Northwest Territories Legislative Assembly

Report of the Special Committee on Constitutional Reform

on the Multilateral Meetings on the Constitution

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

Special Committee on Constitutional Reform

Members

Hon. Stephen Kakfwi
M.L.A., Sahtu
Chairperson

Mr. Ernie Bernhardt
M.L.A., Kitikmeot

Mr. Samuel Gargan
M.L.A., Deh Cho

Mr. Brian Lewis
M.L.A., Yellowknife Centre

Hon. Dennis Patterson
M.L.A., Iqaluit

Alternate Members

Mr. Silas Arngna'naaq
M.L.A., Kivallivik

Ms. Jeannie Marie-Jewell
M.L.A., Thebacha

Staff

Mr. Doug Schauerte
Committee Clerk

Mr. Geoffery Bickert
Legal Counsel

Mr. Bernard Funston
Legal Counsel

Mr. George Braden
Intergovernmental Affairs

Northwest Territories Legislative Assembly/ᓄᓇᑦᓯᐊᕐᒥ ᒪᓕᒐᓕᐅᖅᑎᑦ

June 16, 1992

THE HONOURABLE MICHAEL BALLANTYNE, M.L.A.,
SPEAKER OF THE LEGISLATIVE ASSEMBLY.

I am pleased to submit this Report of the Special Committee on Constitutional Reform on the Multilateral Meetings on the Constitution.

Respectfully submitted,

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

Yellowknife, Northwest Territories, Canada X1A 2L9/Fax (403) 920-4735/Telephone (403) 873-7999
ᔭᓗᓇᐃᑦ, ᓄᓇᑦᓯᐊᖅ, ᑲᓇᑕᒥ X1A 2L9/ ᑐᐊᐱᖅᑐᒃᑦ ᑎᑎᕋᖅᑦ (403) 920-4735/ᐅᖃᓘᑏ (403) 873-7999

REPORT TO THE LEGISLATIVE ASSEMBLY
OF
THE NORTHWEST TERRITORIES

SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

REPORT TO THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES BY THE

SPECIAL COMMITTEE ON CONSTITUTIONAL REFORM

I INTRODUCTION

In September, 1991, the Federal government issued a national constitutional reform discussion paper entitled "Shaping Canada's Future Together" and shortly thereafter established the Special Joint Parliamentary Committee on a Renewed Canada (Beaudoin-Dobbie Committee) to conduct public hearings on the paper's recommendations and report back to Parliament by March 12, 1992. The Northwest Territories Special Committee on Constitutional Reform made a presentation to the Joint Parliamentary Committee on January 23, 1992.

The Federal government also sponsored six conferences between January 17 and March 15 where the general public and representatives from business, interest groups, Aboriginal organizations, the academic community and government examined and made recommendations on the Federal government's discussion paper. Special Committee Members attended all conferences with the exception of the Montreal session on the Canadian economic union.

Special Committee Reports 04-12(2), tabled on March 2, 1992 and 07-12(2) tabled on March 12, 1992 provide more details on the Committee's participation in these two initiatives that were intended to produce the basis for a federal response which the Government of Quebec could consider in the process leading up to its referendum on sovereignty scheduled for on or before October 26, 1992.

In response to pressure from provincial governments and national Aboriginal organizations for a process mandated to develop a consensus package that better reflected their interests, the Federal government agreed to a multilateral approach, with the objective of producing a "best efforts" national constitutional reform package by May 31, 1992. In preparation for the Multilateral Meetings on the Constitution (MMC), the Special Committee tabled Interim Report 09-12(2) on April 1, 1992 which identified objectives and principles which should be pursued by the Northwest Territories delegation in the MMC process.

The MMC process concluded on June 11, 1992 and while participants were able to report agreement on a number of constitutional reform proposals, they were not able to recommend a "best efforts" package for further consideration and approval by First Ministers and Aboriginal Leaders. Nevertheless, sufficient progress has been made for all participants to reconsider options for resolving outstanding issues, such as Senate Reform, and to pursue on a less formal basis, multilateral discussions among Ministers, Aboriginal Leaders and officials.

The purposes of this Report are to:

* summarize the Special Committee's participation in the MMC process;

* review MMC recommendations insofar as they relate to the Special Committee's national constitutional reform objectives and principles;

* speculate on how the national constitutional reform process could unfold in the coming months; and

* make recommendations to guide the Special Committee in this process.

II SPECIAL COMMITTEE PARTICIPATION IN THE MMC PROCESS

On March 12, representatives of Federal, Provincial and Territorial governments and four national Aboriginal organizations convened the first MMC session in Ottawa. Agreement was reached on convening a series of meetings to develop a consensus on constitutional amendments in what has been termed the "Canada Round". The participants also agreed to work toward achieving this consensus by the end of May, 1992 and that no government would take unilateral actions while the MMC process was underway. It was subsequently agreed to extend the MMC process into June.

The MMC included Federal, Provincial and Territorial Ministers or Premiers responsible for the constitutional reform issue and national Aboriginal Leaders who met for twenty-two days between March 12 and June 11. Support was provided by officials and advisors who were organized into four working groups and a committee which co-ordinated presentations to the MMCs. The schedule for MMC sessions to date is noted below:

*	March 12	Ottawa
*	April 8-9	Halifax
*	April 14	Ottawa
*	April 29-30	Edmonton
*	May 6-7	Saint John
*	May 11-13	Vancouver
*	May 20-22	Montreal
*	May 28-30	Toronto
*	June 9-11	Ottawa

During the early stages of the MMC, the Northwest Territories delegation included the Special Committee Chairperson, who was supported by officials from Intergovernmental and Aboriginal Affairs and the Departments of Justice and Finance. Committee Members participated in the last four MMC sessions through their presence at the negotiating table; assisting in developing strategies and positions on a wide range of constitutional reform issues; and representing the Northwest Territories when the Chairperson had other commitments.

While the negotiation process required that, from time to time, Federal Constitutional Affairs Minister Clark had to poll provincial governments on their response to a constitutional amendment, the Special Committee and its officials participated as full and equal participants in all formal and informal MMC sessions. Even though the Northwest Territories does not have a constitutionally entrenched role in amending the Constitution, Federal and Provincial governments ensured that the Northwest Territories delegation had ample opportunities to state their case.

Beginning with the Halifax MMC, a briefing note summarizing the progress of negotiations was prepared for circulation to Special Committee Members. On May 25, 1992, the Chairperson provided a progress report to all Members of the Legislative Assembly on developments in the national reform process insofar as they related to the Special Committee's objectives in the MMC process. Another update was provided on June 2 to the Members of the Legislative Assembly and widely circulated throughout the North to band and regional councils, municipal governments and Aboriginal organizations. The general public was kept informed of developments through an advertisement entitled "Quest for Consensus" which appeared in northern newspapers in early June and is attached in Appendix One.

These measures are consistent with recommendations in the Special Committee's April 1 Interim Report which called for the following:

* participation by appropriate Ministers, Members and officials in the MMC process;

* reporting to the Special Committee and Legislative Assembly on progress in MMC consultations; and

* distributing a public information package relating to national constitutional reform.

III MMC RESPONSE TO SPECIAL COMMITTEE PRINCIPLES AND OBJECTIVES

In its April 1 Interim Report to the Legislative Assembly, the Special Committee also recommended that its participation in the MMCs should focus upon the following issues:

* Territorial participation in public and private meetings and conferences on constitutional, economic and Aboriginal matters;

* constitutional recognition of an inherent right to Aboriginal self-government;

* the effects of the constitutional amending formula on provincial status for the Territories;

* the implications for the Territories of the Canadian economic union proposals and the mechanisms for decentralization of the federation; and

* constitutional amendments relating to institutions such as the Senate and the Supreme Court of Canada.

The following provides an overview of the MMC recommendations insofar as they reflect the objectives and principles recommended in the Special Committee's April 1, 1992 Interim Report:

Territorial Participation in Constitutional, Economic and Aboriginal Meetings

* The Constitution should require the Prime Minister to convene a First Ministers Conference at least once a year. A political accord should specify that Territorial governments will be invited to participate.

* Territorial governments should also be invited to the series of four constitutional conferences which will be convened on Aboriginal issues.

* Territorial governments should be party to all agreement which commit governments to negotiate self-government agreements and processes to clarify and implement treaties. They should also be party to the transition/ implementation process and financing accords would accompany the constitutional amendments on these matters.

Constitutional Recognition of the Inherent Right to Aboriginal Self-Government

* The Constitution should recognize Aboriginal peoples' inherent right to self-government within Canada.

* Governments of Aboriginal peoples should constitute one of three orders of government in Canada.

* Aboriginal governments should be subject to the Charter of Rights and Freedoms, including the capacity to make use of the "notwithstanding" clause.

* Governments and Aboriginal peoples should be committed to negotiate in good faith in the implementation of self-government.

* All Aboriginal peoples, Metis, Indian and Inuit, including those living off reserve, should have equitable access to the negotiation process.

