



THE PREMIER

THE GOVERNMENT OF THE PROVINCE
OF NEWFOUNDLAND AND LABRADOR

March 22, 1990

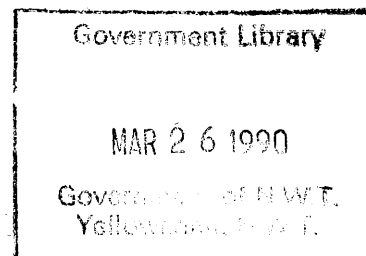
Dear Prime Minister:

Like the other premiers I welcome the contribution made yesterday by Premier McKenna toward resolution of the national differences relating to the Meech Lake Accord. While the proposals put forward by Premier McKenna are not sufficient to meet the primary concerns of Newfoundland those proposals do nevertheless address some of the matters raised by Newfoundland.

In introducing the resolutions in the manner in which he did Premier McKenna set out clearly the basis under which New Brunswick could accept the Meech Lake Accord in its present form. Whether one agrees or disagrees with the basis established by the Government of New Brunswick it was entirely proper that New Brunswick's position should be presented in that manner. I believe it is also appropriate that the Government of Newfoundland and Labrador should do the same.

It is also important that it be done in time to allow you to be fully informed as to the position of the Government of Newfoundland and Labrador prior to your televised address to the nation this evening. Accordingly, I will today introduce the motion for a resolution to revoke the approval of the Meech Lake Accord given on July 7, 1988. As you will see the resolution also provides for future approval of the Accord either upon approval by a majority of electors in a province-wide referendum or upon approval by a majority of electors in a nation-wide referendum.

The Right Honourable M. Brian Mulroney, P.C., M.P.
Prime Minister of Canada
Langevin Block, Parliament Buildings
Ottawa, Ontario
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The Rt. Hon. M. Brian Mulroney, P.C., M.P.
March 22, 1990

I am also enclosing a copy of an alternative constitutional accord that Newfoundland proposes be considered as a means to sincerely and fairly respond to the five original proposals of Quebec but at the same time be faithful to federalism. While it is not put forward as the only possible answer I suggest that it is a proper basis for further discussion in an effort to reach a compromise that would not only be acceptable to the first ministers but also acceptable to the vast majority of the people of this nation.

I look forward to participating constructively in on-going constitutional negotiations and assure you of my willingness to make every reasonable effort to find the appropriate compromise.

Yours sincerely,



CLYDE K. WELLS

**Motion for a Resolution to Revoke
the Resolution approved and adopted on the 7th of July, 1988
authorizing an amendment to the Constitution of Canada
and to make alternate provision therefor**

RESOLUTION

WHEREAS by a Resolution dated the 7th day of July, 1988 the House of Assembly of the Province of Newfoundland resolved that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with amendments set out in the schedule attached thereto;

AND WHEREAS this House does not agree that the amendment authorized will achieve its stated purpose of recognizing the principle of equality of all the provinces or providing new arrangements that will foster greater harmony and co-operation between the Government of Canada and the governments of the provinces;

AND WHEREAS the Government of this Province is concerned that the overall long-term effect of implementation of the said amendment will be to continue indefinitely the regional economic disparity that presently exists in Canada;

AND WHEREAS this House shares those concerns and the grave concerns of certain provinces and various interest groups and concerned citizens that the authorized amendment may be interpreted to diminish guaranteed rights under the Charter of Rights and Freedoms, to create a special legislative status for one province, to reduce or erode effective national shared cost programs, to render effective Senate reform virtually impossible, and to inhibit the governments and legislatures of Canada from honouring the commitments to promote equal opportunities for the well-being of Canadians, to reduce disparity in opportunities and to provide essential public services of reasonable quality to all Canadians as set out in section 36(1) of the Constitution Act 1982;

AND WHEREAS Section 46(2) of the Constitution Act, 1982 specifically provides that a resolution of assent made for purposes of amending the Constitution of Canada may be revoked at any time before the issue of a proclamation authorized by it;

NOW THEREFORE the House of Assembly of the Province of Newfoundland pursuant to Section 46(2) of the Constitution Act, 1982 resolves that the Resolution to authorize the amendment to the Constitution of Canada adopted and approved on the 7th day of July, 1988, be and it is hereby revoked;

