

LEGISLATIVE ASSEMBLY OF THE

NORTHWEST TERRITORIES

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A BRIEF PRESENTED TO  
THE JOINT COMMITTEE OF THE HOUSE OF COMMONS  
AND THE SENATE ON  
THE CONSTITUTIONAL AMENDMENT BILL  
BY  
THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES  
THE HONOURABLE ARNOLD J. McCALLUM  
AUGUST 22, 1978

My name is Arnold McCallum. I am an elected member of the Legislature of the Northwest Territories and Chairman of the Constitutional Development Committee. I have further responsibilities for the portfolios of Health, Local Government and Social Services. I represent the constituency of Slave River which is made up of the Towns of Fort Smith and Pine Point.

I welcome the opportunity to appear before this Joint Committee of Members of the House of Commons and the Senate to speak to the Constitutional Amendment Bill on behalf of my colleagues and the people of the Northwest Territories. I thank you for this honour. However, I must add that had it not been for the intervention of my life time friend and the co-chairman of this Committee, Mr. Mark MacGuigan, I doubt seriously that this opportunity would have presented itself. My being here typifies the way in which the Northwest Territories is treated on the Constitutional Amendment Bill.

We of the Northwest Territories are an afterthought - in the same manner as references to the Northwest Territories are an afterthought in the Bill. Maybe there is a particular policy of the Federal Government or the Parliament of Canada, indeed the entire Federal system, to keep the Northwest Territories in its present status, with no prospect of attaining or achieving full responsible Government and hence provincial status. If you believe that to be a strong indictment of Federal politics, I would suggest that you read again Sections 37, 38 and 39 of the proposed Bill.

It is most ironic that there are areas of Canada that contemplate, even now, leaving the Federation, while we in the North are attempting to join it. Yet we believe in the Federation, we want to join as an equal partner just as the earlier members of the Federation joined and became partners regardless of their size or population. At the present time the Federal Government does recognize our House as the legitimate constitutional authority for the Northwest Territories even though there are components in the North, very favourably funded by the

Federal Government, who would propose a position that attempts to allocate legislative authority and Government jurisdiction on the basis of ethnic origin and that would differentiate between peoples because of residency or race.

In 1966, the Carrothers Commission on the development of Government for the Northwest Territories stated in one of its postulates that every citizen of Canada has a claim to participate in the institutions of responsible Government under the Canadian Constitution. It further stated that Canadian citizens, resident in the North, should participate in Government as fully as Canadian citizens resident in the provinces. If that is true in 1966, it is more than true today in 1978. We believe Federalism is the appropriate political system that will guarantee the existence of individual freedom, regional aspirations and national independence. We believe that, and we seek to join Confederation. However, according to the proposed Constitutional Amendment Bill we cannot hope to aspire to the Rights and Privileges under the Constitution that other Canadians enjoy.

In our review of the Constitutional Amendment Bill we have identified three basic issues of prime concern to the Northwest Territories.

These are:

- 1) The Role of the Territories in the Constitutional Reform Process;
- 2) The way in which the Northwest Territories is represented in the Federation;
- 3) The extent of the Authority of the Northwest Territories in the Federation.

Specific references to Sections of the Constitutional Amendment Bill are made in the text and are summarized in an Addendum.

I will now deal with each of the three issues we have identified:

ISSUE #1: ROLE OF THE N.W.T. IN THE CONSTITUTIONAL REFORM PROCESS

The Preamble to the Constitutional Amendment Bill states that the Parliament of Canada is enacting constitutional reform "honouring

the contributions of Canada's original inhabitants, of those who built the foundations of the country that is Canada, and of all those whose endeavours through the years have endowed its inheritance." We believe that in the Northwest Territories we are still building the foundations of this country, and we are still endeavouring to endow the inheritance of future generations of Canadians. Yet we have never been given the many opportunities afforded to the provinces over the last ten years to be involved in constitutional reform and review. How will our contributions be honoured in the present constitutional reform process?

The Statement of Aims of the Confederation also speaks of the expectations of the people of Canada "for a future in common as participants in a federation." (Section 3). We want to have this kind of participation, as I have explained, but we are constantly excluded. How do we become participants?

Furthermore, one of the stated Aims of the Canadian federation is that society should be governed by "institutions and laws whose legitimacy is founded upon the will and consent of the people." (Section 4). Yet there is no provision for the residents of over forty percent of Canada's land mass to have their voice heard in the constitutional reform process. Let me assure you that we have some real concerns related to the succeeding clauses of this Aim "...that neither the power of Government nor the will of a majority shall interfere.....with the enjoyment by each Canadian of his or her liberty, security and well-being." I will say more about these concerns later. My question at this point is: If our elected Government has no recognized role in the reform process, how can our will and consent be obtained?