* There should be a three year delay before the inherent right to self-government can be taken to court. The objective of all parties is to emphasize the negotiation route, rather than the courts, to implement the inherent right.

* The Federal government should establish a process to clarify and implement treaty rights. Governments should interpret treaty rights in a "just, broad and liberal manner" taking into account the context, spirit and intent of the original treaty.

* Aboriginal consent should be required to constitutional amendments which directly affect Aboriginal peoples and their rights.

* Aboriginal peoples should have a role to play with respect to nominations for Supreme Court vacancies.

* A political accord should specify that Aboriginal Leaders will participate in First Ministers Conferences on any agenda items that directly affect Aboriginal peoples.

* There should be a general non-derogation clause to ensure division of powers amendments will not affect the rights of Aboriginal peoples and the jurisdictions and powers of Aboriginal governments.

* Section 91(24) of the Constitution 1867 should be amended to include Metis.

* The Metis Nation Accord was approved in principle subject to redrafting the document to ensure that its wording is consistent with other constitutional amendments and political accords being considered. The GNWT has not agreed to be a party to the accord at this time and continues to prefer a joint Dene/Metis approach to claims and self-government. However, if joint initiatives cannot be achieved, the GNWT would be prepared to negotiate directly with the Metis in order to help implement any self-government rights.

* There should be a constitutional provision calling for a series of four constitutional conferences on Aboriginal issues. Aboriginal groups are withholding their support for the clause pending clarification of their participation in all other First Ministers Conferences and other constitutional amendments respecting their veto over constitutional amendments which directly affect Aboriginal peoples.

<u>Effects of the Constitutional Amending Formula on Provincehood for the Territories</u>

* The Constitution should be amended to return the authority to create new provinces to Parliament, as was the case prior to 1982.

* The general amending formula should change from "2/3 and 50%" to "3/4 and 50%" so that at least one province from the Atlantic region of the western provinces would need to consent to most changes in the Constitution even if there were 13 provinces.

* The issue of Aboriginal consent to the creation of new provinces was not resolved at the Ottawa MMC.

The Economic Union and Mechanisms for Decentralization

* The current Constitutional commitment of Federal and Provincial governments to promote equal opportunity and economic development and provide essential public services should be expanded to include the Territories.

* There should be a constitutional commitment for the Federal, Provincial and Territorial governments to promote regional economic development and reduce regional disparities. The Federal government should be required to negotiate regional development agreements at the request of a province or territory.

* There should be a constitutional provision to protect future intergovernmental agreements between the Federal and Provincial or Territorial governments from unilateral change by the Federal government.

Constitutional Amendments respecting the Senate and Supreme Court

* Territorial governments should have the opportunity to nominate candidates for Supreme Court vacancies.

* While the MMC process reached agreement on a number of features in a reformed Senate, Ministers and Aboriginal Leaders were not able to develop a consensus on whether or not Senate representation should be on an equal or equitable basis and the corresponding powers of each model.

* The Special Committee declared its support for the equal Senate model during the Montreal MMC even though territories would not receive the same number of seats as provinces. In statements to the MMC and the media, the Committee Chairman indicated that the equal representation approach would provide smaller jurisdictions with an effective voice in balancing their individual and collective interests with those of the Federal government and central Canada.

An MMC Summary Report which includes all of the agreements reached since March 12 is attached in Appendix Two.

IV OPTIONS FOR NATIONAL CONSTITUTIONAL REFORM PROCESS

While the MMC process produced a number of significant agreements on constitutional reform, a number of issues remain unresolved, most notably Senate reform and a veto for Quebec over future constitutional amendments to national institutions. A Senate reform proposal, tabled by Saskatchewan on the last day of the Ottawa MMC (see Appendix Three), could provide a solution to this impasse and provide sufficient encouragement to continue negotiations in another yet to be defined process.

It is also important to note that Quebec has not been an official participant in the MMC process, although representatives of Federal, Provincial and Territorial governments and Aboriginal organizations have been in constant contact with their Quebec counterparts over the past three months. While there are some elements of the MMC reform package which Quebec can support, there are others, including agreements on Aboriginal self-government that may pose problems for Quebec and other provincial governments.

Finally, only four months remain until a referendum must be held in Quebec on sovereignty or a constitutional reform package which hopefully has the support of a majority of Federal and Provincial governments. Some governments including Alberta and British Columbia are required by law to hold referenda on amendments to the Constitution, while others, like Manitoba, are required by law or convention to conduct public hearings before their Legislature can debate a resolution to amend the Constitution. The Federal government has also passed legislation providing it with the authority to conduct a non-binding national referendum on a constitutional package.

Given these circumstances, the Special Committee has identified a number of scenarios or options for the national constitutional reform process in the coming months. They include the following:

Ongoing Informal Negotiations and Consultations by MMC Participants

This process is already underway in response to Minister Clark's encouragement at the conclusion of the Ottawa MMC. The Minister indicated that he would spend a few days reflecting on the MMC process; consulting with his advisors, party caucus and opposition leaders; and, holding discussions with MMC participants and Quebec before recommending a course of action to the Prime Minister.

The response of provincial governments on the Saskatchewan Senate reform proposal will clearly influence his recommendations. He also encouraged officials to continue work on other items which had not been resolved through the MMC process.

Reconvening the MMC or a Similar Process

Assuming there is sufficient will among all MMC participants to reconvene this process or something similar, Minister Clark could recommend this approach which may include participation by the Quebec constitutional Minister and his officials. A variation of this option could involve a negotiation session of provincial constitutional Ministers, with or without Quebec, to address outstanding issues from the MMC process.

Convening a Constitutional Conference of First Ministers and Aboriginal Leaders

While convening a constitutional conference remains an option, it is highly unlikely to be used under the current circumstances, primarily because the Prime Minister, Premier Bourassa and a number of other Premiers do not want to repeat the Meech Lake Accord experience. They are also concerned about the implications of failing to reach agreement on the Quebec referendum.

Adoption of a Federal Constitutional Reform Package

The Federal government had originally planned to produce its own version of a constitutional reform package after receiving the report of the Special Joint Parliamentary Committee on a Renewed Canada. Using the results of the MMC process, it could proceed with this option if consensus is not reached on outstanding issues among the provinces and Aboriginal organizations.

However, to proceed on this course, the Federal government will require the support of opposition parties and support from a majority of provincial governments. The package would include changes to the Constitution which can be made under provisions of the amending formula which require the support of Parliament and seven provinces representing 50% of the Canadian population.

Assuming that support can be achieved, the Federal government could table its reform package and debate and pass resolutions on constitutional amendments in the House of Commons and the Senate. Provincial governments which support the Federal package would debate and pass similar resolutions. While Aboriginal support for a constitutional package is not required under the current Constitution, the Federal government would also seek support of the four national Aboriginal organizations. Under this scenario, the Federal government may not conduct a national referendum.

Unilateral Federal Action

Finally, with the support of the opposition parties, the Federal government could elect to proceed unilaterally with its own reform package. Under this scenario, Ottawa would conduct a nation-wide referendum which has the support of the Liberal Party. While the referendum could ask for Canadian's reaction to the whole reform package, there is speculation that the question would focus on the one issue which has created the current impasse - Senate reform.

Ongoing Consultations in the Northwest Territories

While a national constitutional reform package has yet to be developed, it is likely that a consensus or federal unilateral version will contain a significant Aboriginal component which will have implications for Northwest Territories Dene, Inuit, Inuvialuit and Metis.

In order to assist the national Aboriginal organizations develop their response to the package, Territorial organizations will probably be considering the national constitutional reform issue at their summer assemblies.

V CONCLUSIONS

By the time this Report is considered in Committee of the Whole, it is likely that the Special Committee will have a better understanding of how the national constitutional reform process will proceed over the summer months. However, some preliminary conclusions can be drawn based upon the Special Committee's participation in the MMC process and agreements which have been reached to date.

Ongoing Special Committee Participation in the Reform Process

As noted above, with a few exceptions, Territorial delegations were full and equal participants in the MMC process and it is likely that these arrangements will continue in future meetings of Ministers and officials. However, there is no guarantee that Territorial and Aboriginal Leaders will participate on the same basis if a First Ministers Conference is convened. While convention would require the involvement of Aboriginal Leaders when First Ministers are considering amendments which affect Aboriginal peoples, there is no assurance at this time that Territorial leaders would participate in these discussions.

Status of Agreements on Special Committee's Objectives and Principles

Part Three of this Report outlines the significant progress which has been made on the Special Committee's objectives and principles through the MMC process.

Agreements on Aboriginal self-government; provincehood for the Territories; recognition of the Territories in the Canadian social and economic union; protection of Federal-Territorial intergovernmental agreements; and participation by the Territories and Aboriginal peoples in future constitutional rounds represent major achievements which our Government, Legislature and Territorial Aboriginal organizations have been seeking for more than a decade.

