERNMENTS ON BOTH JURISDICTION AND FINANCIAL RESPONSIBILITY FOR MATTERS RELATING TO ABORIGINAL PEOPLES. IT HAS SOUNDED SOMETIMES MORE LIKE A "DIVISION OF BURDENS" THAN A "**DIVISION** OF POWERS" DEBATE. MOREOVER, THE DEBATE BETWEEN GOVERNMENTS HAS BEEN CARRIED ON IN THE ABSENCE OF THE ABORIGINAL PEOPLES WHO ARE MOST DIRECTLY AFFECTED, AND WHO BELIEVE THAT THE INHERENT RIGHT TO SELF-GOVERNMENT REQUIRES THEIR PRESENCE, THEIR

PARTICIPATION, AND THEIR ULTIMATE SHARING IN THE GOVERNING POWERS .

THE FEDERAL PROPOSALS RELATING TO ABORIGINAL PEOPLES RAISE A WIDE RANGE OF ISSUES WHICH MUST BE ADDRESSED IF ABORIGINAL SELF-GOVERNMENT IS EVER TO HAVE MEANING. WE SEE IT AS AN ENCOURAGING SIGN THAT CANADA IS PREPARED TO MAKE A COMMITMENT TO INCLUDE ABORIGINAL PEOPLES IN THE CONSTITUTIONAL PROCESSES THAT WOULD DETERMINE THE FUTURE OF THIS COUNTRY. AN ONGOING FORUM FOR DISCUSSION BETWEEN ABORIGINAL LEADERS AND FIRST MINISTERS IS ESSENTIAL, NOT JUST IN THE CONSTITUTIONAL FIELD BUT ALSO IN THE POLITICAL PROCESS IN GENERAL, AND IN RELATION TO THE ECONOMY.

AS THE FEDERAL PROPOSALS ON SELF-GOVERNMENT RECOGNIZE, ABORIGINAL PEOPLES WERE SELF-GOVERNING AT THE TIME OF FIRST CONTACT WITH EUROPEAN SOCIETIES. THEIR POWERS OF SELF-GOVERNMENT HAVE BEEN SERIOUSLY ERODED BY THE ENCROACHMENT OF NON-ABORIGINAL SOCIETY AND FEDERAL LEGISLATION SUCH AS THE INDIAN ACT. IN REGIONS SUCH AS THE NORTH THE LOSS OF TRADITIONAL SELF-GOVERNMENT STRUCTURES HAS OCCURRED MAINLY IN THIS CENTURY.

THE **STRUCTURE** AND POWERS OF NEW SELF-GOVERNMENTS MUST BE PRACTICAL AND FISCALLY ATTAINABLE SO THAT PRESERVING AND PROMOTING ABORIGINAL CULTURES AND RIGHTS BECOMES A REALITY. BECAUSE ALTHOUGH SELF-GOVERNMENT IS DESCRIBED IN THE **FEDERAL** PROPOSALS AS A "RIGHT", ULTIMATELY IT REPRESENTS A VERY HEAVY

RESPONSIBILITY FOR ABORIGINAL LEADERS AND ABORIGINAL INSTITUTIONS . ONCE ENTRENCHED, THE RECOGNITION OF ABORIGINAL SELF-GOVERNMENT SHOULD BE SEEN AS A "RIGHT" NOT TO BE UNDULY INTERFERED WITH BY OTHER LEVELS OF GOVERNMENT.

BUT THE LARGER QUESTION IS HOW TO ENSURE THAT ABORIGINAL PEOPLES RECEIVE AND, IN SOME CASES, DELIVER PROGRAMS AND SERVICES COMPARABLE TO ALL OTHER CANADIANS. THE ENTRENCHMENT OF ABORIGINAL SELF-GOVERNMENT WOULD SIGNAL A CHANGE OF ATTITUDE BUT THE MAJORITY OF WORK WOULD STILL HAVE TO BE DONE. SELF-GOVERNMENT INSTITUTIONS WOULD REQUIRE ADEQUATE RESOURCES FINANCED THROUGH LAND AND RESOURCE BASES, TAXATION POWERS, TRANSFERS AND EQUALIZATION PAYMENTS. THESE ARE THE AREAS WHERE WE WILL MAKE OR BREAK ABORIGINAL SELF-GOVERNMENT.

IN THE MEAN TIME, ENTRENCHING AN INHERENT RIGHT TO ABORIGINAL SELF-GOVERNMENT WITHOUT MORE COULD BE SEEN AS SHIFTING THE RESPONSIBILITY FOR ABORIGINAL PEOPLES OFF EXISTING GOVERNMENTS ON TO THE ABORIGINAL PEOPLES THEMSELVES. ULTIMATELY THIS MAY BE THE OBJECTIVE OF GOVERNMENTS AND ABORIGINAL PEOPLES BUT, IF ENTRENCHMENT OF SELF-GOVERNMENT MEANS THE IMMEDIATE REPEAL OF **FEDERAL** POWERS OVER ABORIGINAL PEOPLE AND THE DEMISE OF THE FEDERAL GOVERNMENT'S FIDUCIARY DUTY TOWARD ABORIGINAL PEOPLE, THIS WOULD BE LIKE CUTTING ABORIGINAL PEOPLE ADRIFT IN A LEAKING BOAT WITHOUT FOOD OR WATER.

THESE FINANCIAL ISSUES ARE CRITICAL IN THE NORTHWEST TERRITORIES. WE ARE PRESENTLY ENGAGED IN **VERY DIFFICULT NEGOTIATIONS WITH THE** FEDERAL GOVERNMENT IN RELATION TO LAND CLAIMS IMPLEMENTATION. IT IS ONE THING TO ARRIVE AT A CLAIM AGREEMENT ACCEPTABLE TO ALL **AND** QUITE ANOTHER THING TO ENSURE ADEQUATE RESOURCES TO IMPLEMENT THAT AGREEMENT. IN OUR EXPERIENCE THE **FEDERAL** GOVERNMENT'S WILLINGNESS TO ENTER INTO AND CONCLUDE LAND CLAIMS HAS CERTAINLY TAKEN SOME MAJOR STEPS FORWARD. BUT WE NEED SIGNIFICANT PROGRESS IN RECOGNIZING THE REAL, INCREMENTAL COSTS OF CARRYING OUT GOVERNMENTS' OBLIGATIONS UNDER CLAIMS AND A CLEAR COMMITMENT BY CANADA TO BEAR THESE ADDITIONAL COSTS. ANYTHING LESS WILL INEVITABLY REDUCE OUR GOVERNMENT'S ABILITY TO PROVIDE FOR THE NEEDS OF ALL ITS CITIZENS.

THE 1990-91 RECESSION HIT THE ECONOMY OF THE NORTHWEST TERRITORIES HARD, AS IT DID MOST OTHER REGIONS OF CANADA. IT IS ESTIMATED THAT TOTAL SPENDING BY NORTHWEST TERRITORIES CONSUMERS, BUSINESSES AND GOVERNMENTS IN 1991 WAS ABOUT 15 PER CENT LOWER THAN IT WAS IN 1989. INVESTMENT, AFTER ADJUSTMENT FOR INFLATION, FELL BY 43 PER CENT AND EMPLOYMENT BY MORE THAN THREE PER CENT OVER THE LAST TWO YEARS. THE RECESSION WAS PARTICULARLY HARD SINCE WE **DID NOT** PARTICIPATE IN THE STRONG ECONOMIC EXPANSION THAT CANADA EXPERIENCED IN THE 1980S. OVER THE PAST EIGHT YEARS, 1988 AND 1989 WERE THE ONLY TWO YEARS WHEN WE HAD REAL ECONOMIC GROWTH .