We in the Northwest Territories have too often heard statements that Constitutional Reform, or even amendments to our Constitution, require the approval of the ten provinces and the Federal Government, but nowhere is it indicated that we will participate in the discussions.

We should not have to remind you - the Committee Members - the Federal Government or the Government of the ten provinces, that we are Canadian citizens and that our hopes and our aspirations are in no way different from those of other Canadians.

ISSUE #2: THE WAY IN WHICH THE NORTHWEST TERRITORIES IS REPRESENTED IN THE FEDERATION

The second basic issue of concern to the Northwest Territories is the question of how effectively can the Territories be represented in the Federation. Sections 31 (c), and 36 recognize the Territories as a separate component of Federation and certainly this is consistent with Section 4 (ii) which states that one of the aims of Canada's Federation is an "equal respect for the many origins and regional identities that help shape its society." Yet there are no provisions in the Bill for the Northwest Territories to be represented at Federal Provincial consultations (Sections 37 - 39, 97, 98 and 99) when the voices of regional interests and concerns can be heard. We would specifically suggest that a clause needs to be added to Section 97 making provision for the attendance as active participants of separate representatives of the legislatures of the Northwest Territories and the Yukon at all Federal/Provincial conferences. We find it quite unacceptable that matters, including Territorial limits, directly affecting the peoples of the Northwest Territories should be discussed without representatives of Territorial residents being part of the decision making process. We have had unfortunate experiences with Federal consultations amounting to no more than Notice, and we would expect within a democratic society that consultation would include, as a matter of course, the consent of those Canadian citizens affected.

Certainly the Northwest Territories cannot expect its "legitimate aspirations" (Section 4) to be represented by two members in the House of Commons (Section 71). Such a representation does not ensure equal respect for the cultural differences between Indians, Metis, Inuit and Whites and for the regional disparities of the Mackenzie Valley, the Delta, the Central Arctic, the Baffin and the

Keewatin within the vast expanse of the Northwest Territories.

When it comes to the proposals for a House of Federation we are even more dismayed. One member is most inadequate (Section 62) and the selection of this member by the Governor-General in Council (Section 63) is utterly unacceptable. We see no reason why our member or members should not be selected by the same means as provincial members, namely, by the Legislative Assembly. Furthermore, we do not accept the concept of a House of Federation selected on the basis of party politics. In the Northwest Territories we see party politics as a divisive factor and we do not believe that it has necessarily any relationship to the extension of responsible Government.

The most fundamental question we have, however, is about the purpose of the House of Federation. There seems to be no real change from the purpose of the present Senate. It is not abolished, nor is it given any more power along with its change of name. We can, therefore, only see disadvantages in altering the basis on which senators have been appointed in the past.

Another area of representation in which the Northwest Territories has been ignored is in the Sections on the Courts and the Judiciary. In Sections 117 to 120 no reference at all is made to the Courts and Judiciary of the Northwest Territories. In Section 105 (a) the Territories are not even defined as a Region of Canada for the selection of Supreme Court Judges, and thus, although Section 104 technically allows for the appointment of a Judge from the Territories, Section 106 makes a Territorial appointment unlikely. As the Attorney General of Canada acts as the Attorney General for the Territories, he could only consult with himself to make a Territorial appointment, and it is likely that such an appointment would be viewed as being more Federal than Territorial.

Surely it is no wonder that the Northwest Territories feels that its interests and membership in the Canadian Federation have been scarcely considered and very poorly represented.

ISSUE #3: THE EXTENT OF THE AUTHORITY OF THE NORTHWEST TERRITORIES  
IN THE FEDERATION

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The most serious outcome of the lack of consideration of the Territorial role in Federation is a real failure to consider the extent of Territorial Authority. We cannot help but be sensitive to the fact that Section 31 refers to the Federal Authority and the Authorities of the Provinces but avoids using this word in relation to the Territories. Such omissions make a mockery of earlier exaggerated statements of Constitutional renewal and a new emphasis on democracy. Can there be a democracy where the Commissioner of the Territories can act without reference to the elected representatives and where a Minister of the Federal Authority can act without referring to the Northwest Territories at all?

We had hoped that Constitutional renewal would mean an end to such anomalies but we are deeply concerned that there is a danger of a backward step once again in the Northwest Territories as there was when we lost our first experience of responsible government in 1905. Sections 79 to 90 and 92 of the proposed Bill make no reference to Territorial authority and yet the Northwest Territories Act clearly gave us certain authorities, for example, in relation to Education and Agriculture.