However, the negotiations are far from complete and even the MMC agreements which have been reached to date will be subject to further scrutiny by governments, Aboriginal organizations and, depending upon the circumstances, by the citizens of Canada. There is no question that some governments are concerned about the establishment and cost of an Aboriginal third order of Government in Canada.

Further negotiation on a Quebec veto and the operation of the amending formula could have implications for the agreement to returning the authority to create new provinces to Parliament. Failure to resolve the Senate reform impasse could force the Federal government to proceed on its own with a constitutional package which does not include some of the achievements noted above.

In short, the consensus achieved through the MMC process is significant but very fragile and could deteriorate if the political will to continue does not materialize.

Ongoing Constitutional Reform Initiatives During the Summer

Finally, it is safe to conclude that the constitutional reform process will continue over the summer months. Members of Parliament have been put on alert to return for special sessions in July and August. The Chief Electoral Officer of Canada will soon start the process of putting in place the arrangements necessary for a national referendum.

Some provincial governments will be making similar arrangements. Others will be consulting with their constituents on whatever constitutional reform package is produced out of this round.

As noted above, it is likely that Territorial Aboriginal organizations will be considering the constitutional reform package at their summer assemblies. Depending upon the overall tone of the national debate, the interest of the general public in the North may increase as well. For these reasons, the Special Committee has considered proposals for an information program which would keep northern residents, Aboriginal organizations, interest groups and other levels of government informed about national constitutional reform issues.

VI RECOMMENDATIONS

Subject to consideration of this Report and updates which will be provided to the Legislative Assembly during its June session, the Special Committee offers the following recommendations to guide its activities up to the September session:

1. The Special Committee should continue to use the five principles and objectives outlined in its April 1 Interim Report and the progress achieved on these matters in the MMC round as the basis for Territorial participation in ongoing constitutional talks.

2. As required during the summer months, the Special Committee should implement an information program to ensure that northern residents, organizations, interest groups and other levels of government are kept informed of national constitutional reform developments and issues.

3. The Special Committee should ensure that the Legislative Assembly is also kept current on constitutional negotiations during the summer months and be provided with a comprehensive report during its September session.

APPENDIX ONE

Northwest Territories Legislative Assembly
Special Committee on Constitutional Reform

MAY 25 1992

MEMBERS OF THE LEGISLATIVE ASSEMBLY

My purpose in writing is to bring you up-to-date on developments in the national constitutional reform process insofar as they relate to the mandate of the Special Committee on Constitutional Reform.

Territorial Participation in the Constitutional Reform Process

First, I am pleased to report that the Northwest Territories has been a full participant in all of the public and private sessions of Multilateral Meetings on the Constitution (MMCs) which are scheduled to conclude on May 31 with a "best efforts" constitutional reform package.

Constitutional Recognition of the Inherent Right to Aboriginal Self-Government

Second, I can report that significant progress has been made on the issue of the inherent right to self-government in the MMC process. I am confident that the MMC reform package will not only reflect consensus on entrenching the right, but also agreement on a number of related issues including the framework for the exercise of the right; a commitment by governments to negotiate self-government arrangements; the application of the Charter to self-governments; and transition measures.

Amending Formula Provisions on Creation of New Provinces

Thirdly, I am encouraged by the response of provincial governments to changing amending formula provisions on the creation of new provinces. During the Edmonton MMC, there was near unanimous agreement to return to the pre-1982 arrangements whereby Parliament has the exclusive responsibility to create new provinces. However, as most Ministers noted at the MMC, this change has implications for the operation of the amending formula and should be further discussed with Quebec.

.../2

Yellowknife, Northwest Territories, Canada X1A 2L9/Fax (403) 920-4735/Telephone (403) 873-7457

The Government Leader and I recently met with our Quebec counterparts on this issue and our officials are maintaining an ongoing dialogue. My reading is that Quebec will not establish a position on the creation of new provinces until it has an opportunity to review the entire MMC constitutional reform package.

Implications of Economic Union Proposals and Mechanics for Decentralization

Fourth, a number of our initial concerns about the implications of economic union and decentralization proposals contained in the federal government's September, 1991 discussion paper Shaping Canada's Future are being adequately addressed in this MMC round. Nevertheless, our delegation to the Toronto MMC will have to ensure that recognition of the Territories in provisions respecting the social and economic union, regional economic development programs and intergovernmental agreements are reinforced and reflect in the final MMC constitutional reform package.

Amendments relating to the Supreme Court and Senate

Finally, while I can report that agreement has been reached on Territorial participation in nominations for the Supreme Court, the issue of Senate reform is, at this time, far from being resolved in the MMC process. As you know, we have not established a formal position on Senate reform which is an issue I expect will have to be considered by First Ministers and Aboriginal Leaders when they meet sometime in June. Our approach to date has been to ensure that the Territories are guaranteed the best possible representation whatever Senate model is established. Further direction from the Legislature and the Special Committee may be required on this matter.

In conclusion, I want to acknowledge the assistance of Mr. Samuel Gargan and Mr. Brian Lewis at the Montreal MMC. I look forward to their ongoing involvement and that of Mr. Bernhardt who will be attending the meeting in Toronto. Following the conclusion of the MMC process and consideration of its constitutional reform package, I expect that a First Ministers Conference, involving participation by Aboriginal Leaders and Territorial Government Leaders, will be convened during the last two weeks of June to address outstanding and unresolved issues.

Stephen Kakfwi, M.L.A.,
Chairman.

Northwest Territories Legislative Assembly/ᓄᓇᑦᓯᐊᕐᒥ ᒪᓕᒐᓕᐅᖅᑏᑦ

Special Committee on Constitutional Reform

PROGRESS AT THE MULTILATERAL PROCESS FOR REFORMING THE CONSTITUTION

From the Honourable Stephen Kakfwi, Chairman of the Special Committee on Constitutional Reform

The current round of the multilateral process for reforming the constitution is nearing completion. The committee of provincial and territorial ministers and aboriginal leaders, chaired by the Honourable Joe Clark, will meet once more at Ottawa on June 9 and 10. Issues to be resolved include reform of the senate, the amending formula and the division of powers. It will also put the finishing touches on other proposals including the creation of new provinces and aboriginal self-government.

Next week's meeting may not result in an agreement on all recommendations. The Senate and the amending formula may remain outstanding issues for the First Ministers and Aboriginal leaders to consider later this month. Nevertheless, the committee of ministers and leaders has worked hard and accomplished much in the past ten weeks, as much as 90% of the package some premiers have suggested. Representatives from the Northwest Territories have contributed to every aspect of the committee's work.

Last December the Legislative Assembly of the NWT established the Special Committee on Constitutional Reform. The mandate of the Committee is to;

- review proposals for constitutional and institutional reform;
- undertake the necessary legal and economic analyses;
- consult with federal, provincial or territorial bodies and national aboriginal organizations that have responsibility to consider constitutional and institutional reform in Canada;
- make presentations on behalf of the Legislative Assembly and Government of the Northwest Territories to such bodies as the Committee agrees appropriate; and
- prepare reports on the progress of the national unity debate.

Yellowknife, Northwest Territories, Canada X1A 2L9/Fax (403) 920-4735/Telephone (403) 873-7999
ᔭᓗᓇᐃᑉ, ᓄᓇᑦᓯᐊᖅ, ᑲᓇᑕᒥ X1A 2L9/ ᑐᐊᕕᖅᑐᒃᑯᑦ ᑎᑎᕋᕐᕕᒃ (403) 920-4735/ᐅᖄᓚᐅᑖ (403) 873-7999

As Chairman of the Special Committee and with the active support of Committee Members and the assistance of a dedicated group of staff, I have been able to participate fully in the multilateral process in a manner consistent with the Committee's mandate. I am pleased to provide this report on progress with a special emphasis on those matters of special interest to the north.

The Aboriginal Inherent Right of Self-Government

There are still some items on the aboriginal agenda to be dealt with in Ottawa. However, this last week in Toronto saw major progress on the fundamental issues.

- The Constitution should recognize Aboriginal peoples inherent right of self-government within Canada.

- Governments of Aboriginal peoples should constitute one of three orders of government in Canada.

- Aboriginal governments should be subject to the Charter of Rights and Freedoms, including the capacity to make use of the "notwithstanding" clause.

- Governments and the Aboriginal peoples should be committed to negotiate in good faith the implementation of the right of self-government.

- All aboriginal peoples, including Metis and Indians and Inuit living off reserve should have equitable access to the negotiation process.

- There should be a three year delay before the inherent right of self-government can be taken to court. The clear objective of all parties is to emphasize the negotiation route to implement the inherent right.

- The federal government should establish a process to clarify and implement treaty rights. Courts should interpret treaty rights in a "just, broad and liberal manner," taking into account the context and the spirit and intent of the original treaty.

- The federal government is considering an amendment to Section 91(24) to include all aboriginal peoples under federal jurisdiction. However, it wants firm assurances that provincial governments will not reduce services it provides now to Metis and off reserve Indians as well as a commitment by provinces to participate in self-government negotiations including the provision of finances and land where appropriate.