WE ARE IN A **PERIOD** OF TIGHT BUDGETS LARGELY CAUSED BY REDUCED FEDERAL TRANSFERS. THE GROWTH IN OUR GOVERNMENT REVENUES IS MUCH LOWER THAN THE GROWTH IN DEMAND FOR BASIC SERVICES SUCH AS EDUCATION, HEALTH AND SOCIAL ASSISTANCE. WE ARE MAKING TOUGH BUDGET DECISIONS NOW AND MUST ALSO DECREASE GOVERNMENT AND **PUBLIC** EXPECTATIONS IN ORDER TO AVOID CRUSHING DEBT LOADS.

WITH THE PROPER NATIONAL POLICIES AND VISION, THE NORTHWEST TERRITORIES CAN MAKE IMPORTANT CONTRIBUTIONS TO CANADA'S PROSPERITY. WE HAVE UNDER-EMPLOYED HUMAN RESOURCES AND AN UNDER-EXPLOITED NATURAL RESOURCE BASE.

THE NORTHWEST TERRITORIES OFFERS UNIQUE OPPORTUNITIES IN MINING, OIL AND GAS, FISHING, FORESTRY AND TOURISM. HOWEVER, IN ALL OF THESE SECTORS THE DEVELOPMENT OF THE NORTH IS LIMITED BY THE LACK OF ACCESS. INVESTMENT IN TRANSPORTATION INFRASTRUCTURE SUCH AS ROADS, **HARBOURS** AND WHARVES IS NEEDED TO OPEN UP THE NORTHWEST TERRITORIES FOR THE BENEFIT OF NORTHERN RESIDENTS AND CANADIANS THROUGHOUT CANADA. RESOURCES ARE THERE BUT WITHOUT VISION THE NORTHWEST TERRITORIES WILL CONTINUE TO LINGER ON THE PERIPHERY OF THE CANADIAN CONSCIOUSNESS.

IN THE NORTHWEST TERRITORIES WE DO NOT HAVE THE FINANCIAL RESOURCES TO BUILD THIS INFRASTRUCTURE ALONE. ALL GOVERNMENTS IN CANADA, TOGETHER WITH ABORIGINAL LEADERS IN THE NORTH, COULD PARTICIPATE IN AN EXPANDED VISION OF CANADA BY THE DEVELOPMENT OF

A **TRANSPORTATION** STRATEGY TO MAKE THE CANADIAN NORTH ACCESSIBLE AND BENEFICIAL TO ALL CANADIANS.

THE BENEFITS FROM NORTHERN DEVELOPMENT WOULD EXTEND WELL BEYOND THE CREATION OF AN ECONOMIC BASE FOR THE RESIDENTS OF THE NORTH. IT HAS BEEN ESTIMATED THAT FOR EVERY DOLLAR OF GROSS DOMESTIC PRODUCT IN THE NORTHWEST TERRITORIES, 81 CENTS OF GROSS DOMESTIC PRODUCT IS **GENERATED** IN THE REST OF CANADA. EVERY JOB CREATED IN THE NORTHWEST TERRITORIES SUPPORTS 1.7 JOBS IN THE REST OF THE COUNTRY .

THE CURRENT GOVERNMENT OF THE NORTHWEST TERRITORIES IS COMMITTED TO TRANSFERRING SIGNIFICANT LEVELS OF AUTHORITY AND RESOURCES TO COMMUNITIES TO ENABLE THEM TO SET PRIORITIES AND MAKE THE BEST POSSIBLE USE OF RESOURCES AVAILABLE. OUR GOVERNMENT IS ALSO PREPARED TO MAKE EVERY EFFORT TO INCORPORATE ASPIRATIONS FOR ABORIGINAL SELF-GOVERNMENT INTO POLICIES AND A PROCESS FOR IMPLEMENTING COMMUNITY SELF-GOVERNMENT. WE ARE HOPING THAT BY THE TIME AN INHERENT RIGHT OF ABORIGINAL SELF-GOVERNMENT IS ENTRENCHED IN THE CONSTITUTION OF CANADA WE WILL HAVE BEGUN IN THE NORTHWEST TERRITORIES TO CREATE INSTITUTIONS AND SYSTEMS OF GOVERNMENT THAT REFLECT THE SPIRIT OF THAT RIGHT.

WE WOULD LIKE TO CLOSE OUR PRESENTATION TODAY BY OUTLINING OUR EXPECTATIONS FROM THIS EFFORT TO RENEW CANADA. ALL TOO OFTEN THE ROLE OF THE TERRITORIES IN THE CANADIAN FEDERATION IS OVERLOOKED.

WE FIND **OURSELVES** ON THE OUTSIDE AS THE FEDERAL AND PROVINCIAL GOVERNMENTS SIT DOWN AT THE TABLE TO OVERHAUL OUR COUNTRY OR OUR ECONOMY. WITHIN THE LAST FEW YEARS WE HAVE SEEN SIGNS OF CHANGE. OUR PARTICIPATION IN NATIONAL CONSTITUTIONAL, ECONOMIC AND POLITICAL AFFAIRS IS NOT ONLY TOLERATED BUT ALSO INCREASINGLY SOUGHT AFTER. THE PRIME MINISTER AND THE **FEDERAL** MINISTER OF FINANCE HAVE RECENTLY INVITED THE PARTICIPATION OF TERRITORIAL LEADERS AND FINANCE MINISTERS IN FIRST MINISTERS AND FINANCE MINISTERS' MEETINGS. CANADIANS LIVING IN THE NORTHWEST TERRITORIES AND YUKON HAVE A TRULY UNIQUE PERSPECTIVE ON THIS COUNTRY. WE LOOK FORWARD TO, AND I MUST SAY EXPECT, FULL PARTICIPATION IN ALL THE PROCESSES LEADING TO THE RENEWAL OF CANADA IN THE COMING MONTHS AND YEARS. WE LOOK FORWARD TO AND EXPECT TO BE TREATED WITH THE SAME DIGNITY AND RESPECT THAT ALL CANADIANS AND ALL PROVINCES AND REGIONS IN CANADA SHOULD EXPECT.

A THIRD OF CANADA IS GOVERNED BY TERRITORIAL GOVERNMENTS. SURELY IT DOES NOT STRETCH THE IMAGINATION TO HAVE THE CONSTITUTION REFLECT SOME PRINCIPLES TO ACCOUNT FOR THIS. THE CONSTITUTION SHOULD CONTAIN A SEPARATE PART DEDICATED TO THE TERRITORIES, THEIR INTEGRATION INTO THE CANADIAN NATION AND THEIR MEANS OF ACHIEVING PROVINCEHOOD ON EQUITABLE TERMS. THE POLITICAL AND CONSTITUTIONAL EVOLUTION OF THE TERRITORIES WILL BE NO EASY MATTER. IT CERTAINLY DOES NOT HELP WHEN THE GROUND RULES ARE CHANGED ON US WITHOUT CONSULTATION AS WAS THE CASE IN 1982 WITH THE NEW AMENDING **FORMULA** AND IN 1987 WITH THE MEECH LAKE ACCORD.

WILL WE BE INVOLVED IN THIS ROUND? THE SIGNS ARE CERTAINLY MORE POSITIVE THAN **IN** THE PAST. WE WOULD ASK THAT YOUR REPORT REINFORCE THE NEED FOR AND THE MERITS OF OUR PARTICIPATION.

AT A TIME WHEN ONE VALUED MEMBER OF THE CANADIAN FAMILY IS SERIOUSLY CONSIDERING LEAVING IF ITS DISTINCT NEEDS AND VALUES ARE NOT RECOGNIZED AND MET WITHIN THE UNION, WE IN THE NORTH CONTINUE OUR STRUGGLE TO BE RECOGNIZED AS A VIABLE AND DISTINCT MEMBER OF THAT FAMILY. SURELY BOTH CAN BE ACCOMMODATED AND THE WHOLE MADE STRONGER IN ITS DIVERSITY.