We are concerned with this issue largely because the Northwest Territories is becoming increasingly subject to Federal legislation and authority. The Canadian Labour Code and the attendant Supreme Court decisions, for example, have almost reduced our control over employment to zero.

Some of the most iniquitous provisions of the proposed Bill; in our view, are Sections 38 and 39. Section 38 puts no limitations on the Federal Authority over the Northwest Territories. We find this totally repugnant. If the actions of the Parliament of Canada are not based on the consent of the Territories, then the Bill is treating the Territories more like a colonial dependency than a responsible government. Surely in 1978 we have progressed beyond this.



Sections 37 and 39 likewise propose a system which is more onerous and less democratic than what is available now. If the Northwest Territories is to have no say in the Terms of Provincehood, then this is certainly a regression from Section 146 of the British North America Act of 1871.

Indeed it had been our hope that the Constitutional Amendment Bill would clearly lay down the ground rules for becoming a "New Province", but this has not been done. We feel that the Bill should spell out, possibly in an extension of Section 39, the conditions under which the local representative of the Crown would extend full responsible government and allow for the creation of a new province.

We wish to make it clear that the Territories expect to participate as full members in the Canadian Federation. We do not expect to be treated as wards of a Federal Authority that can change Territorial boundaries under Section 38 or maintain the obsolete Power of Disallowance for the Territories when it would be abolished for the Provinces. (Section 131 - 3 (a)).

It may be, of course, that Canada's North - of which on occasions Canadians speak so proudly - has been forgotten once again. It may be that it was an accident that the Territories were omitted from Sections 79, 85 and 88 establishing a Lieutenant-Governor, an Executive Council and a Legislative Authority in each Province. However, we do not think that it was an accident. We believe that precedents established throughout the Commonwealth are being deliberately ignored. All that is necessary for the achievement of full responsible government, based on Commonwealth precedence, is for the Governor-General-in-Council to instruct the Commissioner, as Head of the Territorial Executive, to select the presiding officer and members of his executive from among the elected members of the Legislative Assembly and to consider himself bound by their advice. The Legislative Assembly could then be given control of the Territorial Constitution, and the Commissioner would adopt the politically more limited role of Lieutenant-Governor. From this phase, it would be a short step to Provincial status.

In any event, Section 79 should be re-written to allow for a Lieutenant-Governor in each province or territory; and Sections 85 and 88 should similarly allow for an Executive Council and a Legislative Authority in each province or territory.

We in the Northwest Territories have been struggling to have our House properly called a Legislative Assembly. We struggle to be recognized as Members of that Assembly. We have been elected by the people of the Northwest Territories in the same manner as Members of Parliament are elected to the House of Commons, as Members of the National Assembly are elected in Quebec, as Members of the Provincial Parliament are elected in Ontario, as other members of Legislative Assemblies are elected. We are the only jurisdiction in Canada that cannot set its own number of constituencies. That is a sad indictment of our Canadian democratic system of government.

We need greater representation for our people along identical lines and in the manner in which other jurisdictions increase their Houses. We must continue the evolutionary process by which this country was formed and take on more responsibility for the operation and spending of our Government. The powers resident in our Chief Executive, the Commissioner, must be turned over to elected Executive Members and our Executive Committee must become an Executive Council whose majority decisions are binding on the Administration. These changes would bring about full responsible government and hence a sense of unity, in purpose as well as faith, in our Canadian system of government.

The Northwest Territories seeks and needs a wider role, a greater authority, in order to tackle its own problems. There are particular concerns in the North which we wish to address. There are particular areas in which we would expect our consent to be sought. In some sections of the Bill, such as Section 96, dealing with the important matter of the reduction of regional disparities, we are not even mentioned. In other areas not enough thought has been given to the needs and

problems of our area. It is unlikely, for example, that the emphasis on French (Sections 4 and 13 to 22) will be acceptable to the majority of our population. Nor may many of the provisions in the Charter of Rights and Freedoms be relevant - such as the one on residency. On the other hand, references to Native Rights under Section 26 are so broad that they make many of the guarantees of the Charter virtually ineffectual in the North. In addition, actions of the Federal Authority make other provisions of the Charter meaningless, such as the right to own property.

The people of the Northwest Territories look towards further constitutional development in order to take their place in the Confederation on an equal footing with Provinces. This has proven to be more difficult than it might be because of the ethnic variability of the Northwest Territories and the difficulty of making political arrangements agreeable to all.