The Metis National Council is seeking a political accord outside the constitution which would provide access for Metis living in Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and the Northwest Territories to a process to negotiate self-government agreements for Metis including a separate land base. Northern representatives have vigorously supported the inclusion of Metis under 91(24), and as parties to the inherent right with an equal right to access the negotiation and implementation processes.

However, the traditional and arguably most practical approach to claims and self-government in the north is joint agreements with Metis and Dene together. For this reason plus the concerns expressed by other groups, we are reluctant to commit the GNWT to separate claims and self-government agreements with Dene and Metis. However, we will continue to review this position and keep our options open.

Other Matters Involving Aboriginal Peoples

- There should be an interpretative Canada Clause for the entire Constitution. It would refer to the Aboriginal inherent right of self-government as well as to Canada's democratic institutions, Quebec's distinct society, linguistic duality, ethnic diversity, ethnic and racial equality, equality of the provinces within their diverse characteristics, and the equality of women and men.

- Aboriginal consent should be required to constitutional amendments which directly affect aboriginal peoples.

- Aboriginal representation in the Senate should be guaranteed in the Constitution.

- Aboriginal peoples should have a role to play with respect to the Supreme Court.

- A political accord should specify that Aboriginal leaders will participate in First Ministers' Conferences on any agenda items that directly affect Aboriginal peoples.

- Consideration is still being given to a constitutional requirement to hold several First Ministers' Conferences specifically for Aboriginal issues.

The Creation of New Provinces and the Amending Formula

Before 1982 a new province could be created by the enactment of legislation by the Parliament of Canada. Constitutional amendments made in 1982 now mean that at least 2/3 of the provinces representing 50% of the population must also give consent. The Meech Lake proposal which eventually was rejected required approval from all ten provinces plus the federal government.

- Ministers agree that new provinces should be created by Parliament alone, as was the case prior to 1982.

- The general amending formula should change from "2/3 and 50%" to "3/4 and 50%" so that at least one province from the Atlantic Region or the western provinces would need to consent to most changes to the constitution even if there were 13 provinces.

- Some aboriginal groups are demanding a constitutional requirement for aboriginal consent before a territory becomes a province. This issue has yet to be resolved.

Economic Union

- The current commitment of the Government of Canada and the provinces to promote equal opportunities and economic development throughout the country and to provide essential public services of reasonable quality to all Canadians has been expanded to include the territories.

- There should be a constitutional commitment for the federal, provincial and territorial governments to promote regional economic development to reduce economic disparities. The federal government would be required to negotiate regional development agreements at the request of the province or territory, and to protect the agreement under mechanisms for the protection of intergovernmental agreements. Provinces and territories would be given equality of treatment, taking into account different needs and circumstances.

Other Matters Involving the Territories

- There should be a territorial role in appointing judges to the Supreme Court.

- Territorial representation in the Senate has yet to be determined. This is somewhat tied to the equal versus equitable debate.

- The Constitution should require the Prime Minister to convene a First Ministers' Conference at least once a year and a political accord should specify that territorial governments will be invited to participate.

We have come a long way in the past ten weeks and our accomplishments are considerable. Northern leaders have been particularly visible at the meetings and have made notable contributions. Rosemary Kuptana and Mary Simon of Inuit Tapirisat of Canada are constantly at the table. With them is John Amagoalik, Zeebeedee Nungak, Senator Charlie Watt and Roger Gruben.

Grand Chief Ovide Mercredi, Chief Joe Mathias and Chief Ed John of the Assembly of First Nations have presented the Treaty Chiefs' views forcefully and articulately.

The Metis Nation - NWT is represented by President Gary Bohnet who has been consistent in his attendance and persistent in presenting the views of the Metis.

The Northwest Territories Legislature has been represented by myself as the Chairman of the Special Committee on Constitutional Reform, Sam Gargan, MLA, Deh Cho and Brian Lewis, MLA, Yellowknife Centre. Both Mr. Gargan and Mr. Lewis have been very helpful in the discussions and daily briefings.

While our progress has been substantial, there is still a long way to go before a final set of constitutional amendments has been formally approved. It is premature to predict with confidence that the gains we have made will still be there even next week. It is important that we pause now to consider how tentative the relationships are around the table and to be thoughtful in our criticisms.

Let us appreciate the significant achievements we have already made which will help us decide how diligent and determined we are in defending, promoting and protecting these accomplishments, lest we lose everything.

Stephen Kakfwi, Chairman
Special Committee on
Constitutional Reform

Quest for Consensus

An Update on the National Constitutional Debates

Hon. Stephen Kakfwi
Chairman
Special Committee
on Constitutional
Reform

Real progress has been made in the national constitutional reform debate this past week after three months of hard debate. Serious efforts to reach consensus were made by the Canadian government, nine provinces, two territories and national Aboriginal leaders. Quebec has refused to participate in the meetings. Northern leaders have played a major role at these meetings making considerable contribution.

At the table representing Inuit concerns are Inuit Tapirisat of Canada President Rosemary Kuptana, Inuit Circumpolar Conference President Mary Simon, negotiator John Amagoalik, spokesman Zebedee Nungak, Senator Charlie Watt and Inuvialuit President Nellie Gruben.

The Metis Nation of NWT is represented by President Gary Bohnet. Representing the NWT Legislative Assembly are the Hon. Stephen Kakfwi, Deh Cho MLA Sam Gargan and Yellowknife Centre MLA Brian Lewis.

One more meeting is scheduled for June 9 and 10 to finalize outstanding issues before the constitutional package is presented to the next First Ministers' Conference.

This is what's been accepted so far:

Hon. Dennis Patterson
Committee Member

Sam [illegible] M.L.A.
Committee Member

Aboriginal Rights

- The Constitution will recognize that aboriginal peoples have the "inherent" right of self government within Canada. This means that Indians, Metis and Inuit not only have the "existing" right of self government, as implied in the 1982 Constitution, but that they have always had that right.
- Aboriginal governments will be recognized as one of three orders of government in Canada. Right now there are only two: federal and provincial.
- Governments and Aboriginal peoples will agree to negotiate in good faith the implementation of self government.
- All Aboriginal peoples, including Metis, Indians and Inuit, living off reserve will have equitable access to the negotiation process.
- Aboriginal peoples will agree to wait three years before the inherent right of self government can be taken to court.
- Aboriginal governments will be subject to the Canadian *Charter of Rights and Freedoms* including the right to make use of the "notwithstanding" clause.
- Treaty rights will be interpreted in the courts in a "just, broad and liberal manner", taking into account the context, spirit and intent of the original treaty. The federal government has agreed to establish a process to clarify and implement these treaty rights.
- An Amendment to include all Aboriginal peoples, in particular the Metis and Inuit, is being proposed under section 91(24) of the Canadian Constitution. However, the federal government wants firm assurances that provincial governments will not reduce services provided now to Metis and off-reserve Indians. Also, the federal government is insisting on a commitment by provinces to participate in self-government negotiations including the provision of finances and lands where appropriate.
- Aboriginal peoples would be participants at First Ministers' Conferences where agenda items that directly affect them are being discussed. There would be Aboriginal representation in the Senate and opportunity for Aboriginal peoples to participate in the nomination of judges to the Supreme Court.

Brian Lewis, M.L.A.
Committee Member

Ernie Bernhardt, M.L.A.
Committee Member

Outstanding Issues

There are a few issues which it is hoped will be resolved at the next and final round of talks:

- The Metis National Council is seeking an agreement on a right to a separate land base and a political accord which would provide [illegible] with a process for negotiating their own self government [illegible].
- The Government of the Northwest Territories has supported the inclusion of Metis under section 91(24), while recognizing the joint land claims negotiation process in the north is the traditional and most practical [illegible]. The Government will continue to explore options open on [illegible].

The Amending Formula

In 1982, the Constitutional amending formula was changed. In order for new provinces to be created, consent was required from the federal government and 2/3 of the provinces, representing 50 percent of the population. The federal government, the provinces and the territories now agree:

- New provinces would be created by Parliament alone, as was the case prior to 1982.
- The federal amending formula would change from "two thirds and 50 percent" to "three quarters and 50 per cent" so that at least one province from the Atlantic region & the Western provinces would need to consent to most changes to the Constitution even if there were 10 provinces.

An issue that's still unresolved:

- Before any territory is granted provincial status, some Aboriginal groups are demanding that Aboriginal consent be provided first.

Economic Union

Essential public services and equal economic development opportunities provided to the provinces from Ottawa, will now include the Northwest Territories and Yukon.

The federal government [illegible] agreements with the provinces and territories which would receive equal treatment, taking into consideration the different provincial or territorial needs and circumstances. All intergovernmental agreements would be provided under the Constitution.

Other NWT Matters

- The Government of the Northwest Territories would have a role in appointing judges to the Supreme Court.
- There would be a requirement in the Constitution for the Prime Minister to convene a First Ministers' Conference at least once a year and a political accord would specify that Territorial Governments would be invited to participate.
- Territorial representation in the Senate has yet to be determined.