APPENDIX

“PRELIMINARY COMMENTS ON FEDERAL PROPOSALS”

SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM
LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES



PRELIMINARY COMMENTS ON FEDERAL PROPOSALS

The Northwest Territories Special Committee *on* Constitutional Reform was struck on December 18, 1991. There has been no opportunity **since** that date to conduct **public** hearings, nor have any been scheduled. The comments contained **in this** Appendix are **preliminary and** do not necessarily represent the positions of the Government or Legislative Assembly of the Northwest Territories. The Northwest Territories Special **Committee will submit its** report and recommendations to the **Legislative** Assembly at an appropriate time.

Part IProposal 1. **Property Rights and the Notwithstanding Clause**

- The consequences of a property right amendment **including its implications on such** matters as aboriginal claim settlements would depend heavily on the placement and wording of the amendment. These important details are not addressed in the federal proposal. The Special **Committee will not support** or reject a property right amendment until **further** information is **available as to the issues** of wording and placement and its relationship to aboriginal, environmental and other such provisions has been identified.
- Increasing the majority required to invoke the "notwithstanding **clause**" **does not** address the underlying issue as to whether the Constitution should contain such an override **provision**. **The Special Committee, however,** would not oppose making the **clause** more difficult to invoke, provided that there was wide spread support for such an amendment at this time.

Proposal 2. **Recognition of Quebec's Distinctiveness and Canada's Linguistic Duality**

- The Special Committee recognizes distinctiveness of Quebec's language, culture, and civil law tradition. During the **Meech** Lake round a Senate Task Force on the Northwest Territories and Yukon recommended recognition **of** aboriginal peoples as constituting distinct societies. In principle, the recognition of

distinct aboriginal societies in the Constitution should not be precluded, and on this basis the recognition of Quebec as a distinct society in **the Charter** would be supported by the **Special Committee**.

The Special Committee takes no position at this time on the draft wording contained in the proposal.

Proposal 3. **Aboriginal Participation in Current Constitutional Deliberations**

- . The Special Committee supports the participation of aboriginal peoples in current and ongoing constitutional deliberations in a capacity, and on matters, acceptable to aboriginal peoples. This is equally the case in the political process **in general**, and in relation to the economy.

Proposal 4. **Aboriginal Self-Government**

- . The inherent right to self-government must be a central element of this round of constitutional renewal. The relationship of the **self-government** right to the political and constitutional development of the territories is of **profound importance** to all residents of the territory. The Government and Legislative Assembly of the **Northwest Territories** are pursuing a realization of aboriginal **self-government** in the context of public government.

Self-governments must be practicable and fiscally attainable.

Proposal 5. **Aboriginal Constitutional Process**

- . An agenda of matters of importance to aboriginal peoples remains outstanding from the 1983 Constitutional Accord. Entrenchment of a constitutional process to address these and other matters relating to the aboriginal people is supported by the **Special Committee**. The full participation of the aboriginal peoples **and territorial governments** must be provided for in **any** such process.

Proposal 6. Representation of Aboriginal Peoples in the Senate

- . **The** Special Committee takes no position on this issue until such time **as** the aboriginal peoples have expressed **their views** on the need for such a guarantee, and there has been a fuller discussion on the matter of Senate Reform generally.

Proposal 7. Canada Clause

- . The purpose, wording and placement of a Canada Clause require further discussion. The Special Committee accepts the concept of a balanced Canada Clause **which is intended to inspire** the pride and commitment of all Canadians in their country. The Canada Clause should recognize the historical place of aboriginal societies **pre-dating** European settlement.

Part II Responsive Institutions

Proposal 8. House of Commons

- . **While the** Special Committee recognizes that reform of the House of Commons is considered by many to be a high priority, it does not recommend pursuing **non-constitutional parliamentary reform in the same process as constitutional reform.**

Proposal 9. Principles and Details of Senate Reform
and 10.

- . The Special Committee considers Senate Reform to be a central issue that must be addressed in the current round of constitutional reform. Equitable arrangements for the representation of the Territories **in an** elected, and effective Senate must *form* part of any reformed Senate.

Proposal 11. Senate Ratification of Appointments

- . The Special Committee believes the Senate ratification issue should be discussed in the context of the powers of a reformed Senate. The Special Committee **notes that some** federal boards **operate** only in the territories. Some exceptions to Senate ratification of **appointments to such boards and agencies should be considered.**
-

Proposal 12. **Appointments to the Supreme court**

- . The Special Committee accepts the federal proposal and will await a draft legal text before commenting further.

Proposal 13. **The Amending Formula**

- . The Special Committee does not accept the current amending formula in s.42(1) (e) and (f) of the **Constitution Act, 1982** in relation to the establishment of new provinces and the extension of provincial boundaries into the territories. The Special Committee refers the Joint Committee to the brief of the Special Committee of the 11th Assembly of the Northwest Territories to the **Beaudoin-Edwards** Committee on May 1, 1991.

Part III

A More Prosperous Future

Proposal 14. **The Common Market Clause**

- . The intended treatment of the NUT is unclear from the text of the federal proposals. The reference to "territories" in s. 121(1) of the proposed draft is contrasted by an omission of the word "territories" from s.121(2), (3)(b), (3)(c) and (4). This would lead to confusion in the application of the common market principle in relation to the Territories. While the Special Committee generally supports measures to improve the economic union, the proposal as presently worded causes concerns particularly if some jurisdictions can opt-out of a new s. 121.

Proposal 15. **Power to Manage Economic Union**

- . It is not clear what the intended application of the proposed s.91A to the governments and legislative assemblies of the two territories would be. As a concept, the "Economic Union Clause" could lead to unusual and unacceptable economic and political problems if one or more provinces opt out of the clause at the time it is entrenched in the Constitution.

Proposal 16. Harmonization of Economic Policies

- While coordination of economic policies may be a commendable goal, it should *not* be included in the constitutional process.

Proposal 17. Bank of Canada

- This is a non-constitutional matter which should not be addressed in a constitutional process.

Proposal 18 to 24 and 26 Division of Powers

- The implications of proposals 18 to 24 for the Northwest Territories are unclear. Is there an intended process of non-constitutional devolution to territorial governments? Fiscal capacity of provinces and territories is a central issue relating to proposals 18 to 24 that is not addressed by the federal proposals. This is **not true** in the case of proposal 26. The Special Committee would be concerned about any devolution of authority that compromised critical federal programs in the Northwest Territories in areas such as housing.

Proposal 27. Spending Power

- The Spatial Committee would be concerned about any limitation on the federal spending power which could threaten vital cost-shared programs or tend to erode national standards. As a sparsely populated, undeveloped region, the Northwest Territories would be particularly vulnerable to reductions in the federal spending power even though it does not appear that this proposal is intended to alter the relationship between the federal and territorial governments.

Proposal 28. Council of the Federation

- The Special Committee does not view the Council as a possible substitute for a reformed Senate. The role of the Council could be accomplished by non-constitutional means by annual First

Ministers/Ministers Conferences established by intergovernmental agreement. Territories are excluded from the voting. The Special Committee sees no **reason** to limit territorial **voting in relation to matters that** directly affect the territorial economy.

News Release

President of the Privy Council and
Minister Responsible for
Constitutional Affairs



Communiqué

Président du Conseil privé et
ministre responsable des Affaires
constitutionnelles

APPENDIX B

FOR IMMEDIATE RELEASE

March 3, 1992

Details of Aboriginal Conference Plans Released

OTTAWA -- The Right Honorable Joe Clark, President of the Privy Council and Minister Responsible for Constitutional Affairs, today announced details of the conference on First peoples and the Constitution which is to be held in Ottawa on March 13-15.

Co-Chairs will be the Honorable Joseph Ghiz, premier of Prince Edward Island, and Mary Simon, President, Inuit Circumpolar Conference.