In recognition of this difficulty the Prime Minister has caused the constitutional elements of land claims to be separated from the body of the negotiations. The constitutional elements are to be the object of a special study by the Honourable C.M. (Bud) Drury, the Prime Minister's special representative. We fully support Mr. Drury in all aspects of his study, but we would not want anyone to misunderstand the difficulties inherent in his Terms of Reference. He is appointed to seek consensus, to co-ordinate information, to inform the people, and to report to the Prime Minister - in short, to be a mediator. His Terms of Reference mention "representative and responsive government" even a "phased restructuring to achieve a greater degree of responsible government", but as we have indicated, we are interested in full responsible government, and the way to achieve this is established by precedent. Too many of Mr. Drury's Terms of Reference also depend on Federal Government action, whereas the present Constitution of Canada calls for action on responsible government by the Governor-General-in-Council. Furthermore, even while Mr. Drury's consultations are going on, the Federal Government is failing to uphold in land claims

negotiations the separation of political demands from socio-economic benefits, and is making unilateral decisions to extend Federal programs and services to the Northwest Territories.

We find it ironic that we, as elected members, both past and present, have positioned ourselves as adherents of the Federal system, and have worked against the idea of government on an ethnic basis, even though the Federal Government spends mightily against us. It is even more ironic when one remembers that the Prime Minister's statement at the time of Mr. Drury's appointment insisted that "the Government does not favour the creation in the North of new political divisions ... based essentially on distinctions of race and involving a direct relationship with the Federal Government."

If this part of Canada is not to be granted full responsible government, and is to remain subject to the whims of the Federal Government, then we believe that we should be told. Mr. Drury's time should not be wasted, and we should not just be subjected to random omissions from the Constitutional Amendment Bill.

We cannot be expected to continue to defend the political institutions and systems of our country without being allowed to participate in fundamental government. We want to be partners in Confederation. As other areas have made deals to join, we want to make our deal. At the very least, we should know what the ground rules are for joining Confederation and when and if the time comes to seriously consider either the re-writing of the Canadian Constitution or the formulation of amendments to it, we want to be part of that discussion. We must be part of that discussion.

We deeply resent the fact that the proposed Constitutional Amendment Bill not only invades our existing authority, not only is vague about our role in Federation, but also fails to emphasize our contribution to that Federation. This seems to us to be a denial of the Canadian Charter of Rights and Freedoms which calls for a more democratic system of government and a new relationship between the Crown,

the Territorial Executive, and the Legislative Assembly, and between the Government of the Northwest Territories and the Federal Government.

If the Government institutions for all Canadians are to be based upon the "will and consent of the people", and if "democratic elections" signify effective participation in Government, the Crown must become formally responsible to the democratically elected members. In our opinion it is no longer acceptable for us to remain a ward of a Federal Government Department maintained by a bureaucracy either unaware of our beliefs or deaf to our words.

What we expect to see is a basic right of even the existing Canadian Constitution made available to us. That basic right is that all areas of Canada have full responsible government extended to them. As Canadians and particularly as elected representatives we, as members of the Constitutional Development Committee of the Legislative Assembly of the Northwest Territories, formally request therefore, that there be no further exclusion of our part of Canada from the provisions of the Bill and from the consultative meetings of the Federation. In particular, we would like to be assured that this will not be our last opportunity to be involved in the debate on the Constitutional Amendment Bill and that a formalized system of consultation, including the Legislative Assembly of the Northwest Territories, will be established. Only by these means can we be sure that our rightful place in Confederation will be recognized both for the present and the future.

ADDENDUM

SUMMARY OF COMMENTS BY THE CONSTITUTIONAL  
DEVELOPMENT COMMITTEE OF THE LEGISLATIVE  
ASSEMBLY OF THE NORTHWEST TERRITORIES  
ON THE CONSTITUTIONAL AMENDMENT BILL OF JUNE 1978

SECTIONS OF THE  
CONSTITUTIONAL AMENDMENT BILL

COMMENTS FROM THE  
NORTHWEST TERRITORIES

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- Preamble
- How are the contributions of N.W.T. residents honoured in the Bill and in the entire process of Constitutional Reform?
3. Statement of Aims
- How do N.W.T. residents participate fully in Federation without responsible government?
4. Statement of Aims (Cont'd)
- Do not Canadians living in the North lose some of their "fundamental rights"?
  - How is the "will and consent" obtained from Northern Canadians to support the institutions and laws of our society?
  - The various cultures and regions of the North are not adequately represented in Federation; e.g. in the House of Commons.
  - Emphasis on French unacceptable to many people in the North, particularly where a prior concern is with the use of native languages.
5. Rights and Freedoms
- The rights and freedoms of a democratic society are meaningless without at least the attainment of full responsible government.