The Mandate of the Special Committee on Constitutional Reform

Last December the Legislative Assembly of the Northwest Territories established the Special Committee on Constitutional Reform. The mandate of the Committee is to:

- review proposals for constitutional and institutional reform;
- undertake the necessary [illegible] analyses;
- consult with federal, provincial & territorial bodies and national Aboriginal organizations that have responsibility to consider constitutional and institutional reform in Canada;
- make presentations on behalf of the Legislative Assembly and Government of the Northwest Territories to such bodies as the Committee agrees appropriate;
- prepare reports on the progress of the national unity debate.

Northwest Territories Legislative Assembly

APPENDIX TWO

STATUS REPORT OF THE MULTILATERAL MEETINGS ON THE CONSTITUTION

ROLLING DRAFT AS AT JUNE 11, 1992 - END OF DAY

EXPLANATORY NOTE

This Status Report summarizes the results of the Multilateral Meetings on the Constitution through June 10, 1992. It has been compiled as a reference document and does not constitute a record of final decisions.

All decisions taken in the process are provisional. Delegations reserved their positions on the overall package pending completion of the discussions.

On several issues of major importance, consensus has not been reached. In areas where there was consensus, some provinces chose to have their dissents recorded. Where requested, these dissents have been recorded in the chronological records of the meetings but are not recorded in this summary document.

Generally, consensus was recorded by the Chair on the basis of his judgement that a particular proposal had at least tentative support from seven or more provincial delegations representing at least fifty per cent of the population and the federal government. With respect to Aboriginal issues, consensus was considered to have been achieved only where there was substantial support from Aboriginal delegations.

TABLE OF CONTENTS

III ROLES AND RESPONSIBILITIES

24. Federal Spending Power: New Canada-Wide Cost-Shared Programs
25. Protection of Intergovernmental Agreements(*)
26. Immigration
27. Labour Market Development and Training(*)
28. Culture
29. Forestry(*)
30. Mining(*)
31. Tourism(*)
32. Housing(*)
33. Recreation(*)
34. Municipal and Urban Affairs(*)
35. Regional Development
36. Legislative Interdelegation(*)
37. Federal Power of Disallowance and Reservation
38. Federal Declaratory Power
39. Aboriginal Peoples' Protection Mechanism
40. Other Issues(*)

IV FIRST PEOPLES

A. Statement of the Inherent Right

41. The Inherent Right of Self-Government
42. Contextual Statement

B. Framework for the Exercise of the Right

43. One of Three Orders of Government
44. Canada Clause
45. Interpretative Provision
46. Charter Issues
47. Justiciability(*)

C. Method of Exercise of the Right

48. Commitment to Negotiate
49. The Process of Negotiation
    - Political Accord on Negotiation and Implementation
    - Equity of Access
    - Trigger for Negotiations
    - Provision for Non-Ethnic Governments
    - Provision for Different Circumstances
    - Provision for Agreements
    - Ratification of Agreements
    - Non-Derogation Clause
50. Legal Transition
51. Special Courts/Dispute Resolution
52. Treaties

D. Issues Related to the Exercise of the Right

53. Equity of Access to Section 35(1) Rights
54. Financing
55. Gender Equality
56. Future Aboriginal Constitutional Process
57. Amendment to Section 91(24)
58. Métis in Alberta/Section 91(24)
59. Métis Accord

V THE AMENDING FORMULA

60. Changes to National Institutions
61. Establishment of New Provinces
62. Impact of New Provinces on the Amending Formula
63. Compensation for Amendments that Transfer Jurisdiction
64. Aboriginal Consent

NOTE:

Asterisks in the table of contents indicate areas where the consensus on some issues under the heading is to proceed with a political accord.

PREFACE

This document is a product of a series of meetings on constitutional reform involving the federal, provincial and territorial governments and representatives of Aboriginal peoples.

These meetings were part of the Canada Round of constitutional renewal. On September 24, 1991, the Government of Canada tabled in the federal Parliament a set of proposals for the renewal of the Canadian federation entitled Shaping Canada's Future Together. These proposals were referred to a Special Joint Committee of the House of Commons and the Senate which travelled across Canada seeking views on the proposals. The Committee received 3,000 submissions and listened to testimony from 700 individuals.

During the same period, all provinces and territories created forums for public consultation on constitutional matters. These forums gathered reaction and advice with a view to producing recommendations to their governments. In addition, Aboriginal peoples were consulted by national and regional Aboriginal organizations.

An innovative forum for consultation with experts, advocacy groups and citizens was the series of six televised national conferences that took place between January and March of 1992.

Shortly before the release of the report of the Special Joint Committee on a Renewed Canada, the Prime Minister invited representatives of the provinces and territories and Aboriginal leaders to meet with the federal Minister of Constitutional Affairs to discuss the report.

At this initial meeting, held March 12, 1992 in Ottawa, participants agreed to proceed with a series of meetings with the objective of reaching consensus on a set of constitutional amendments. It was agreed that participants would make best efforts to reach consensus before the end of May, 1992 and that there would be no unilateral actions by any government while this process was under way. It was subsequently agreed to extend this series of meetings into June.

To support their work, the heads of delegation agreed to establish a Coordinating Committee, composed of senior government officials and representatives of the four Aboriginal organizations. This committee, in turn, created four working groups to develop options and recommendations for consideration by the heads of delegation.

Recommendations made in the report of the Special Joint Committee on a Renewed Canada served as the basis of discussion, as did the recommendations of the various provincial and territorial consultations and the consultations with Aboriginal peoples. Alternatives and modifications to the proposals in these reports have been the principal subject of discussion at the multilateral meetings.

Including the initial session in Ottawa, there have been twenty-two days of meetings among the heads of delegation, as well as additional meetings of the Coordinating Committee and the four working groups. The schedule of the multilateral meetings to date is as follows:

March 12	Ottawa
April 8 and 9	Halifax
April 14	Ottawa
April 29 and 30	Edmonton
May 6 and 7	Saint John
May 11, 12 and 13	Vancouver
May 20, 21 and 22	Montreal
May 26, 27, 28, 29 and 30	Toronto
June 9, 10, 11	Ottawa

Organizational support for the meetings has been provided by the Canadian Intergovernmental Conferences Secretariat.

In the course of the multilateral discussions, draft constitutional texts have been developed wherever possible in order to reduce uncertainty or ambiguity. These drafts would provide the foundation of the formal legal resolutions to be submitted to Parliament and the legislatures.

Asterisks in the text indicate the areas where the consensus is to proceed with a political accord.

I: UNITY AND DIVERSITY

A. PEOPLE AND COMMUNITIES

1. Canada Clause

A new clause should be added to section 2 of the Constitution Act, 1867 that would express fundamental Canadian values. The clause would guide the courts in their future interpretation of the Constitution.

The following characteristics should be specifically included:

- Parliamentary democracy and Canadian federalism; and,
- the Aboriginal peoples of Canada and related rights and responsibilities;
- Quebec's distinct society;
- linguistic duality;
- racial and ethnic equality;
- equality of women and men;
- the equality of provinces, while recognizing their diverse characteristics.

2. Recognition of Quebec as a Distinct Society and Canada's Linguistic Duality

In addition to the references in the Canada clause, a provision should be added to the Charter of Rights and Freedoms to assure that it is interpreted in a manner consistent with the preservation and promotion of Quebec as a distinct society within Canada and the vitality and development of the language and culture of French-speaking and English-speaking minority communities throughout Canada.

3. The Charter of Rights and Freedoms

The Charter provision dealing with Aboriginal peoples (section 25, the non-derogation clause) should be strengthened to ensure that nothing in the Charter abrogates or derogates from Aboriginal, treaty or other rights of Aboriginal peoples, and in particular any rights or freedoms relating to the exercise or protection of their languages, culture or traditions. A further provision relating to the inherent right of self-government is still being discussed.

Consideration of section 33 (the "notwithstanding" clause) should be deferred to a later constitutional round.

B. CANADA'S SOCIAL AND ECONOMIC UNION

4. The Social and Economic Union

A new provision should be added to the Constitution describing the commitment of the governments and legislatures within the federation to the principle of the preservation and development of Canada's social and economic union. The new provision, entitled The Social and Economic Union, should be drafted to set out a series of policy objectives underlying the social and the economic union, respectively. The provision should not be justiciable.

The policy objectives set out in the provision on the social union should include, [but not be limited to]:

- providing throughout Canada a health care system that is comprehensive, universal, portable, publicly administered and accessible;
- providing adequate social services and benefits to ensure that all individuals resident in Canada can have reasonable access to housing, food and other basic necessities;
- providing high quality primary and secondary education to all individuals resident in Canada and ensuring reasonable access to post-secondary education;
- protecting the [rights] of workers to organize and bargain collectively; and,
- protecting, preserving and sustaining the integrity of the environment for present and future generations.