The conference will have 184 participants, of whom half will be selected by the four national aboriginal associations. Aboriginal women's associations will be fully represented.

The other 92 participants will include experts on aboriginal questions, representatives of provincial and territorial governments, Members of Parliament and Senators and other interested individuals. Some 28 members of the public, selected from those who applied to attend one of the five constitutional conferences held earlier this year, are included among the 92.

The conference will be held on Parliament Hill. Plenary sessions will be held in Room 200 of the West Block and various committee rooms will be used for workshops.

It has been agreed among the aboriginal associations and the government that the four major conference themes will be:

1. Aboriginal peoples' inherent right to self-government.
2. Jurisdiction and responsibility regarding aboriginal peoples.
3. Implementation and some practical aspects of self-government.
4. First Peoples' recognition.

. ../2

Ottawa, Canada K1A 1K2

Further details are set out in the attached document, which was agreed to by the four national aboriginal associations and the government on February 28.

For more information please contact:

Wendy Johnson
Constitutional Conferences Secretariat
1-800-363-3537

February 28, 1992

PARLIAMENTARY CONFERENCE
FIRST PEOPLES AND THE CONSTITUTION

CONTEXT:

Agreement has been reached with the national Aboriginal associations to hold a Conference on Aboriginal constitutional matters in Ottawa on March 13, 14 and 15.

Since the Special Joint Committee Report will have been made public, the Conference should serve as a consultation mechanism for the federal government before it tables its position in April. It will also provide an opportunity for public discussion on the practical implications of Aboriginal self-government, recognition of First Peoples and other related constitutional issues.

OBJECTIVES:

To provide a public forum for a general discussion of Aboriginal issues.

To educate the public about these issues..

To begin a discussion on the practical issues related to self-government and the recognition of First Peoples.

To inform the government of Aboriginal reactions to the recommendations of the Special Joint Committee.

CONFERENCE MANAGEMENT:

The Conference Co-Chairs, the Honorable Joseph Ghiz and Ms. Mary Simon, shall be vested with the authority to manage the Conference.

The Conference Co-Chairs shall work in close consultation with representatives of the four Aboriginal associations and with officials designated by the Minister Responsible for Constitutional Affairs in determining the various arrangements for the Conference. More particularly, consultations will take place on:

Conference format and agenda;
selection of **speakers**, workshop chairs and other
Conference officials; and
organization of the cultural evening.

They shall also be responsible for ensuring that the provisions set out **in this** document are duly observed by all parties.

The Constitutional Conference Secretariat shall:

Work under the direction of the Conference Co-Chairs.

Develop recommendations for consideration by the Co-Chairs, and by representatives of the Aboriginal associations and the government as appropriate.

Be responsible for implementing decisions about the management of the Conference.

Be represented at all significant discussions about Conference arrangements.

FORMAT, COMPOSITION, AND LOGISTICS:

Location: Parliament Hill: Room 200, West Block and Parliamentary Committee rooms.

Timing: The Conference would begin on the evening of March 13 and end in the early afternoon of March 15.

Size: 184 participants, including experts and Chairpersons. A maximum of 40 observers from Aboriginal associations and 10 from the federal government will be invited. The Co-Chairs will determine the number of visitors.

Composition:

92 participants chosen by the four national Aboriginal associations.

40 participants chosen by the federal government.

28 representatives of the public, selected by the Conference Co-Chairs from those who applied to attend the five Constitutional Conferences held between January 17 and February 16, 1992.

12 Members of Parliament and Senators.

12 representatives from provinces/territories (one nominee from each government).

In addition, some Ministers from the Cabinet Committee on Canadian Unity could attend as observers.

The Workshop Chairs and any other conference officers shall be designated by the Conference Co-Chairs, shall be balanced between **Aboriginal and non-Aboriginal participants, and shall be acceptable to all parties.**

Format: Should facilitate dialogue and participation. **Set-** piece presentations may be provided for but should not dominate the proceedings.

Cultural Evening: **Will** be organized for the evening of March 14.

REPRESENTATIVENESS :

Every effort shall be made to ensure that the Conference in its composition is broadly reflective of Canadian Aboriginal and non-Aboriginal society.

There shall be appropriate representation from both official language groups. Inuktitut interpretation and translation will be provided **subject** to logistical and financial considerations. .

The associations, the government, and the Conference Co-Chairs, shall make best efforts to select equal numbers of men and women. The Aboriginal associations will provide for representation by Aboriginal women's associations.

PROPOSED THEMES:

1. ABORIGINAL PEOPLES' INHERENT RIGHT OF SELF-GOVERNMENT

- a) Recognition of the Inherent Right of Self-Government in the Constitution

What are the options for recognizing the inherent right of self-government?

What principles are important in developing a constitutional amendment recognizing the inherent right of self-government?

- b) Constitutional Process

Aboriginal participation in First Ministers' Conference (FMC) .

Aboriginal consent for amendments to Part II of the

constitution Act, 1982 and other constitutional provisions affecting Aboriginal peoples.

FMC'S on issues of concern to Aboriginal peoples.

2. JURISDICTION AND RESPONSIBILITY REGARDING ABORIGINAL PEOPLES

- a) What are the implications of recognizing a third order of government for the future relations between federal, provincial and Aboriginal peoples governments?

What are the **implications** of redistribution of powers between federal and provincial governments for Aboriginal peoples?

- b) Section 91(24) of the Constitution Act, 1867.

3. IMPLEMENTATION AND SOME PRACTICAL ASPECTS OF SELF-GOVERNMENT

- a) Implementation and Enforcement Issues

What means can be used to move from recognition of the inherent right of self-government to implementation. For example, should a national treaty or a constitutional amendment **be** used to provide a framework for self-government negotiations?

What matters should be discussed in the context of implementation - e.g., land and resources, jurisdictions, dispute resolution mechanisms, transitional measures?

Equity of access.

Self-government without a land base.

- b) Financing, equalization payments
c) Charter Issues

Development of human rights instruments by Aboriginal peoples.

Application of the federal Charter of Rights and Freedoms.

Relationship between section 25 and 25.1.

- d) Treaties

4. FIRST PEOPLES RECOGNITION

- a) Recognition of the Unique Constitutional Status of Aboriginal Peoples
- **Recognition as "distinct societies" or "First Peoples" including protection and promotion of Aboriginal languages and cultures in the Canada Clause and elsewhere in the Constitution such as Part II of the Constitution Act, 1982.**
- Consent to amendments.
- b) Reform of central institutions and Aboriginal representation.

CONFERENCE REPORT:

A **report** on the proceedings will be prepared by the Conference Co-Chairs for the Minister of Constitutional Affairs, and will be provided to national Aboriginal leaders.

MEDIA: "

All proceedings, including workshops, shall be open to the media.

Arrangements shall be made for all plenary sessions and selected workshops to be carried nationally in both official languages on the Parliamentary Channel.

EXPENSES:

Participants shall be eligible **for** reimbursement of their expenses, subject to normal government travel regulations.

Observers will pay their own travel and accommodation expenses. Meals will be provided for them on the same basis as to participants .

**The Report of the Special Joint Committee
of the Senate and the House of Commons**

**Joint Chairmen
Hon. Gérard Beaudoin, Senator
Dorothy Dobbie, M.P.**

February 28, 1992

EXECUTIVE SUMMARY

A. STATEMENT OF CANADIAN IDENTITY AND VALUES

We recommend that a **statement of Canada's identity and values** be **included in a prominent place in the Constitution**. We recommend **the following** preamble:

PREAMBLE

We are the **people** of Canada,
drawn from **the** four winds of **the** earth,
a privileged people,
citizens **of** a sovereign state.