AND the House of Assembly of the Province of Newfoundland further resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by His Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto either:

upon approval of the said amendment by a majority of the electors of Newfoundland and Labrador in a province-wide referendum; or

upon approval of the said amendment by a majority of the electors of Canada in a nation-wide referendum, notwithstanding that approval may have been rejected in a previous province-wide referendum;

and the Speaker is hereby authorized, upon receipt by the Speaker of a certificate from the official designated by the Lieutenant Governor in Council, or the Governor General in Council, as the case may be, confirming that any such referendum approved the said amendment by an absolute majority of valid votes cast, to certify to His Excellency the Governor General authorization of the said amendment by this House;

AND the House of Assembly of the Province of Newfoundland further resolves to authorize and hereby authorizes the Lieutenant Governor in Council to provide for such a province-wide referendum, if it is deemed necessary, and conduct the same either as a plebiscite under section 169 of the Election Act or in such other manner and at such time as the Lieutenant Governor in Council shall prescribe.

The Honourable Clyde K. Wells, Premier of Newfoundland and Labrador today gave formal notice of the resolution that would be introduced into the House of Assembly to deal with the Meech Lake Constitutional Accord. A copy of the resolution is attached.

The resolution would rescind the earlier approval of the Meech Lake Accord given on July 7, 1988 but would also provide for future approval of the Accord either upon approval by a majority of electors in a province-wide referendum or upon approval of the Accord by a majority of electors in a nation-wide referendum.

The Premier noted that yesterday the Premier of New Brunswick introduced a resolution into the New Brunswick legislature setting out the basis under which New Brunswick could accept the Accord in its present form. Whether one agrees or disagrees with the basis established by the Government of New Brunswick, it was entirely proper that New Brunswick's position should be presented in that manner. Mr. Wells said it was also appropriate that Newfoundland and Labrador should do the same.

The Premier emphasized his belief that the constitutional amendments that would be effected by the Meech Lake Accord were so detrimental to the long-term economic and political position of Newfoundland and Labrador and for that matter the whole nation, that he could not possibly ask the legislature to approve such amendments. He said the same argument dictates that he could not possibly fail to ask the legislature to exercise its power, pursuant to section 46(2) of the Constitution Act 1982, to rescind the approval previously given.

Accordingly, it has been evident from the beginning that the Government would sooner or later take the step of asking the legislature to rescind the former government's approval of the Accord. The purpose in not taking immediate action following the Government's election in April 1989 was to convey the Government's desire to resolve these differences through constitutional negotiations leading to a new or revised accord.

To this end, the Government set out its concerns with the Accord in its present form and suggested amendments to the Accord to the First Ministers' Conference on November 9-10, 1989. The Government further agreed at the Conference that it would refrain from immediately seeking rescission of the resolution of approval of the Meech Lake Accord which was passed in the prior General Assembly, in order to facilitate further discussions on constitutional reform. This position and action was subsequently endorsed by the House of Assembly.

While there have been some discussions on constitutional reform over the past months, there have been no discussions with Newfoundland about its position since Senator Murray's visit on December 8th last year. The Federal Government and certain provinces have not yet indicated a willingness to change any part of the Meech Lake Accord. On the contrary, all indications are that their position remains that the Meech Lake Accord must be approved without any change. In the last few days there has been some indication of a willingness to consider the parallel accord suggested by Premier McKenna but no indication of any willingness to address the substantial concerns of Manitoba and Newfoundland.

Accordingly, the Government has concluded that the step to rescind must now be taken to indicate firmly and unequivocally that Newfoundland's concerns with the Accord must be addressed and that the Newfoundland legislature cannot accept the Meech Lake Accord in its present form. Amendments cannot be postponed to a later constitutional round. They must be considered now.

The Premier emphasized, however, that Newfoundland will participate constructively in all future negotiations and will spare no effort to seek a reasonable accommodation for all. The Government believes that the new constitutional negotiations can and must result in a compromise that will be fairly and properly responsive to Quebec's five original proposals, but faithful to federalism and reasonably acceptable to the majority of the people of Canada. Such a compromise must leave us with a unified Canada made up of ten provinces, equal in their status and rights as provinces, and territories with a realistic opportunity to become provinces at an appropriate time in the future. It must also recognize the fundamental equality of all citizens of Canada and must not undermine the Canadian Charter of Rights and Freedoms.