The policy objectives set out in the provision on the economic union should include, [but not be limited to]:

- working together to strengthen the Canadian economic union;
- the free movement of persons, goods, services and capital;
- the goal of full employment;
- ensuring that all Canadians have a reasonable standard of living; and,
- ensuring sustainable and equitable development.

A new provision may be drafted to clarify the possible relationship between the new section and the existing Charter of Rights and Freedoms.

A mechanism for monitoring the Social and Economic Union should be determined by a First Ministers' Conference.

[Six provinces representing over 50 per cent of the population agreed to include a clause stating that the Social and Economic Union does not affect the Charter of Rights and Freedoms and to use the word "rights" in the provision referring to collective bargaining].

5. Economic Disparities, Equalization and Regional Development

Section 36 of the Constitution Act, 1982 currently commits the Government of Canada and the provinces to promote equal opportunities and economic development throughout the country and to provide essential public services of reasonable quality to all Canadians. Section 36(2) currently commits the federal government to the principle of equalization payments. This section should be amended to read as follows:

> Parliament and the Government of Canada are committed to making equalization payments so that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

Section 36 should be expanded to include the territories.

Section 36(1) should be amended to add a commitment to ensure the provision of reasonably comparable economic infrastructure of a national nature in each province and territory.

The Constitution should commit the federal government to consultation with the provinces before introducing legislation relating to equalization payments. Provinces will consider an offer by the federal government to provide up to two years' notice before any changes are made to federal equalization legislation.

A new Section 36(3) should be added to entrench the commitment of governments to the promotion of regional economic development to reduce economic disparities.

Regional development is also discussed in item 35 of this document.

6. The Common Market - Mobility of Goods, Services, Persons and Capital

The Constitution should include a statement of the principle of the free movement within Canada of persons, goods, services and capital.

No consensus has yet been reached on expanding the current Section 121 of the Constitution Act, 1867, which refers only to tariffs between provinces, into a justiciable statement of this principle.

II: NATIONAL INSTITUTIONS

A. THE SENATE

7. An Elected Senate

The Constitution should be amended to provide that Senators are directly elected by the people of Canada.

Federal legislation should govern Senate elections, subject to constitutional provisions respecting the timing of elections, the term of office of Senators and qualification of Senators.

This legislation should ensure that Senators will be elected by proportional representation instead of by the "first-past-the-post" system currently used in elections to the House of Commons and the provincial legislatures(*). The specific system should be set out in federal legislation and should be chosen to reflect the diversity of Canada's population, notably taking account of gender equality.(*)

All Senators should be elected at the same time.

Senators should be elected for terms of fixed duration, on an electoral cycle that is independent of elections to the House of Commons or to provincial legislatures and territorial assemblies. The length of the term should be five years.

8. Allocation of Seats

To be determined.

9. Aboriginal Representation in the Senate

Aboriginal representation in the Senate should be guaranteed in the Constitution. Aboriginal Senate seats should be additional to provincial and territorial seats, rather than drawn from any province or territory's allocation of Senate seats.

Aboriginal Senators should have the same role and powers as other Senators, plus a possible double majority power in relation to certain matters materially affecting Aboriginal people(*).

Details relating to Aboriginal representation in the Senate, including the method of electing Aboriginal Senators and the possible Aboriginal double majority power, will not be discussed further in this constitutional round.

10. Relationship to the House of Commons

The Senate should not be a confidence chamber. In other words, the defeat of government-sponsored legislation by the Senate would not require the government's resignation.

11. Powers of the Senate over Revenue and Expenditure Bills

In order to preserve Canada's parliamentary traditions, the Senate should not be able to block the routine flow of legislation relating to taxation, borrowing and appropriation. These revenue and expenditure bills would be subject to a 30-day suspensive veto subject to repassage by the House of Commons if the bill had been defeated or amended.

Revenue and expenditure bills should be defined as only those matters involving borrowing, the raising of revenue and appropriation as well as matters subordinate to these issues. This definition should exclude fundamental policy changes to the tax system (such as the Goods and Services Tax and the National Energy Program), which should be subject to the Senate's powers over ordinary legislation.

12. Double Majority

Federal legislation that materially affects French language and culture should require approval by a majority of Senators (voting) and by a majority of the Francophone Senators (voting).

The originator of a bill should be responsible for designating whether it materially affects French language and culture. Each designation should be subject to appeal to the Speaker of the Senate under rules to be established by the Senate. These rules should be designed to provide adequate protection to Francophones.

On entering the Senate, Senators should be required to declare whether they are Francophones. Any process for challenging these declarations should be left to the rules of the Senate.

13. Powers of the Senate over Ordinary Legislation

To be determined.

14. Ratification of Appointments

The Constitution should specify a role for the Senate in ratifying the appointment of the Governor of the Bank of Canada.

The Constitution should also be amended to provide the Senate with a new power to ratify other key appointments made by the federal government. The appointment of Justices to the Supreme Court of Canada should not be subject to ratification by the Senate.

The appointments that would be subject to Senate ratification, including the heads of the national cultural institutions and the heads of federal regulatory boards and agencies, should be set out in specific federal legislation rather than the Constitution. Such legislation should also set out time limits within which Senate ratification must be obtained and within which the Senate must deal with a proposed appointment(*).

15. Eligibility for Cabinet

The issue of whether Senators should be eligible for Cabinet posts should continue to be determined by convention.

B. THE SUPREME COURT

16. Entrenchment in the Constitution

The Supreme Court should be entrenched in the Constitution as the general court of appeal for Canada.

17. Composition

The Constitution should entrench the current provision of the Supreme Court Act, which specifies that the Supreme Court is to be composed of nine members, of whom three must have been admitted to the civil law bar of Quebec.

18. Nomination and Appointments

The Constitution should require the federal government to name judges from lists submitted by the governments of the provinces and territories. A provision should be made in the Constitution for the appointment of interim judges if a list is not submitted on a timely basis.

Constitutional text is being prepared in two forms, one requiring unanimity and one requiring approval under the general amending formula.

19. Aboriginal Role

The structure of the Supreme Court should not be modified in this round of constitutional discussions. The role of Aboriginal peoples in relation to the Supreme Court could be recorded in a political accord and should be on the agenda of a future First Ministers' Conference on Aboriginal issues(*).

Provincial and territorial governments should develop a reasonable process for consulting representatives of the Aboriginal peoples of Canada in the preparation of lists of candidates to fill vacancies on the Supreme Court.

Aboriginal groups should retain the right to make representations to the federal government respecting candidates to fill vacancies on the Supreme Court.

The federal government should examine, in consultation with Aboriginal groups, the proposal that an Aboriginal Council of Elders be entitled to make submissions to the Supreme Court when the court considers Aboriginal issues.

C. HOUSE OF COMMONS

20. Aboriginal Representation(*)

The issue of Aboriginal representation in the House of Commons should be pursued by Parliament, in consultation with representatives of the Aboriginal peoples of Canada, after it has received the final report of the House of Commons Committee studying the recommendations of the Royal Commission on Electoral Reform and Party Financing.

21. House of Commons Reform

House of Commons reform was discussed and the consensus was not to pursue this issue in the current round, with the exception of the questions of Aboriginal representation and the interrelationship of the House of Commons and the Senate.

D. FIRST MINISTERS' CONFERENCE

22. Entrenchment

A provision should be added to the Constitution requiring the Prime Minister to convene a First Ministers' Conference at least once a year. The agendas for these conferences should not be specified in the Constitution.

The leaders of the territorial governments should be invited to participate in any First Ministers' Conference convened pursuant to this constitutional provision. Representatives of the Aboriginal peoples of Canada should be invited to participate in discussions on any item on the agenda of a First Ministers' Conference that directly affects the Aboriginal peoples. This should be embodied in a political accord.(*)

E. THE BANK OF CANADA

23. Bank of Canada

The Bank of Canada was discussed and the consensus was that this issue should not be pursued in this round, except for the consensus that the Senate should have a role in ratifying the appointment of its Governor.

III: ROLES AND RESPONSIBILITIES

24. Federal Spending Power: New Canada-Wide Shared-Cost Programs

A provision should be added to the Constitution stipulating that the Government of Canada must 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 federal government in an area of exclusive provincial jurisdiction, if that province carries on a program or initiative that is compatible with the national objectives.

25. Protection of Intergovernmental Agreements

The Constitution should be amended to provide a mechanism to ensure that designated agreements between governments are protected from unilateral change. This would occur when Parliament and the legislature(s) enact laws approving the agreement.

Each application of the mechanism should cease to have effect after a maximum of five years but could be renewed by a vote of the legislature readopting similar legislation. Governments of Aboriginal peoples should have access to this mechanism. The provision should be available to protect both bilateral and multilateral agreements among federal, provincial and territorial governments.

It is the intention of governments to apply this mechanism to future agreements related to the Canada Assistance Plan.(*) Discussions are continuing with respect to the possible protection of fiscal transfers not currently covered by agreements, such as Established Programs Financing.