Trustees of a vast northern land,
we **celebrate its** beauty **and** grandeur.
Aboriginal peoples, **immigrants,**
French-speaking, English-speaking,
Canadians all,
we **honour** our roots and **value** our
diversity,

We affirm that our **country**
is **founded** upon principles that
acknowledge the supremacy of **God,**
the dignity **of** each person,
the importance of family,
and the **value** of community,

We recognize **that** we remain **free**
only when freedom is founded on
respect for moral and spiritual values,
and **the rule** of law
in **the service** of justice.

We cherish **this** free and united country,
its place within the family of nations,
and accepting **the** responsibilities
privileges bring,
we **pledge** to **strengthen this** land
as a home of peace, hope **and** goodwill.

We **further recommend that a Canada Clause be included in section 2 of the Constitution Act, 1867 and, as such, interpretative in effect.**

We recommend the following **Canada Clause**:

CANADA CLAUSE

The following would be added to the *Constitution Act, 1867* as section 2:

Declaration

2. *We, Canadians all*, convinced of the nobility of our collective experiment, hereby renew our historic resolve to live together in a federal state;

We acknowledge that we are deeply indebted to our forebears:

the aboriginal peoples, whose inherent rights stem from their being the first inhabitants of our vast territory to govern themselves according to their own laws, customs and traditions for the protection of their diverse languages and cultures;

the French and British settlers, who to this country brought their own unique languages and cultures but together forged political institutions that strengthened our union and enabled Quebec to flourish as a distinct society within Canada; and

the peoples from myriad other nations, scattered the world over, who came to our shores and helped us greatly to fulfil the promise of this fair land;

We reaffirm our profound attachment to the principles and values that have drawn us together, enlightened our national life, and afforded us peace and security, such as our unshakable respect for the institutions of Parliamentary democracy; the special responsibility of Quebec to preserve and promote its distinct society; the right and responsibility of aboriginal peoples to protect and develop their unique cultures, languages and traditions; a profound commitment to the vitality and development of official language minority communities; an abiding obligation to assure the quality of women and men; and the recognition of the irreplaceable value of our multicultural heritage;

We pledge to honourably discharge our responsibility to our children, so that they may do the same for their own, of ensuring their prosperity and the integrity of their Environment.

Therefore we, **Canadians all**, formally adopt this, our Constitution, including the *Canadian Charter of Rights and Freedoms*, as the solemn expression of our national will and hopes.

The Committee has examined alternative drafts which can be found in Appendix B.

B. QUEBEC'S DISTINCT SOCIETY AND CANADA'S LINGUISTIC DUALITY

We recommend:

The Canadian Charter of Rights and Freedoms should be amended to include the following section after section 25:

**Quebec's distinct
Society and Canada's
Linguistic duality**

25.1 (1) This Charter shall be interpreted in a manner consistent with

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the vitality and development of the language and culture of French-speaking and English-speaking minority communities throughout Canada.

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes

(a) a French-speaking majority;

(b) a unique culture; and

(c) a civil law tradition.

C. ABORIGINAL MATTERS

The Committee recommends the entrenchment in section 35 of the *Constitution Act, 1982* of the inherent right of aboriginal peoples to self-government within Canada.¹

a. *Self-Government: Jurisdiction and Implementation*

The modern application of self-government will require negotiations with respect to the jurisdiction to be exercised by self-governing aboriginal communities. We recommend the entrenchment of a transition process to identify the responsibilities that will be exercised by aboriginal governments and their relationship to federal, provincial and territorial governments.²

b. *The Canadian Charter of Rights and Freedoms*

We recommend that the fundamental rights and freedoms of all Canadians, including the equality of the rights of men and women, ought to receive full constitutional protection.

c. *Federal Responsibilities Under Section 91(24)*

We recommend that the federal government respond to the representations of the Metis for access to a land and resource base.

We recommend that federal treaty obligations, fiduciary and trust responsibilities, and the provision of fiscal transfers that continue after the implementation of forms of self-government by various aboriginal groups be administered by a small bureau jointly managed by the federal government and representatives of the aboriginal peoples.

¹See Draft Constitutional Amendments, Appendix A at p. 107.

²See Draft Constitutional Amendments, Appendix A at p. 107.

Aboriginal Constitutional Process

We recommend:

- i) **in order to protect the aboriginal and treaty rights which the Constitution guarantees to the aboriginal peoples of Canada, that any amendment to the Constitution of Canada directly affecting the aboriginal peoples require the consent of the aboriginal peoples of Canada prior to its implementation;**
- ii) **that representatives of the aboriginal peoples of Canada be invited to all future constitutional conferences relating to the matters referred to in paragraph (i); and**
- iii) **that the Constitution provide that a constitutional conference be convened within two years after the amendment on the inherent right of self-government of the aboriginal peoples of Canada comes into force.²**

Representation of Aboriginal Peoples in the Senate

We recommend that, if they wish, aboriginal peoples be guaranteed representation in a reformed Senate, and commend the mechanism and options proposed by the Royal Commission on Electoral Reform and Party Financing.

A Canada Clause in the Constitution: Reference to Aboriginal Peoples

We recommend that the role of the Indian, Inuit and Métis peoples in the development of Canada, as well as their inherent rights as the First Peoples be recognized in the proposed Canada Clause. In addition, the clause should contain a recognition of the right and responsibility of aboriginal peoples to protect and develop their unique cultures, languages and traditions.³

²These matters are contained in section 91(24) of the *Constitution Act, 1867*, and sections 25 and 35 of the *Constitution Act, 1982*.

⁴See *Draft Constitutional Amendments, Appendix A* at p. 107.

³See *Draft Constitutional Amendments, Appendix A* p. 129.

D. OTHER CHARTER ISSUES

1. Entrenching **Property Rights**

The government **members** of the Committee support the **federal** proposal that the right to enjoy **property** and not to be deprived **thereof** without due process **and** reasonable **compensation** **be entrenched** in the *Canadian Charter of Rights and Freedoms*. The **opposition** members of the **Committee** **disagree** with this **position**.

2. Notwithstanding **Clause**

Because of the complexity **of the issues** raked, we believe that study **of the federal government's** proposal to make the **notwithstanding clause** more **difficult** to **invoke** be postponed for another round **of constitutional discussions**.

- **New Democratic Party Dissent**

Therefore the **New Democratic Party members** of the Committee **recommend** that **section 15(1)** of the *Canadian Charter of Rights and Freedoms* be exempted from **section 33**.

The **New Democratic Party** members recommend that **section 27** of the *Canadian Charter of Rights and Freedoms* be amended to **provide** that the *Charter* shall be interpreted **in** a manner consistent with the preservation and **enhancement** of the **multicultural** heritage of Canadians and the preservation **and** promotion of racial and **ethnic quality**.

3. *The Right to Privacy*

Some government members of the **Committee** support the entrenchment of a right to privacy. The opposition members disagree.

OTTAWA 13-8-82 9:03AM G.N.W.T. LEGISLATIVE ASSEMBLY

Federal Institutions for a Renewed Canada

A. THE HOUSE OF COMMONS

We recommend:

D) as **reform** of the procedures, practices and **representational** effectiveness of the **House of Commons** does not require **constitutional** change, the federal **government's proposals** on this matter should not be pursued during the current constitutional round; and

D) the **question** of a comprehensive review of the **procedures and practices** of the **House of Commons** should be **addressed** by the House of Commons.

B. REFORM OF THE SENATE

1. The Need for Reform

We believe that the **need** for increased **regional** responsiveness within central institutions, and the potential of a reformed **Senate** to **contribute** to the meeting of this need, are **elements** in a growing constitutional **consensus** among **Canadians**. The task which remains is the design of an **upper** chamber which responds to this consensus.

The federal **government's proposal** outlines **some** of the **features** which a reformed **Senate** might possess. Others, such as the **electoral** system and distribution of **seats**, are left unspecified, and highlighted for **special** attention by this Committee.

