

LEGISLATIVE ASSEMBLY OF THE  
NORTHWEST TERRITORIES  
9<sup>TH</sup> ASSEMBLY, 3<sup>RD</sup> SESSION

SESSIONAL PAPER NO. 6-80(2)

TABLED ON NOVEMBER 8, 1980

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OPTIONS FOR A POSITION ON THE  
PROPOSED RESOLUTION FOR A JOINT  
ADDRESS TO HER MAJESTY THE QUEEN  
RESPECTING THE CONSTITUTION OF  
CANADA

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A SESSIONAL PAPER PRESENTED TO THE  
THIRD SESSION OF THE NINTH LEGISLATIVE  
ASSEMBLY OF THE NORTHWEST TERRITORIES  
BY THE EXECUTIVE COMMITTEE OF THE  
GOVERNMENT OF THE NORTHWEST TERRITORIES.

November, 1980.

## I. Introduction

The purpose of this paper is to briefly examine the various options open to the Government of the Northwest Territories in responding to the federal government's proposed Resolution respecting the Constitution of Canada and more importantly to generate a discussion on this topic in the House so that a consensus can be developed providing a clear direction on this matter to the Executive Committee.

This paper also presents a brief analysis of some of the provisions of the proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada, in terms of the effect that those provisions will have on the people and institutions of Government in the Northwest Territories.

## II. Background

As members of the Legislative Assembly are aware, two representatives from the Executive Committee attended the First Ministers' Conference in Ottawa in early September. The Government of the Northwest Territories was accorded an observer status, which though falling far short of what was demanded by the government, was a marked improvement from earlier conferences where the interests of the Northwest Territories were represented by the federal delegation.

The First Ministers' conference did not result in agreement over the term and content of the Canadian Constitution nor indeed on the basic question of the patriation of the constitution to Canada from the United Kingdom.

The federal government has now taken steps to attempt to unilaterally patriate the constitution to Canada. It is proposed that the House of Commons and the Senate pass a Joint Resolution. The Resolution will be in the form of a message to Her Majesty the Queen requesting Her to introduce in the Parliament of the United Kingdom a Bill containing the provisions set out in the Resolution.

The Resolution was debated in the House of Commons and has now been referred to a Special Joint Committee of the Senate and the House of Commons for discussion and reporting back to Parliament by December 9th, 1980.

### III. Proposed Resolution and The Canada Act

The proposed Resolution contains within it the text of the Joint Address to Her Majesty the Queen. It is intended to call upon the United Kingdom Parliament to enact two statutes. *The Canada Act* and the *Constitution Act, 1980*. The *Canada Act* is a short statute and is technical in nature. It uses a special mechanism to enact a French version of the Act and grants it the same authority in Canada as the English version.

The *Canada Act* provides for the enactment of the *Constitution Act 1980*, which contains the constitutional provisions and removes Canada from the legislative jurisdiction of the Imperial Parliament by stating that no Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1980* comes into force shall extend to Canada as part of its law.

#### IV. The Constitution Act 1980

The *Constitution Act 1980*, which will be a statute of the Parliament of United Kingdom, is to contain the principal provisions of the new constitution of Canada. The *Constitution Act 1980* is divided into six distinct parts dealing with various elements of the Constitution:

##### a) Part I - Charter of Rights and Freedoms

As the heading suggests, this part deals with the fundamental rights of Canadian citizens or permanent residents of Canada and guarantees to them the usual freedoms known to democratic society. Some of the rights and freedoms which may have a bearing on the operation of government in the Northwest Territories may be summarized as follows:

The Charter guarantees to every citizen of Canada, without unreasonable distinction or limitation, the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein. Any territorial legislation or policy affecting this right could be considered by the Courts to be unconstitutional. The Charter uses the test of "reasonableness" and in every case, the Courts will have to decide whether a particular limitation or distinction is unreasonable. This provision would have direct effect on territorial legislation pertaining to election of members to this Assembly, the residency requirements to vote in the election or any other provision dealing with the membership or election to the Legislative Assembly. Unless special circumstances warrant it, the life of the legislatures is limited to five years.

The Charter enshrines mobility rights for every citizen and permanent resident of Canada. Mobility rights include the right to pursue the gaining of a livelihood in any province. The Charter specifically forbids discrimination among persons primarily on the basis of province of present or previous residence. This provision in the Charter may therefore call into question the statutes, regulations and policies of this government discriminating on the basis of Northern residence.

The Charter sets out English and French to be the official languages of Canada with equality of status. However, the right to use English or French in any debates or other proceedings is confined only to proceedings of Parliament and does not extend to other legislatures in Canada. The Charter also grants any member of the public in Canada the right to communicate with and to receive available services from any head or central office of an institution of the Parliament or Government of Canada in English or French, as he or she may choose and for any other office of such institutions the services are to be provided in such manner as may be presented or authorized by Parliament. If the Legislative Assembly and indeed the Government of the Northwest Territories could be construed to be an institution of the Parliament or Government of Canada by virtue of the *Northwest Territories Act*, it is conceivable that this provision may apply to this Assembly or the Government of the Northwest Territories.

Section 22 of the *Constitution Act* however preserves any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of the Charter, with respect to any language that is not English or French. This presumably preserves the language rights and privileges

required or enjoyed by the Native people in the Northwest Territories. The Charter also protects minority language educational rights and imposes an obligation on the provinces to provide minority language educational facilities where the number of children of citizens resident in that area so warrant it.