26. Immigration

A new provision should be added to the Constitution committing the Government of Canada to negotiate agreements with the provinces relating to immigration.

The Constitution should specify that such agreements have the force of law and can only be altered by resolutions of Parliament and the legislature concerned or by using an amendment procedure set out in the agreement itself.

The Constitution should oblige the federal government to negotiate and conclude within a reasonable time an immigration agreement at the request of any province.

A province negotiating an agreement should be accorded equality of treatment in relation to any other province which has already concluded an agreement, taking into account the different needs and circumstances of the provinces.

27. Labour Market Development and Training

Labour market training should be identified in section 92 of the Constitution as a matter of exclusive provincial jurisdiction. Section 91(2A) of the Constitution Act, 1867, setting out exclusive federal jurisdiction for unemployment insurance, should not be altered. Federal spending on job creation programs should be protected through a constitutional provision or a political accord.(*)

Provincial legislatures should have the authority to constrain federal spending that is directly related to labour market development and training. This should be accomplished through justiciable intergovernmental agreements designed to meet the circumstances of each province.

At the request of a province, the federal government would be obligated to withdraw from any or all training activities and from any or all labour market development activities, except Unemployment Insurance.

The federal government should be required to negotiate and conclude agreements to provide reasonable compensation to provinces requesting that the federal government withdraw.

The Government of Canada and the government of the province that requested the federal government to withdraw should conclude agreements within a reasonable time.

Provinces negotiating agreements would be accorded equality of treatment in relation to any other province that has already concluded an agreement, taking into account the different needs and circumstances of the provinces.

The federal government should commit itself in a political accord to enter into administrative arrangements with the provinces with a view to improving the efficiency and client services through harmonization and rationalization of federal U.I. and provincial employment functions.*

As a safeguard, the federal government should be required to negotiate and conclude an agreement within a reasonable time, at the request of any province not requesting the federal government to withdraw, to maintain its labour market programs and activities in that province.

Provinces that negotiated agreements to constrain the federal spending power should be obliged to ensure that labour market development programs are compatible with the national policy objectives, in the context of different needs and circumstances.

Official languages considerations should be included in a political accord and be discussed as part of the negotiation of bilateral agreements.(*)

The concerns of Aboriginal peoples in this field will be dealt with through the mechanisms set out in item 39 below.

28. Culture

Culture should be identified as a matter of exclusive provincial jurisdiction. This should be recognized through an explicit constitutional amendment that also recognizes the continuing responsibility of the federal government for existing national cultural institutions, including grants and contributions delivered by these institutions. These changes should not alter the federal fiduciary responsibility for Aboriginal people. The non-derogation provisions for Aboriginal peoples set out in item 39 of this document will apply to culture.

29. Forestry

Exclusive provincial jurisdiction over forestry should be recognized and clarified through an explicit constitutional amendment.

Provincial legislatures should have the authority to constrain federal spending that is directly related to forestry.

This should be accomplished through justiciable intergovernmental agreements, designed to meet the specific circumstances of each province. The mechanism used would be the one set out in item 25 of this document. Considerations of service to the public in both official languages should be considered a possible part of such agreements.

Such an agreement should set the terms for federal withdrawal, including the level and form of financial resources to be transferred. Alternatively, such an agreement could require the federal government to maintain its spending in that province. The federal government should be obliged to negotiate and conclude such an agreement within a reasonable time.(*)

These changes and the ones set out in items 30, 31, 32, 33 and 34 should not alter the federal fiduciary responsibility for Aboriginal people. The provisions set out in item 39 would apply.

30. Mining

Exclusive provincial jurisdiction over mining should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements.

This should be done in the same manner as set out above with respect to forestry.(*)

31. Tourism

Exclusive provincial jurisdiction over tourism should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements.

This should be done in the same manner as set out above with respect to forestry.(*)

32. Housing

Exclusive provincial jurisdiction over housing should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements.

This should be done in the same manner as set out above with respect to forestry.(*)

33. Recreation

Exclusive provincial jurisdiction over recreation should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements.

This should be done in the same manner as set out above with respect to forestry.(*)

34. Municipal and Urban Affairs

Exclusive provincial jurisdiction over municipal and urban affairs should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements.

This should be done in the same manner as set out above with respect to forestry.(*)

35. Regional Development

In addition to the commitment to regional development to be added to Section 36 of the Constitution (described in item 5 of this document), a provision should be added to the Constitution that would oblige the federal government to negotiate an agreement at the request of any province with respect to regional development. Such agreements could be protected under the provision set out in item 25 ("Intergovernmental Agreements"). Regional development should not become a separate head of power in the constitution.

36. Legislative Interdelegation

[The record indicates that "there had probably not been 7/50 support for this principle."]

[A new mechanism should be added to the Constitution to allow Parliament and the provincial legislatures to delegate legislative jurisdiction over specific matters to one another for a fixed period of time. Each delegation would be limited to a period of up to five years. Two years notice should be required to repeal any use of legislative delegation. Legislative interdelegation should not negatively affect official language considerations.

Governments of Aboriginal peoples should have access to this provision.

An illustrative list of items that would not be subject to legislative interdelegation should be developed. The list could be included in the Constitution or in a political accord(*).

Reasonable compensation should be provided when legislative authority is delegated.

A province negotiating an agreement with respect to legislative interdelegation should be accorded equality of treatment in relation to any other province which has already concluded an agreement, taking into account the different needs and circumstances of the provinces.

This provision should be very specific about the circumstances in which it may be used and the procedures to be followed, including a requirement for public consultation.

This provision would not apply to section 91(24), which sets out the federal responsibility for "Indians and lands reserved for Indians"]

37. Federal Power of Disallowance and Reservation

This provision of the Constitution should be repealed. Repeal requires unanimity.

38. Federal Declaratory Power

Section 92(10)(c) of the Constitution Act, 1867 permits the federal government to declare a "work" to be for the general advantage of Canada and bring it under the legislative jurisdiction of Parliament. This provision should be amended to ensure that the declaratory power can only be applied to new works or rescinded with respect to past declarations with the explicit consent of the province(s) in which the work is situated. Existing declarations should be left undisturbed unless all of the legislatures affected wish to take action.

39. Aboriginal Peoples' Protection Mechanism

There should be a general non-derogation clause to ensure division of powers amendments will not affect the rights of the Aboriginal peoples and the jurisdictions and powers of governments of Aboriginal peoples. Discussion is continuing on the subject of Aboriginal participation in the negotiating of intergovernmental agreements and on the question of Aboriginal consent for the protection of intergovernmental agreements dealing more specifically with Aboriginal rights.

40. Other Issues

The consensus was to defer the following issues for consideration later in the current constitutional round -- marriage and divorce, broadcasting, inland fisheries, the residual power and telecommunications.

Other issues related to the roles and responsibilities of governments were discussed. The consensus was not to pursue the issues of jurisdiction over personal bankruptcy and intellectual property in the current round. To date, no consensus has yet been reached on the following issues:

- changes to section 92A of the Constitution Act, 1867, relating to provincial legislative authority over exports of natural resources;

- establishing in a political accord a formal federal-provincial consultation process with regard to the negotiation of international treaties and agreements(*)

IV: FIRST PEOPLES

A. STATEMENT OF THE INHERENT RIGHT

41. The Inherent Right of Self-Government

The Constitution should be amended to recognize that the Aboriginal peoples of Canada have the inherent right of self-government within Canada. This right should be placed in a new section of the Constitution Act, 1982, section 35.1(1).

42. Contextual Statement

The Constitution should be amended to provide a context for the inherent right of self-government that would illustrate the nature and scope of the legislative authority of governments of Aboriginal peoples.

B. FRAMEWORK FOR THE EXERCISE OF THE RIGHT

43. One of Three Orders of Government

The constitution should be amended to ensure that governments of Aboriginal peoples have the constitutional status of one of three orders of government in Canada (federal, provincial and Aboriginal). The wording and placement of reference(s) to the third order of government are still to be determined.

44. Canada Clause

The proposed Canada Clause should contain references to Aboriginal peoples. Text to be determined.

45. Interpretative Provision

To be determined.

46. Charter Issues

The Charter of Rights and Freedoms should apply immediately to governments of Aboriginal peoples.

A technical change should be made to the English text of Sections 3, 4 and 5 of the Charter of Rights and Freedoms to ensure that it corresponds to the French text.

The Constitution should include a provision which authorizes Aboriginal governments to undertake affirmative action programs for socially and economically disadvantaged individuals or groups and programs for the advancement of Aboriginal languages and culture.

Governments of Aboriginal peoples should have access to section 33 (the notwithstanding clause) provided that there are similar conditions to those applying to the federal and provincial governments. (Conditions to be determined.)

47. Justiciability

The inherent right of self-government should be entrenched in the Constitution. However, its justiciability should be delayed for a three-year period through constitutional language and a political accord.(*)

Delaying the justiciability of the right should be coupled with a constitutional provision which would shield Aboriginal rights. (Actual scope of the shield to be determined.)