2. The Role and Functions of a Reformed Senate

a. *Roles*

We therefore **conclude** that **regional representation** must be understood as the **representation** of the people of the provinces and territories, rather than **their** governments. It must also be recognized that, for people in the central provinces, regional **representation** is already substantially achieved through the operation of the representation by population principle in the **House of Commons**. It is **primarily** the people in the Atlantic and Western provinces and the **territories** who **continue** to need enhanced **representation**. This is the specific **messing** of the **regional representation** role which must be **carried** out by a reformed **Senate**.

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b. **Functions**

It is useful to distinguish between the central purpose, or role, of an institution, and the various activities which it carries out. Most institutions have one basic role, but perform a number of functions, some of which may be required by that role and some of which may be relatively unrelated to it. One of the challenges of institutional reform is to ensure that these secondary functions do not interfere with the performance of the basic role, and identify implications which a change of basic role may have for the secondary functions,

- **Legislative Review**

Clearly, the review of federal legislation should be the primary function of a reformed Senate. If it were unable to do this, the ability of the Senate to represent regional needs and concerns would be seriously undermined. This was the view of virtually all witnesses appearing before the Committee.

- **Policy Studies**

A number of our witnesses have noted the achievements of the current Senate in the investigation of policy issues. These also receive special mention in the federal government's proposal, which applauds the work of Senate committees in the investigation of policy issues. In our view this function, as is the case with legislative review, is directly related to the basic role of the Senate. Committee investigations, in both Houses, are an indispensable means for identifying and representing the concern of Canadians.

- **Reflecting Canada's Duality**

Witnesses noted that, at Confederation, Quebec was awarded a slightly larger quota of Senate seats in recognition of needs created by its role as the institutional home of a distinct society living in the French language in North America. These needs remain, and must be reflected broadly in federal institutions and practices, as well as in any redistribution of Senate seats.

Canada's duality has a second dimension, created by the existence of francophone communities throughout Canada, and an anglophone community within Quebec. We believe that the reflection of this reality should be recognized as an important function of any reformed Senate, and incorporated within the design of constituencies.

- **Reflecting diversity**

Several witnesses argued that the Senate should more broadly reflect Canada's diversity. This issue received special attention at the Calgary constitutional conference where demands for gender equality and greater political participation were made by under-represented groups. We believe that a reformed Senate* play a useful role in reflecting Canada's diversity, and that this role can be enhanced through careful attention to the details of reform.

- **Representation of Aboriginal Peoples**

In its proposals 6 and 9, the Government of Canada calls for guaranteed aboriginal representation in a reformed Senate. There was considerable support for this proposal among our witnesses.

c* **Summing Up**

To sum up, we believe that Senate reform has become vitally important so that Canadians can have an upper house which directly represents the people of the regions, especially the less populous regions/provinces. We also believe that the representation should be by province and territory, and that the Senate will carry out its representative role by performing a variety of functions, most importantly the review of legislation.

3. **The Selection of Senators**

a. **The Principle**

We recommend:

Senators should be chosen by the people of Canada by direct election.

b. **An Electoral System for a Reformed Senate**

We recommend:

The Senate should be elected by proportional representation.

c. **Size of Constituencies and of the Senate**

We recommend:

Where possible, the constituencies from which Senators will be elected to a reformed Senate should be multi-member constituencies, normally electing, where practicable, at least four Senators.

d. **Timing and Electoral Terms**

We recommend:

A reformed Senate should have fixed terms of no more than six years in length.

4. **Distribution of Seats**

a. **A Distribution Principle**

We recommend

The distribution of seats among the provinces and territories^{and territories?} a reformed Canadian Senate should be equitable, reflecting the need of less populous provinces and the territories for disproportionately large numbers of seats in the Upper House.

b. our Proposed Distribution

Seats in a reformed Canadian Senate could be distributed as follows:

British Columbia	18	. . . . .	12
Alberta	18	. . . . .	12
Saskatchewan	12	. . . . .	8
Manitoba	12	. . . . .	8
Ontario	30	. . . . .	20
Quebec	30	. . . . .	20
New Brunswick	10	. . . . .	8
Nova Scotia,	10	. . . . .	8
Prince Edward Island	4	. . . . .	4
Newfoundland,	7	. . . . .	6
Northwest Territories	2	. . . . .	2
Yukon	1	. . . . .	1
TOTAL	154	. . . . .	109

• **Liberal Party dissent**

The Liberal members disagree with the recommended options for the composition of the Senate. The Liberal members feel that Canadians do not need a larger Senate as proposal by the majority but that, in fact, a smaller and more equal Senate than we now have would add to its effectiveness. Therefore, the Liberal members recommend the following:

Yukon,	1
Northwest Territories	1
British Columbia	9
Alberta	9
Saskatchewan	8
Manitoba	8
Ontario	18
Quebec	18
New Brunswick	8
Nova Scotia	8
Newfoundland	8
Prince Edward Island	4
TOTAL	100

c. Aboriginal Representation

We recommend:

Guaranteed aboriginal representation in the Canadian Senate will be a logical extension of aboriginal self-government, and the details of this representation should be negotiated with aboriginal peoples, consistent with the relationship between numbers of seats and population applied to the distribution of Senate seats among provinces and territories.

5. The Powers of the Senate

a. Ordinary Legislative Review

We recommend:

The powers of a reformed Senate should be similar to those of the House of Commons on all bills except supply bills, as discussed below. All normal legislation with policy content should require the consent of the Senate. There should be no exception for matters of "national importance" such as national defence and international issues.

We recommend:

In cases of deadlock on normal bills, the House of Commons should be able to override a Senate vote.

The Senate should be required to dispose of normal legislation within 180 days after it is received from the House of Commons.

• Liberal Party dissent

The Liberal members of the Committee believe that a fundamental objective of Senate reform is to provide a more effective control of the Executive.

The Liberal members of the committee disagree with the majority recommendation concerning the powers of the Senate because of the proposed House of Commons override of a Senate veto of legislation. Such an override will undermine the effectiveness of a reformed Senate.

Therefore, the Liberal members of the Committee recommend that a reformed Senate be granted an absolute veto on all bills, except for appropriation and budget bills for which a 30 day and a 180 day suspensive veto respectively would apply, after which period the appropriation or budget bill could be passed in the House by a simple majority.

b. Supply Bills

In the case of supply bills, the Senate should be required to dispose of the measure within 30 days of receiving it from the House of Commons. At the end of the 30-day period if the bill is amended or defeated by the Senate it would be necessary for the House of Commons to reaffirm the measure by a simple majority.

The Speaker of the House of Commons should **certify bills as supply bills** for the ordinary functioning of the government.

c. **Double Majority**

Measures affecting the language or culture of **French-speaking** communities should require the **approval of a majority of Senators voting and a majority of francophone senators voting.**

The Speaker of the Senate **should certify bills as being measures** affecting language or culture of **French-speaking** communities on which a double **majority voting** procedure is required, **There** should be no appeal of the Speaker's decision to the courts.

d. **Ratification of Appointments**

The Senate **should have** a mandate to **ratify the** appointment of the **Governor of the Bank of Canada** and the appointments of the heads of national **cultural** institutions, as **well as** the heads of regulatory boards and agencies.

C. **THE SUPREME COURT OF CANADA**

We agree with the Government **proposal** to emend the **Constitution Act, 1982**, to provide *for the* **appointment** of the Supreme Court **judges** from **lists of candidates submitted** by provincial and territorial **governments**. To prevent **paralysis** of the Supreme Court's activities by a **drown-out** dispute, we propose **the constitutionalization** of a simpler version of the mechanism contained in **section 30 of the Supreme Court Act**. This section **empowers** the Chief Justice of Canada to appoint, on a **temporary** basis, an *ad hoc* justice from among **judges of the Federal Court or a provincial superior court**. Such an ^{appointment} **would be made only if governments** reach a deadlock. It would enable the Court to **operate normally until a mutually acceptable candidate is found**. Such **amendments** could be adopted under the **7/50 formula**.