The Charter provides that the guarantee of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the Native peoples of Canada. It would appear therefore that at least so far as existing rights and freedoms of Native people of Canada are concerned, the Charter does not deny their existence.

A reference to a legislature of a Province in the Charter is said to include a reference to the legislature of the Northwest Territories and the Charter is said to apply to all matters within the authority of Parliament including all matters relating to the Northwest Territories.

It is worth noting that the reference to the legislature of the Territories is confined only to Part I of the *Constitution Act 1980* which contains the Charter of Rights and Freedoms and is not referred to in any other parts of that Act. Therefore, while for the purposes of the Charter of Rights and Freedoms, the Legislative Assembly of the Northwest Territories is considered to be a legislature, it is not considered a legislature for the purposes of other parts of the *Constitution Act 1980*.

b) Part II - Equalization and Regional Disparities

This part of the *Constitution Act 1980* contains a declaration that Parliament and the provincial legislatures, together with their respective governments, are committed to promoting equal opportunities for the well being of Canadians, furthering economic development to reduce disparity in opportunities and providing essential public services of reasonable quality to all Canadians. As indicated above the reference to "legislature" in this part or the remaining parts of the Act, does not include the Legislative Assembly of the Northwest Territories and therefore by implication such declaration excludes this Legislative Assembly.

c) Part III - Constitutional Conferences

This provision requires the Prime Minister of Canada to call a constitutional conference with the first ministers of the provinces once in every year unless, in any year, a majority of those composing the conference decide that it shall not be held. It would appear that therefore such an invitation to the conference will not be extended to a representative of the Territories.

d) Part IV - Interim Amending Procedure and  
Rules for its Replacement

The *Constitution Act 1980*, contains several complicated provisions on the procedure to be adopted to amend the Constitution prior to the coming into force of Part V of the Act. During this interim period an amendment to the Constitution may be made by the Governor General's proclamation where they are authorized by resolutions of the Senate, the House of Commons and by the legislative assembly or government of each province. As the



Legislative Assembly of the Northwest Territories is considered to be a legislature only for the purposes of Part I of the Act, it would not be necessary to require a resolution of this Assembly to enable the Governor General to issue a proclamation.

Where the amendments contemplated relate to some but not all provinces, such amendments will be made by proclamation upon resolution of Parliament and the legislatures of each of the provinces to which the amendment applies.

Part V, which provides for the permanent method of amendment to the Constitution is to come into force on a day to be fixed by resolution of Parliament and all provincial legislatures or two years from the date when the Act comes into force, whichever is earlier.

This part has additional provisions for the changing of the permanent amending formula where such change is proposed by the governments or legislative assemblies of eight or more provinces that have combined populations of at least eighty percent of all the provinces. Each proposal for change in the amending formula, however, is to be confirmed by referendum. Although the Act provides that every citizen has without unreasonable distinction or limitation the right to vote in such a referendum, the Legislative Assembly of the Northwest Territories is not one of the legislatures referred to in this part of the Act and therefore would not be able to participate in any amending process.

e) Part V - Procedure for Amending Constitution of Canada

As indicated earlier, this part of the Act is to come into force after two years from the date of the coming into force of the rest of the Act or on an earlier date where there is unanimous consent from Parliament and the provinces.

The general procedure for amending the Constitution is set out in Section 41 of the *Constitution Act 1980* and requires the resolutions of Parliament and at least a majority of the legislative assemblies that include every province that has twenty-five percent of the population of Canada, at least two Atlantic provinces and at least two Western provinces. Again the Territories and its legislature is excluded from this amending formula. An alternative method for amendment is by means of a referendum. This part contains detailed provisions governing the amending process.

f) Part VI - General

This part contains general provisions which are not strictly relevant for the purposes of this paper. Most of the provisions referred to in this paper are paraphrased and therefore Members seeking to review the provisions in detail are advised to refer to the actual provisions in the *Constitution Act 1980*.

Part VI - Recommendations

The Executive Committee, having examined the proposed Resolution for Joint Address to Her Majesty, is of the view that the following recommendations be adopted by this House:

- (i) The Executive Committee be urged to make an oral or written submission, as it chooses, to the Special Senate/House of Commons Committee at present considering the proposed Resolution including the provisions of the *Constitution Act 1980*.

- (ii) In such submission to the Special Committee, this Government should contend that the Legislative Assembly of the Northwest Territories be recognized as a "provincial" legislature not only for the purposes of Part I of the *Constitution Act 1980* (the Charter of Rights) but for all parts of the Act.
- (iii) In respect of both the interim and the permanent amending formula, the Government should contend in its submission, that the Legislative Assembly of the Northwest Territories be accorded the same status as legislatures in other parts of Canada.
- (iv) In such submission to the Special Committee, this Government should attempt to seek special recognition for the economic realities of the North thereby allowing it to make laws for the preference of Northern residents in employment.
- (v) The Government should attempt to seek a special status for Native languages in keeping with the special mention in the charter of the rights or freedoms that pertain to the Native people of Canada.
- (vi) In the submission to the Special Committee, this Government should attempt to seek amendment to Part III of the Act so that the Leader of the Elected Members of the Executive Committee be able to participate at the annual first ministers's conferences.