

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

PRESENTATION

TO

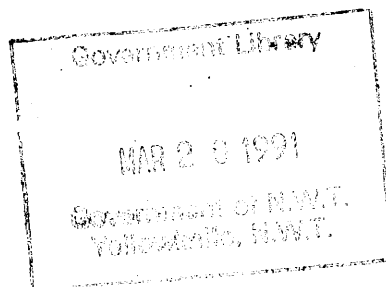
SENATE AND HOUSE OF COMMONS

SPECIAL JOINT COMMITTEE

ON THE PROCESS FOR

AMENDING THE CONSTITUTION OF CANADA

**March 19, 1991
Yellowknife, N.W.T.**



Check Against Delivery

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES
SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM
PRESENTATION TO
THE SPECIAL JOINT COMMITTEE
OF THE SENATE AND HOUSE OF COMMONS
ON THE PROCESS FOR AMENDING
THE CONSTITUTION OF CANADA

JOINT CHAIRMEN, SENATORS, MEMBERS OF PARLIAMENT, LADIES AND GENTLEMEN. ON BEHALF OF THE NORTHWEST TERRITORIES' SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM, I WOULD LIKE TO WELCOME YOU TO YELLOWKNIFE AND TO THE NORTHWEST TERRITORIES. I REALIZE YOUR VISIT HERE WILL ONLY BE A FEW HOURS, BUT I HOPE IT IS A PLEASANT AND INFORMATIVE ONE AND I HOPE YOU WILL COME BACK TO VISIT AGAIN SOON.

THE SPECIAL COMMITTEE DOES NOT WISH TO TAKE TOO MUCH OF YOUR TIME TODAY. YOU HAVE KINDLY AGREED TO ALLOW US TO MAKE A LONGER, MORE TECHNICAL PRESENTATION AT YOUR HEARINGS IN OTTAWA IN LATE APRIL OR EARLY MAY. WE BELIEVE YOU WILL WANT TO HEAR FROM THE PUBLIC AND OTHER ORGANIZATIONS AS MUCH AS POSSIBLE WHILE YOU ARE IN YELLOWKNIFE.

TODAY I WOULD LIKE TO LEAVE YOU WITH TWO SIMPLE MESSAGES: FIRST, THE PEOPLE, GOVERNMENT AND LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES MUST BE ADMITTED TO THE CONSTITUTIONAL COUNCILS OF CANADA, INCLUDING ALL DISCUSSIONS ON THE AMENDING FORMULA. CONSTITUTIONAL PROCESSES SUCH AS INTERGOVERNMENTAL MEETINGS OF OFFICIALS AND MINISTERS, FIRST MINISTERS' MEETINGS AND CONFERENCES,



IT WAS OUR VIEW THAT THE PROCESS OF AMENDMENT MUST BE LEGITIMIZED IN THE EYES OF CANADIANS BEFORE ANY NEW EFFORTS WERE MADE TO AMEND THE CONSTITUTION. AMENDMENTS MUST BE PRESENTED TO AND JUSTIFIED TO THE CANADIAN PEOPLE PRIOR TO THE ADOPTION OF ANY CONSTITUTIONAL RESOLUTION BY FIRST MINISTERS OR LEGISLATURES.

WE POINTED OUT BEFORE THE CHAREST COMMITTEE THAT A CONFERENCE TO REVIEW THE AMENDING FORMULA IS ALREADY PROVIDED FOR IN SECTION 49 OF THE CONSTITUTION ACT, 1982. THAT CONFERENCE WAS TO BE HELD BEFORE 1997 SO YOU ARE A FEW YEARS AHEAD OF THE GAME.

WE WANT TO STRESS AT THE OUTSET, HOWEVER, THAT THE NEED FOR CHANGE TO THE CONSTITUTIONAL TEXT SETTING OUT THE AMENDING FORMULA MUST BE CLEAR AND UNEQUIVOCAL BEFORE THE EXISTING PROVISIONS ARE TAMPERED WITH. IN OUR VIEW, THERE ARE SOME PROVISIONS IN THE PRESENT FORMULA THAT MUST BE ATTENDED TO IF THE NORTHWEST TERRITORIES AND THE YUKON ARE TO BE TREATED FAIRLY AND ARE TO PLAY A ROLE IN THE CANADA OF THE 21ST CENTURY. BUT THERE ARE ALSO SEVERAL UNWRITTEN ASPECTS OF THE AMENDING PROCESS THAT MUST BE CAREFULLY EXAMINED. WE BELIEVE A CLEAR DISTINCTION MUST BE DRAWN BETWEEN THESE WRITTEN AND UNWRITTEN ELEMENTS OF THE PROCESS.