In arriving at a new compromise, the Premier stressed the urgent need to open up the constitutional reform process to allow for public debate and the participation of the people of Canada in deciding these important issues. Constitutional change is not simply a matter for prime ministers and premiers; it must meet with an acceptable level of approval of people in all parts of this country. The premier believes that the worst flaw in the Meech Lake Accord is the process that resulted in the eleven first ministers telling the 26 million people of Canada how they will be governed in the future, instead of the 26 million people of Canada telling the eleven first ministers how they will govern.

To facilitate public discussion and debate about the changes proposed by Newfoundland and Labrador, the Premier tabled a document showing a detailed comparison of the original Meech Lake Accord with the Newfoundland proposal for a revised accord.

In addition, the Premier emphasized that the Province of Manitoba takes essentially the same position as Newfoundland and Labrador and its Government has indicated that Manitoba will not approve of the Meech Lake Accord without amendments substantially similar to those recommended by Newfoundland and Labrador. However, should the legislature of Newfoundland and Labrador be the only legislature not to approve the Meech Lake Accord as it is, the Government will hold a province-wide referendum and if a majority of electors approve the Accord then the House of Assembly will authorize the proclamation of the amendments contained in the Meech Lake Accord by His Excellency the Governor General. The resolution tabled today also provides that the House of Assembly will authorize proclamation of those amendments no matter what results from a Newfoundland referendum if a majority of the electors of Canada approve of the Accord in a nation-wide referendum. The Premier said that this was simply honouring the position of the Government that no one province should have the right to hold up the constitutional development of this nation.

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March 22, 1990

COMMENTARY ON THE BASIS FOR THE CHANGES-WHICH NEWFOUNDLAND PROPOSES SHOULD BE MADE TO THE MEECH LAKE ACCORD

The Newfoundland proposal is designed to be genuinely responsive to Quebec's original constitutional proposals but also faithful to federalism and the fundamental constitutional precepts of the Canadian nation. The five original Quebec proposals which gave rise to the Meech Lake Accord were put forward in 1986 by Gil Rémillard, the Quebec Minister of Intergovernmental Affairs, as follows:

1. Explicit recognition of Quebec as a distinct society (suggested and understood at the time to be contained in a revised preamble to the Constitution);
2. The recognition of a right to constitutional veto;
3. A limitation on the federal spending power;
4. Quebec's participation in appointing judges to the Supreme Court of Canada;
5. A guarantee of increased powers in matters of immigration.

Newfoundland acknowledges that these are reasonable proposals to address Quebec's legitimate concerns. The manner in which the Meech Lake Accord addresses these concerns results in such adverse impact on the political and economic future of some of the provinces and on the national political and economic structure that revision is essential if we are to preserve the fundamental character of Canada as a federal state and at the same time be genuinely responsive to Quebec's proposals. We believe the Newfoundland proposal is an acceptable way to achieve this. If it is not, some reasonable variation of it would be. The Newfoundland proposal addresses the original five proposals of Quebec as follows:

1. Recognition of Quebec as a Distinct Society

The recognition of Quebec as a distinct society in a revised preamble to the Constitution Act 1867 responds to Quebec's original proposal, but at the same time respects the fundamental precepts of the equality of all citizens and the equality of provinces.

To the extent that the courts do not already take into account Quebec's distinctiveness in Charter cases by virtue of section 1 of the Charter, the preamble reference will provide a basis for doing so. The Government of Newfoundland and Labrador remains convinced that affirming for the Quebec legislature a role to preserve and promote a distinct identity for Quebec reflecting a distinct society creates a special legislative status that no other province would have. By whatever name this is special status and creates two different classes of provinces. It should also be remembered that Quebec has been and continues to be able to promote its distinctive character with its existing legislative powers.

Newfoundland agrees with Manitoba that the constitutional recognition of Quebec's distinctiveness must be accomplished at the same time as recognizing other fundamental characteristics of Canada, most notably, the contribution of our aboriginal peoples, in an expanded preamble. This will ensure that such recognition will have a unifying effect in the country and that we will focus, as we should, on what unites us as a federation, strengthens our sense of national identity, and allows us to accommodate our diversity in a spirit of tolerance and fairness. Recognition of the distinct society in the preamble is precisely what Quebec originally proposed.