6. Legal Right to own Property - Meaningless in most parts of the N.W.T.
8. Rights within Canada - Residency and Property rights may be meaningless.
9. Non-discrimination - The Federal Government has conflicting approaches to the question of discrimination by race.
10. Elections - Free and democratic elections meaningless without full responsible government.
- 13 - 22 Official Language Rights - Emphasis unacceptable to many people in the North and specifically to the Legislative Assembly of the N.W.T. where native languages are used extensively.
26. Native Rights - Makes many of the guarantees of the Charter of Rights and Freedoms ineffectual in the North.
31. Institutional elements of Federation - 31(c) recognizes the Territories as a component of Federation.  
- 31(c) omits the word "authority" in relation to the Territories, while using it in relation to the federal and provincial governments.
36. Institutional elements of Federation (Cont'd) - Recognizes that the Territories have responsibility for the administration and enforcement of their laws, but

includes a vague reference to other agreements or arrangements which could be restrictive. In view of unilateral federal activity in the North, this is not acceptable.

37. Alteration of Territorial Limits

- No provision for the N.W.T. to be a separate and active participant at Federal-Provincial consultations. Serious omission.
- Allows for the alteration of territorial limits without territorial consent. Quite unacceptable.

38. Laws for Territories

- One of the most iniquitous provisions of the Bill.
- Inadequate definition of "administration, peace, order and good government"
- Gives the federal authority a free hand in interfering with territorial authority (c.f. Section 36).
- Same comment as for Section 37 on territorial limits.
- Treats the Territories as colonial dependencies.
- Does not even make provision for consultation, and should provide for consent if this Bill is to avoid being a backward step. N.W.T. had more responsibility from 1897 - 1905 than is allowed for in 1978.



39. New Provinces

- A more onerous provision than Section 146 of the B.N.A. Act.
- Another iniquitous provision of the Bill extending the undemocratic provisions of Section 38.
- Would expect an extension of this Section to spell out the conditions under which the local representative of the Crown would offer, in accordance with Commonwealth precedents, full responsible government to the Territories.
- Again, no provision for separate and active Territorial participation at First Ministers' meetings.

62. House of Federation

- Purpose of the new House not identified.
- Inadequate representation of regional disparities and cultural differences in the N.W.T.

63. House of Federation  
(Cont'd)

- Party politics basis for representation unacceptable.
- Selection of Territorial members by Governor-in-Council quite unacceptable. Must be by the Legislative Assembly, as for Provinces.

64. House of Federation  
(Cont'd)

- Does not exclude a Territorial Councillor from being selected as a member of the House of Federation, in spite of the Explanatory note.

66. House of Federation  
(Cont'd)

- No new powers given to House of Federation. Why change name, but not increase or diminish powers?

71. House of Commons

- Representation of N.W.T. inadequate to reflect regional disparities and cultural differences.

79 et seq. Lieutenant Governor

- These sections should provide for a Lieutenant Governor in "each province and territory" so that the present position of Commissioner could adopt the politically more limited role of that office.

85 et seq. Executive Council

- These sections should provide for an Executive Council in "each province and territory" so that full responsible government becomes a reality in the Territories.

88 et seq. Legislative Authority

- These sections should provide for a legislative for "each province and territory" in accordance with the requirements for full responsible government.

91.24 and .29. Powers of the  
Federal Authority

- We trust that these are not provisions covering all the residents of the N.W.T.

92 et seq. Provincial Powers

- No reference is made to the powers of the Territories, even to those authorities already assigned, e.g. under the Northwest Territories Act.

96. Regional Disparities
- There is considerable interest in the N.W.T. in overcoming regional disparities. A reference to the Territories should be included.
- 97 et seq. Federal-Provincial Consultation & Commitments
- Separate Territorial participation should be provided for.
  - "Consent" rather than "consultation" is the appropriate term within a democracy.
105. Supreme Court
- No reference to Territories in "regions" of Canada. This could be seen as being in conflict with the reference in 104.
106. Supreme Court (Cont'd)
- Procedure makes a Territorial appointment unlikely.
- 117 et seq. Courts and Judiciary
- No reference to the Courts and Judiciary of the N.W.T.
122. Interprovincial Commerce
- Reference to the Territories should be added.
- 131(3). Powers of Disallowance
- The Federal Power of Disallowance should cease for the Territories as well as for the Provinces once the Charter of Rights and Freedoms has been adopted.