We **also** recommend that the government's **proposal in its comprehensive version**, merits the support of **all governments**.⁶ Under this **proposal**, the existence of *the* Supreme Court of Canada and its **current** composition, which **totals nine judges** including three from the province of **Quebec** trained in civil law, **would be entrenched**.

⁶See Draft Constitutional Amendments, Appendix A at p. 109.

Sharing Responsibilities and Benefits

Instruments to Manage our Federal System and Promote Intergovernmental Cooperation

a. Concurrency

We recommend that *inland fisheries and personal bankruptcy* be made concurrent powers with federal paramountcy.⁷

b. Streamlining Government

We recommend that the federal and provincial governments examine ways to eliminate unnecessary overlap and duplication and make more efficient use of public resources.

c. Delegation

We recommend that the proposal to permit legislative delegation between Parliament and the provincial legislatures be adopted within a constitutional framework that will ensure that the concerns expressed about it are met.⁸

d. Intergovernmental Agreements

We recommend that the *Constitution Act, 1867* be amended to provide a mechanism for giving more certainty to the public policy process in relation to intergovernmental agreements and protecting them from unilateral amendment.⁹

⁷See Draft Constitutional Amendments, Appendix A at p. 114.

⁸See Draft Constitutional Amendments, Appendix A at p. 114.

⁹See Draft Constitutional Amendments, Appendix A at p. 116.

Improving Shared Management of Specific Fields

a *Labour Market Training*

We recommend that:

- i) **the *Constitution Act, 1867* be amended to provide that any province may affirm by law its exclusive legislative jurisdiction over labour market training.¹⁹**
- ii) **the federal government negotiate an intergovernmental agreement with every province exercising this option. The agreement would define and clarify the responsibilities of each order of government and set jointly agreed-on limits on federal spending on labour market training in the province. Standards in such programs are to be agreed upon mutually between provincial and federal governments and set out in such agreements. This intergovernmental agreement could be constitutionally protected as discussed above at page 68.**
- iii) **financial compensation would be subject to a general condition that the funds be actually spent on training.**
- iv) **because training is a key to economic development, the share of federal labour training funds allocated to a province that has signed an intergovernmental agreement should reflect the spirit of section 36 of the *Constitution Act, 1982*. By this we mean that a province's share of federal training funds should not be based on a simple measure of the province's weight in the Canadian economy such as population, employment or production share but should reflect its relative needs.**
- v) **the federal government's obligation for aboriginal affairs be maintained and respected and its official languages obligation shall also be provided for under the intergovernmental agreement.**
- vi) **the federal government's ability to legislate on labour market training not be affected in areas of exclusive jurisdiction pertaining to unemployment insurance or any other head of power.**

The federal government proposal on labour market training also suggested that leadership in the area of skills standards should be exercised jointly by the federal and provincial governments and the private sector be given an enhanced role in training and standard setting.

The Committee agrees with this proposal.

¹⁹See Draft Constitutional Amendments, Appendix A at p. 117.

b. **Recognizing Areas of Provincial Jurisdiction: Tourism, Forestry, Mining, Recreation, Housing, Municipal Affairs**

We recommend that the **federal government** offer to negotiate bilateral **agreements** in the **areas** of *tourism, forestry, mining, recreation, housing, municipal/urban affairs* with any province wishing to do so, to better **define** the **roles** of each government and to **harmonize** their policies.

Such **agreements** would explicitly recognize the province's **leadership** role in the field and the province's authority to control the initiation, design and delivery of **programs** in the field. Such **understandings** between the **federal government** and a province would be constitutionally protected by using the approval process for **intergovernmental** agreements **discussed** above at **pages 68-69**.

We **believe** that the approach described above could **also** be **applied** to other areas **which** are either **totally within provincial jurisdiction** or are **presently** shared with the federal government. We **recommend** the areas of *regional development, and family policy* as **ideal candidates** for such a treatment to the extent that **these are within** provincial jurisdiction.

The federal spending power could be dealt with in a **similar fashion** in relation to *energy*.

Although spending by the federal government is currently, of limited importance in some of the **areas listed** above, clarifying responsibilities **now will help** to **prevent future tensions and conflicts** should the **federal government** decide at **some point** to become **more active** in **these** areas of **exclusive** provincial jurisdiction.

We **recognize** that *health, education anti social services* are under provincial **jurisdiction**. The **federal government** has instituted a **number** of Canada-wide program in some of **these** areas. We believe that the **federal government** should continue to **deliver these**.

• **Liberal Party Dissent**

The **Liberal** members of the **Committee** disagree with the conclusion of the majority with respect to **regional development, energy and health**. The **Liberal** members believe that there is a **better way to meet** the **challenges** of interdependence **referred** to earlier in this report.

Regional development is important to all of Canada. It has **been** particularly important in Atlantic Canada, many **parts** of Quebec, the West and the North. **The federal** role in regional development has **been essential** and it must continue,

c* **Culture and Broadcasting**

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We believe the federal offer to negotiate arrangements on culture with all provinces requires further examination. In particular, governments should consult the artistic and cultural communities affected before proceeding with this initiative.

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5) **The Special Needs of Quebec**

Although all provinces have legislative jurisdiction over cultural affairs it is not explicitly enumerated in the Constitution.

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We recommend that the legislative jurisdiction of Quebec over cultural affairs be explicitly affirmed through an amendment to the *Constitution Act, 1867*,¹ upon Quebec's request.

We leave open the possibility that in the future other provinces maybe interested in having their legislative jurisdiction over cultural affairs affirmed in the Constitution.

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• **Rationalizing Federal/Provincial Spending in Quebec and the Exercise of Powers**

We recommend that the Government of Canada negotiate with the Government of Quebec an agreement to establish cooperative arrangements in the fields of culture. Such an agreement would set out the respective roles of the federal and provincial governments in funding activities and identify those funds that should be transferred to the province as discussed above. Any continued use of the federal spending power would be conditional on the approval of the province, subject to the ability of the federal government to maintain programs clearly identified as related to national objectives.

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In the field of broadcasting, an agreement should be entered into to improve the participation of Quebec in federal regulation of broadcasting. Improving provincial input in federal regulation of broadcasting maybe of interest to other provinces and the negotiation of agreements should be open to them as well.

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• **Liberal Party Dissent**

The Liberal members of the Committee believe that in cultural matters the Quebec government must play a leading role, but that there must be a federal presence.

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¹See Draft Constitutional Amendments, Appendix A U p. 118.

Therefore, the Liberal members recommend a new head of power in the Constitution to be entitled "Cultural Matters". It would provide that both Parliament and provincial legislatures may make laws with respect to cultural matters. Provincial laws would have paramountcy, subject to the federal power over national cultural institutions and the federal power to make payments directly to individuals and organizations.

The Liberal members recommend that the federal government not make capital expenditures in the cultural area without the approval of the appropriate province, unless the federal government undertakes to pay operation and maintenance costs.

With respect to broadcasting, the Liberal members reaffirm that there is exclusive federal jurisdiction. No intergovernmental agreement should be able to bind the CRTC.

d. *Immigration*

We support the proposal of the Government of Canada to negotiate and give more certainty to the public policy process in relation to immigration agreements with the provinces. We recommend that these agreements be constitutionally protected from unilateral amendment.¹²

e. *Shared-Cost Programs: The Exercise of the Federal Spending in Areas of Provincial Jurisdiction*

We recommend that the federal and provincial governments work together towards establishing procedures for implementing changes in terms and conditions of existing shared-cost programs. For example, we believe that one could consider fixing the program's terms and conditions under a binding intergovernmental agreement for a period of, for example, four to five years. In our view, such an approach would not undermine Parliament's authority while addressing many of the provincial governments' concerns

• **New Shared-Cost Programs**

We recommend:

i) " that the *Constitution Act, 1867* be amended, by adding a section stating that the Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a new Canada-wide shared-cost program that is established by the Government of Canada in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that meets the objectives of the new Canada-wide program; and*

ii) that any new Canada-wide shared-cost program be constitutionally protected from unilateral changes to the terms of the program over a jointly agreed-on period through the approval process for intergovernmental agreements discussed at pages 68-69.