2. Recognition of a Right of Veto

The Government of Newfoundland believes that extending a constitutional veto to all provinces, as a means of accommodating Quebec's request for a constitutional veto, would effectively halt all significant future constitutional change. The current amending formula, is already quite rigid; the Meech Lake Accord, by requiring unanimity in several more areas, would place Canada in a permanent constitutional strait jacket.

An amending formula requiring unanimity effectively destroys all hope of Senate reform and will prevent Newfoundland and Labrador and the other smaller provinces from ever becoming full participating provinces of Canada. It would also prevent the Northwest Territories or the Yukon from ever becoming provinces unless they could obtain the approval of all the provincial legislatures.

Accordingly, Newfoundland recommends that Quebec's proposal for a constitutional veto be addressed through special votes in the Senate. Under Newfoundland's proposal Quebec, through its senators acting at the national level, would have an effective veto over constitutional amendments affecting linguistic or cultural rights, or civil law judges on the Supreme Court of Canada. This would respect the fundamental precept of the equality of the provinces since it would not give the Quebec legislature or government a status that no other provincial legislature or government had.

This proposal can clearly be justified as the means of giving voice to the third essential equality in our federation, namely, the equality of each of the two founding linguistic cultures, without destroying either of the other two essential equalities: the equality of each citizen (reflected in the House of Commons elected on the basis of representation by population) and the equality of all provinces (which should be reflected in a reformed Triple-E Senate).

3. A Limitation on the Federal Spending Power

Quebec (and other provinces sharing its view, including Newfoundland) does have a legitimate concern that unilateral federal action in the exercise of its spending power could encroach on areas of exclusive provincial jurisdiction, and Newfoundland therefore supports the basic limitation on the federal spending power set out in the Meech Lake Accord.

It is necessary, however, to add a new subsection to the Meech Lake provisions, to provide that the opting-out with compensation provisions would not apply "to any national program expressly declared by Parliament to be a response to the commitment set out in section 36(1) of the Constitution Act, 1982." This ensures that the federal government will be able to implement national or regional programs, with minimum national standards and full provincial participation, designed to meet the fundamental precept set out in section 36(1) without the deterring effect of one or more provinces claiming entitlement to compensation. Indeed, it should provide an incentive to the federal government to develop such programs.

It is also desirable to ensure that the entitlement of a province to opt out and get compensation would depend on that province carrying on a program that accorded with the national objectives, rather than being entitled to compensation provided it was undertaking some initiative that was not incompatible with the national objectives.

By such reasonable changes to the Meech Lake Accord, a revised provision could be created that would faithfully address Quebec's desire for a limitation on the federal spending power and at the same time be faithful to federalism.

4. Appointment of Supreme Court Judges

Newfoundland believes that it is not faithful to federalism for all Supreme Court appointments to be made only from a list of names submitted by provincial governments, something which effectively cedes the power to appoint judges to Canada's highest court to certain of the provinces and would likely result in the appointment of judges with a strongly provincial view of Canada. In addition, the Meech Lake provisions create no mechanism to break any deadlock that would inevitably occur when the federal government disagreed with the provincial nominations; they leave unspecified a fair means of distributing nominations among the Atlantic Provinces; and, they prohibit the appointment of judges from the Northwest Territories and Yukon.

It is noteworthy that even the judges of the provincial supreme courts are appointed by the federal government with no right in any of the provinces to submit lists. In such circumstances, it is even more difficult to justify restricting the Government of Canada to choosing common law judges to be appointed to the Supreme Court of Canada from a list collectively submitted by the common law provinces, and effectively giving the Quebec government the right to appoint civil law judges by submitting a very restricted list.

Quebec and the other provinces can be given appropriate roles in the appointment of Supreme Court of Canada judges by requiring that all civil law judges appointed by the federal government to the Supreme Court of Canada be subject to the approval of the senators from Quebec, and all common law judges appointed to the Supreme Court of Canada be subject to the approval of the senators from the common law provinces and the territories. Again, this is a method of being faithful to Quebec's original proposal respecting participation in the appointment of Supreme Court of Canada judges and, at the same time, being faithful to federalism.