CHANGES TO THE AMENDING FORMULA MUST NOT BE MADE SIMPLY TO ADDRESS CURRENT POLITICAL PROBLEMS. ANY CHANGES MUST BE SQUARELY GROUNDED IN WIDELY-SHARED PRINCIPLES AND MUST BE DURABLE.

GENERAL FORMULA WHICH ENCOURAGES EXPEDITIOUS AMENDMENTS AND THEREFORE SETS AN OUTSIDE LIMIT OF THREE YEARS WHEN THE GENERAL FORMULA IS EMPLOYED.

ONE FLAW IN THE CURRENT AMENDING PROCESS WHICH NEEDS TO BE ADDRESSED IS THE LACK OF A CLEAR BALANCING OF THE ROLES OF THE EXECUTIVE, LEGISLATIVE AND PUBLIC ELEMENTS IN THAT PROCESS. IN THE MEECH LAKE DEBATE FIRST MINISTERS USED PARTY DISCIPLINE AND THE SEAMLESS WEB TACTIC TO PUSH FORWARD AN ACCORD THAT WAS NOT WELL UNDERSTOOD BY THE CANADIAN PEOPLE. THE CURRENT WRITTEN PROVISIONS DO NOT CONTAIN A CLEAR ROLE FOR FIRST MINISTERS IN THE AMENDING PROCESS AND THEREFORE FIRST MINISTERS WERE ABLE TO PROVIDE THEIR OWN INTERPRETATION OF THEIR ROLE.

FURTHERMORE, THE CURRENT PROCESS HAS NO REQUIREMENT FOR PUBLIC INPUT OTHER THAN THROUGH THE DULY ELECTED REPRESENTATIVES IN THE LEGISLATURES AND IN PARLIAMENT. PARTY DISCIPLINE OPERATED TO PREVENT CONSTRUCTIVE CHANGES TO THE MEECH LAKE ACCORD. THE MINIMAL ROLE PLAYED BY ELECTED REPRESENTATIVES IN CONSTITUTIONAL AMENDMENTS WILL CONTINUE UNLESS THERE ARE FUNDAMENTAL REFORMS IN THE PARTY SYSTEM IN CANADA.

SO THE HYBRID FORMULA DESIGNED BY FIRST MINISTERS FOR THE MEECH LAKE AMENDMENTS MAY HAVE PLAYED SOME PART IN THE FAILURE OF THE ACCORD. BUT DOES THIS STAND AS AN INDICTMENT OF THE AMENDING FORMULA PROVISIONS GENERALLY?

CONSIDERATION MUST ALSO BE GIVEN TO ESTABLISHING A PROCESS FOR INVOLVING THE GENERAL ABORIGINAL POPULATION IN ANY AMENDMENTS THAT DIRECTLY AFFECT THEM. IN OTHER WORDS, BEFORE CONSTITUTIONAL AMENDMENTS ON ABORIGINAL MATTERS ARE MADE IT MUST BE CLEAR THAT ABORIGINAL LEADERS AND THE MAJORITY OF ABORIGINAL PEOPLE SUPPORT THEM.

IN CLOSING, I WOULD ENCOURAGE YOUR COMMITTEE TO WEIGH VERY CAREFULLY THE QUESTION OF WHETHER OR NOT THE CURRENT WRITTEN PROVISIONS OF THE AMENDING FORMULA ARE THE PROBLEM AND WHETHER OR NOT THEY CAN BE CHANGED USING A PRINCIPLED, DURABLE APPROACH GIVEN OUR CURRENT NATIONAL CLIMATE. WE DO SEE IN THE CURRENT WRITTEN PROVISIONS, AND IN THE AMENDING PROCESS GENERALLY, AN UNJUSTIFIED BIAS AGAINST THE TWO TERRITORIES IN PARTICULAR, AND AGAINST CANADIANS LIVING IN THESE JURISDICTIONS. WE WILL SPEAK TO ALL THESE ISSUES IN SOME DETAIL WHEN WE APPEAR BEFORE YOU IN OTTAWA. I HAVE AN OUTLINE OF THAT PRESENTATION AVAILABLE TODAY WHICH I WILL LEAVE FOR YOUR COMMITTEE. THE NORTHWEST TERRITORIES SPECIAL COMMITTEE WOULD ALSO BE PLEASED TO EXTEND ASSISTANCE TO YOUR COMMITTEE BY WAY OF FURTHER RESEARCH PAPERS OR ANALYSIS RELATING TO THE AMENDING FORMULA AND ITS APPLICATION TO THE NORTHWEST TERRITORIES.

THANK YOU.