¹²See Draft Constitutional Amendments, Appendix A at p. 118.

¹³See Draft Constitutional Amendments, Appendix A at p. 120.

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Residual Power

We recommend that the residual power should not be changed.

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Declaratory Power

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The government members of the Committee support the proposal that the federal declaratory power be repealed, subject to a transitional provision for existing declared works. The opposition members of the Committee disagree with the proposal to repeal the declaratory power.

B. ENSURING THE WELL-BEING OF CANADIANS AND WAGING INTERDEPENDENCE

1. The Common Market - Section 121

We recommend that section 121 of the *Constitution Act, 1867* be replaced with a new section establishing Canada as an economic union. This new section would not permit governmental prohibitions or restrictions on the movement of goods, services, persons and capital if the prohibitions or restrictions impeded the efficient functioning of the economic union and constituted arbitrary discrimination or disguised restrictions on trade across provincial or territorial boundaries. However, the section 121 would contain exceptions to address the legitimate concerns that we have heard. It would also require governments to seek agreement on equivalent national standards to enhance the mobility and well-being of persons in Canada.¹⁴

¹⁴See Draft Constitutional Amendments, Appendix A, p. 120

We recommend that a dispute settlement mechanism be chosen which would comprise three steps: 1) a review mechanism to determine whether a complaint presents a *prima facie* case; 2) a conciliation mechanism which would attempt to reach a negotiated settlement; and 3) a trade tribunal which would make a final and binding decision, should conciliation fail.¹⁵

2. The Social Covenant

We recommend the *Constitution Act, 1982* be amended by adding a new section 36.1, which would commit governments to fostering the following social commitments:

- a) - comprehensive, universal, portable, publicly administered and accessible health care;
- b) - adequate social services and social benefits;
- c) - high quality education;
- d) - the right of workers to organize and bargain collectively; and
- e) - the integrity of the environment.

3. The Declaration of the Economic Union

We recommend that the *Constitution Act, 1982* be amended by adding a new section 362, which would commit governments to:

- a) - working cooperatively to strengthen the economic union;
- b) - ensuring the mobility of persons, goods, services and capital; .
- c) - pursuing the goal of full employment; and
- d) - ensuring all Canadians have a reasonable standard of living.¹⁶

¹⁵No draft constitutional amendment has been prepared for this recommendation.

¹⁶See Draft Constitutional Amendment, Appendix A, p. 122

Reforming the Bank of Canada

We recommend therefore that the issue of the Bank of Canada mandate not be part of the constitutional discussions.

We recommend that the federal government proceed with its proposal to consult provincial and territorial governments in the matter of appointments to the Board of Directors of the Bank of Canada and the establishment of regional consultative panels.

S. The Conference of First Ministers

We therefore propose the entrenchment in the Constitution of an annual conference of the First Ministers which would deal primarily with social and economic matters but also with any other issue that the First Ministers would wish to discuss.¹⁷

¹⁷See Draft Constitutional Amendments, Appendix A at p. 124.

There are no magic solutions. Nevertheless, we believe that the answer lies in one of five approaches:

- 1) One option is the unanimity procedure set out in section 41 of the *Constitution Act, 1982*. It could be expanded to include all the items set out in section 42 which are now subject to the general procedure (with the exception of the establishment of new provinces and the extension of existing provinces into the territories which we discuss in detail below). This would mean that the agreement of all provinces would be needed to make changes to representation in the House of Commons, the powers and method of selection of the Senate, the minimum number of members of a province in the Senate and the Supreme Court of Canada. In addition, section 40 of the *Constitution Act, 1982* would be amended to provide for reasonable compensation to a province for any amendment that transfers provincial legislative powers to Parliament.
- 2) A second option would be to require the consent of two Atlantic provinces, Ontario, Quebec, and two western provinces representing 50 per cent of the population of that region for any amendment to the principle of representation in the House of Commons, the powers and composition of the Senate and the Supreme Court of Canada; compensation would be available for any province opting out of a transfer of regulative powers to Parliament. This recommendation is similar to other "regional veto" proposals set out in the Victoria Charter (1971) and the Beaudoin-Edwards report (1991). In addition, compensation would be available for provinces opting out of a transfer of legislative authority to the federal parliament in relation to "any" matter.
- 3) A third option would be to amend section 42 to require that, with the exception of the creation of new provinces or the extension of existing provinces into the territories, Quebec must be among the provinces consenting to any future amendment relating to the matters listed in that section (House of Commons, Senate, Supreme Court of Canada); compensation would be available for provinces in relation to "any" matter as in the other options described above.
- 4) A fourth option would be to leave the general procedure for amending the Constitution as it is, but upon the request of any province or combination of provinces representing the regions of Canada, a referendum would be required for an amendment under that section to enter into force. The referendum would have to be carried nationally and in each region identified in the formula. Implicit in this suggestion is that Quebec constitutes one of the regions of Canada.

5) A fifth option would be to amend the general procedure for amendment, to require that Quebec be among the two-thirds of the provinces for all amendments under that procedure; compensation would be available for provinces in relation to 'any' matter as in the options described above.

We urge the First Ministers to examine each of these and other approaches. Because of the importance of the amending formula, in particular to the security of those who look to the Constitution for the protection of their rights and distinctiveness, it should be a matter of the highest priority during this round of constitutional negotiation to find an amending formula that meets the needs of Quebec.

● The Effect of New Provinces on the Amending Formula

One of the most controversial elements of the Meech Lake Accord was the proposal to change the existing amending procedure respecting the creation of new provinces. If the Meech Lake proposal had entered into force, the amending formula would have been changed to require unanimous consent among the provinces.

Many Canadians, particularly those residing in the territories, are opposed to any change that will make it more difficult for the territories to become provinces. Nevertheless, we recognize the legitimate concerns of existing provinces over the effect that the creation of new provinces would have on the equilibrium in the federation.

One possibility to avoid diluting the power of any existing province in the current general procedure would be to provide that the new province should not be counted as a province for the purposes of the amending procedures until the procedures are amended to specifically include the new province. The Beaudoin-Edwards committee endorsed this proposal in the following terms:

... 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.

When we were in Whitehorse, Premier Penikett told us that he recognized that the "diluting effect on the amending formula" is a legitimate concern. He said:

We have said to every parliamentary committee that we have addressed on the question that we are quite prepared to contemplate the possibility one day of becoming provinces without being provinces for the purposes of being a member of the amending formula club. We don't know quite how that would be done legally, but it seems to me that is an issue that, as Beaudoin-Edwards said, should be discussed at the time you are dealing with the amending formula.

We believe that Premier Penikett has set out a valid option and one that should be examined.

We endorse the recommendation of the Beaudoin/Edwards Committee on the need to review the effect of the creation of new provinces out of the existing territories on the amending procedures.

Conclusion

Involving the People in the Constitutional Process

We recommend that a federal law be enacted, if deemed appropriate by the Government of Canada, to *enable the federal government*, at its discretion, to hold a consultative referendum on a constitutional proposal, either to confirm the existence of a national consensus or to facilitate the adoption of the required amending resolutions.

We recommend that the government ensure the meaningful involvement of all the provinces, territories and aboriginal leaders on the development of the format and substance of the government's response to this report.

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 national 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.