5. Immigration

Under the Cullen-Couture Agreement, the Quebec and federal governments agreed to "(i) cooperate in all areas relating to immigration movements and demography; and (ii) participate jointly in the selection of persons who wish to settle permanently or temporarily in Quebec." The Agreement stipulates that selection will be "on a joint and equal basis, according to separate sets of criteria for Canada and for Quebec", although in the case of independent immigrants (in contrast to refugees, family members, visitors students and teachers), Quebec's prior agreement is required. This gives Quebec a significant participation in the Canadian immigration process.

The power over immigration is shared concurrently under the existing Constitution. Both Parliament and the provincial legislatures can pass laws to deal with immigration but in the case of conflict, the federal law prevails. This is because there were in 1867 few other areas of public policy so critical to Canada's political, social and economic life. Immigration is just as significant to the future of Canada today as it was in 1867. Thus in negotiating constitutional provisions to entrench Quebec's special interest in the selection of immigrants, care must be taken not only to respect the fundamental precept of the equality of the provinces but also ensure that our ability to maintain a unique national identity is not impaired and that immigrants are provided with a sense of attachment to Canada as a nation and not just to the particular province to which they initially immigrate.

The provisions of the Meech Lake political accord, in particular, fail to respect these precepts in many ways, most notably, by severely restricting the federal role in providing reception and integration services and permitting provinces to select immigrants both abroad and from within Canada. In addition all provinces can conclude similar agreements with the federal government which will then be constitutionally entrenched and thereafter only able to be amended by either the general amending process or "such other manner as is set out in the

agreement". Finally, the Accord purports to "guarantee" that any province will get a fixed proportion of the total number of immigrants and, more specifically, that the province of Quebec has the right to exceed its fixed proportion by 5% for demographic reasons. These provisions are neither reasonable nor practical, and perhaps not even mathematically possible.

Newfoundland has therefore proposed the deletion of the provisions of the political accord, together with a variation of the Meech Lake Accord proposed constitutional amendments to require that the constitutional entrenchment of any immigration agreement negotiated between the federal and provincial governments be subject to the general amending procedure. By this means we can ensure that an agreement affecting future immigration would not be entrenched unless it has a substantial level of approval in the country, and should it become necessary in the future, such agreements could be similarly amended.

In addition, Newfoundland agrees with Manitoba's recommendation that the federal government continue to play a leading role in the immigration process, and that the provisions on immigration and agreements pursuant thereto should be reviewed at least every five years with a view to their possible amendment or revocation. In this connection, explicit constitutional provision could be made for a mandatory first ministers' conference to be convened within 5 years, modelled on section 49 of the Constitution Act, 1982.

Other Matters

The foregoing reflects the views of Newfoundland on the changes necessary to cause the Meech Lake Accord to be changed so as to be sincerely responsive to Quebec's five original proposals but remain faithful to federalism. The Meech Lake Accord, however, addresses matters other than the five original Quebec proposals. Newfoundland believes that some aspects of the provisions of the Meech Lake Accord relating to these other matters need revision as well.

The Government of Newfoundland and Labrador proposes the deletion of the constitutional entrenchment of First Ministers' Conferences set out in sections 8 and 13 of the Meech Lake Accord, as well as the deletion of the provisions dealing with the appointment of Senators in section 2 of the Accord.

The Government is concerned about the entrenchment of two annual First Ministers' Conferences in the Constitution as provided for in the Meech Lake Accord. In the government's view, First Ministers' Conferences are not the appropriate or effective forum in which provinces can bring provincial influence to bear on the exercise of federal power and national policies. While it would enable smaller provinces to have an influence on a basis that reflects the equality of the provinces, nevertheless in a properly functioning federal system where legislative power is divided between two levels of government, officials elected to provincial institutions should not be, in effect, exercising federal legislative power as inevitably occurs through the medium of First Ministers' Conferences.

Rather, the appropriate and effective forum in which provincial and regional concerns can be brought to bear on national policies is through federal institutions and, specifically, a reformed Senate. It is through an elected Senate that small provinces like Newfoundland will finally be able to take their rightful position as full participating partners in the federal state of Canada. The government is convinced that a reformed Senate, combined with a strong and resourceful federal government, is the only means by which regional disparities in this country will ever be corrected - hence the government's concern to integrate consideration of senate reform in this round of constitutional negotiations. To this end, a detailed proposal for a Triple-E Senate was submitted by Newfoundland to the First Ministers' Conference on November 9-10, 1989.