Delaying the justiciability of the right will not make the right contingent and will not affect existing treaties.

C. METHOD OF EXERCISE OF THE RIGHT

48. Commitment to Negotiate

There should be a constitutional commitment by the federal and provincial governments and the Indian, Inuit and Métis peoples in the various regions and communities of Canada to negotiate in good faith with the objective of concluding agreements elaborating the relationship between Aboriginal governments and the other orders of government. The negotiations would focus on the implementation of the right of self-government including issues of jurisdiction, lands and resources, economic and fiscal arrangements.

49. The Process of Negotiation

Political Accord on Negotiation and Implementation

- A political accord should be developed to guide the process of self-government negotiations.(*)

Equity of Access

- All Aboriginal peoples of Canada should have equitable access to the process of negotiation.

Trigger for Negotiations

- Self-government negotiations should be initiated by the representatives of Aboriginal peoples when they are prepared to do so.

Provision for Non-Ethnic Governments

- Self-government agreements would allow for self-government institutions which are open to the participation of all residents in a region covered by the agreement.

Provision for Different Circumstances

- Self-government negotiations should take into consideration the different circumstances of the various Aboriginal peoples.

Provision for Agreements

- Self-government agreements should be set out in future treaties, including land claims agreements or amendments to existing treaties, including land claims agreements. In addition, self-government agreements could be set out in other agreements which may contain a declaration that the rights of the Aboriginal peoples are treaty rights.

Ratification of Agreements

- Self-government agreements should be consented to by Aboriginal peoples and ratified by Parliament and, to the extent of its jurisdiction, by the provincial legislature. (Technical wording changes are expected.)

Non-Derogation Clause

- There should be an explicit statement in the Constitution that the commitment to negotiate does not make the right to self-government contingent on negotiations or in any way affect the right to self-government.

50. Legal Transition

A constitutional provision should ensure that federal and provincial laws will continue to apply until they are displaced by laws passed by governments of Aboriginal peoples pursuant to their authority.

51. Special Courts/Dispute Resolution

To be determined.

52. Treaties

With respect to treaties with Aboriginal peoples, the Constitution should be amended as follows:

- treaty rights should be interpreted in a just, broad and liberal manner taking into account the spirit and intent of the treaties and the context in which they were negotiated;

- the Government of Canada should be committed to establishing and participating in good faith in a joint process to clarify or implement treaty rights, or to rectify terms of treaties when agreed to by the parties. The governments of the provinces should also be committed, to the extent that they have jurisdiction, to participation in the above treaty process when invited by the government of Canada and the Aboriginal peoples concerned or where specified in a treaty;

- participants in this process should have regard, among other things and where appropriate, to the spirit and intent of the treaties as understood by Aboriginal peoples. It should be confirmed that all Aboriginal peoples that possess treaty rights shall have equitable access to this treaty process;

- it should be provided that these treaty amendments shall not extend the authority of any government or legislature, or affect the rights of Aboriginal peoples not party to the treaty concerned.

D. ISSUES RELATED TO THE EXERCISE OF THE RIGHT

53. Equity of Access to Section 35(1) Rights

The Constitution should provide that all of the Aboriginal peoples of Canada have access to those Aboriginal and treaty rights recognized and affirmed in Section 35 that pertain to them.

54. Financing

There was a consensus among governments that matters relating to the financing of governments of Aboriginal peoples should be dealt with in a political accord which reflects the fiduciary responsibility of the federal government and the responsibilities of provincial governments (*).

55. Gender Equality

To be determined.

56. Future Aboriginal Constitutional Process

The Constitution should be amended to provide for future First Ministers' Conferences on Aboriginal constitutional matters on a biennial basis, beginning no later than 1996. (Agenda for meetings and structure for future meetings to be determined.)

57. Amendment to Section 91(24)

For greater certainty, Section 91(24) of the Constitution Act, 1867 should be amended to apply to all Aboriginal peoples.

58. Métis in Alberta/Section 91(24)

The Constitution should be amended to safeguard the legislative authority of the Government of Alberta for Métis and Métis settlements lands.

59. Métis Accord

The federal government, the provinces of Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and the Métis National Council have agreed to enter into a legally binding, justiciable and enforceable accord on Métis issues. Technical drafting of the Accord is being completed. The Accord sets out the obligations of both orders of government and the Métis Nation.

The Accord commits governments to negotiate: self-government agreements; lands and resources; the transfer of the portion of Aboriginal programs and services available to Métis; and cost sharing arrangements relating to Métis institutions, programs and services.

Provinces and the federal government agree not to reduce existing expenditures on Métis and other Aboriginal people as a result of the Accord or as a result of an amendment to section 91(24). The Accord defines the Métis and commits governments to enumerate and register the Métis Nation.

V: THE AMENDING FORMULA

60. Changes to National Institutions

To be determined.

61. Establishment of New Provinces

The current provisions of the amending formula governing the creation of new provinces should be rescinded. They should be replaced by the pre-1982 provisions allowing the creation of new provinces through an Act of Parliament, following appropriate consultation. Discussions are continuing on how to express Aboriginal consent for the establishment of new provinces in the territories.

62. Impact of New Provinces on the Amending Formula

The amending formula should be changed so that the admission of new provinces would trigger a change in the requirements for approval of constitutional amendments. The current requirement to obtain the approval of two-thirds of the provinces representing 50 percent of the population for most amendments (the "7/50 formula") should then become a requirement to obtain the approval of three-quarters of the provinces representing 50 percent of the population.

63. Compensation for Amendments that Transfer Jurisdiction

Where an amendment is made under the general amending formula that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province that opts out of the amendment.

64. Aboriginal Consent

There should be Aboriginal consent to constitutional amendments that directly affect the Aboriginal peoples. Discussions are continuing on wording to give effect to this.

POLITICAL ACCORD(S)

POSSIBLE ELEMENTS

Ottawa
June 11, 1992

POLITICAL ACCORD(S) - POSSIBLE ELEMENTS

(As of June 11, 1992)

DRAFT

The following is a preliminary list, based on the records of meetings, of elements that might be included in a political accord or accords.

NATIONAL INSTITUTIONS

Item

7. Election of Senators through proportional representation (MMC Record of Meeting: Doc. 830-442/006 -- 5th draft)

7. Gender equality in the Senate (MMC Record of Meeting: Doc. 840-636/016) (principals to continue discussion on this issue -- MMC Record of Meeting: Doc. 830-442/006 -- 5th Draft)

9. Aboriginal representation in the Senate

14. With respect to federal appointments (other than the Governor of the Bank of Canada), the federal government would be willing to introduce legislation to provide for Senate ratification of appointments to major cultural boards and agencies and other agencies as outlined in the federal proposals (MMC Record of Meeting: Doc. 636/016)

19. Aboriginal role in relation to the Supreme Court of Canada (where appropriate) (MMC Record of Meeting: Doc. 830-443/014 -- Draft) (Draft Record of Toronto Meeting: June 2)

20. Aboriginal representation in the House of Commons will be pursued by the federal government, in consultation with Aboriginal peoples, after it has received the report of the Commons committee studying the recommendations of the Royal Commission on Electoral Reform (MMC Record of Meeting: Doc. 830-443/014 -- Draft) (Draft Record of Toronto Meeting: June 2)

22. Territorial participation in First Ministers' Conferences (MMC Record of Meeting: Doc. 830-443/014 -- Draft) (Draft Record of Toronto Meeting: June 2)

22. Aboriginal participation in discussions on any item on the agenda of an FMC that directly affects Aboriginal peoples (MMC Record of Meeting: Doc. 830-443/014 -- Draft) (Working Group II questions the accuracy of the description of this decision). (Draft Record of Toronto Meeting: June 2)

ROLES AND RESPONSIBILITIES

25. Protection of intergovernmental agreements - Application of the mechanism to future agreements related to the Canada Assistance Plan

27. Labour market development and training - harmonization and rationalization of federal UI and provincial employment functions, job creation programs, official languages, and development of common occupational standards

29-34. Form of compensation, i. e., cash transfers, tax points, etc., in relation to the six policy fields (MMC Record of Meeting: Doc. 830-442/006 – 5th Draft)

36. Illustrative list of items that would not be subject to legislative interdelegation could be included in the Constitution or a political accord (Draft Record of Toronto Meeting: June 2)

40. Formalization of existing practices in relation to treaty-making (MMC Record of Meeting: Doc. 840-640/006 and MMC Record of Meeting: Doc. 830-443/014 – Draft)

- Federal government prepared to look at a proposal for a political accord to reflect current consultation arrangements (Draft Record of Toronto Meeting: June 2)

FIRST PEOPLES

47. Delay of justiciability

49. Process for negotiating of particular self-government agreements (MMC Record of Meeting: Doc. 840-640/006)

60. Métis Nation Accord (Group III – Doc. 830-443/008)