

A PRESENTATION BY THE GOVERNMENT OF THE  
NORTHWEST TERRITORIES

TO

THE JOINT COMMITTEE OF THE HOUSE OF  
COMMONS AND THE SENATE ON THE CONSTITUTION  
OF CANADA

BY

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MEMBERS OF THE EXECUTIVE COMMITTEE

Co-Chairmen representing the Senate and House of Commons and Members of the Joint Committee, I would like to begin this afternoon by thanking you for the opportunity to appear before your Committee and to make this presentation on behalf of the Legislative Assembly and Government of the Northwest Territories.

My name is George Braden and I am a Member of the Northwest Territories Legislative Assembly where I represent the constituency of Yellowknife North. I am also a Member of the Executive Committee of the Northwest Territories Government and I am appearing before you today in my capacity as the Leader of the elected Members on our Executive Committee.

I am sure that the Members of this Committee are aware of the tremendous progress made by the Northwest Territories towards responsible government over the last decade. We have progressed from the stage of a legislature consisting of mostly appointed members to a legislature which is fully elected and whose members are answerable to the electorate. We have also a House in which native members are in the majority in keeping with the racial structure of the Territories. In the Executive Committee, which is the equivalent of an executive council in a province, we have seven elected members and two federally appointed officials. We believe that the Northwest Territories has made great strides in constitutional development and in the development of local governments throughout the Northwest Territories.

At the last Session of the Legislative Assembly in Frobisher Bay, the House debated at length the question of the division of the Northwest Territories into two new territories. It was resolved to accept the principle of division of the Territories subject to adequate public consultation and approval by plebiscite in which all permanent residents of the Territories can vote. The question of the division of the Territories was initiated by members from the Eastern Arctic area of the Northwest Territories who feel that the division would create two more manageable entities better able to provide government to their respective residents.

I have deviated briefly from the subject at hand, not to waste the Committee's time but to indicate to you in a nutshell that the Northwest Territories have made substantial progress in constitutional development and, as a natural flow of this progress, whether we remain as one territory or two, we will look forward to the attainment of provincehood within Canada in the foreseeable future. It is therefore of vital interest to us to participate in the shaping of the Constitution of Canada, to be given an opportunity to speak for the residents of our vast region and to bring to the attention of this Committee the concerns of the people of the Northwest Territories.

The Legislative Assembly has also considered the Proposed Resolution for a Joint Address to Her Majesty the Queen

respecting the Constitution of Canada. The provisions of the proposed Constitution Act, 1980 affecting the people and institutions of government in the Northwest Territories were closely scrutinized by the Assembly and, in this submission, I propose to draw some of those provisions to your attention.

In general terms however, let me state that we support the idea of a Canadian Constitution. It is, in our view, totally unacceptable that a sovereign nation, such as Canada, should come within the legislative jurisdiction of the Imperial Parliament in Westminster. We have received much from Britain in the way of parliamentary traditions and other organs of government but the fact remains that if we are to assert our sovereignty today, then it is absolutely imperative that Canadians or any part of Canada should not be subjected to the laws enacted by a Parliament whose members were not elected by Canadians. The proposed Canada Act would ensure that after the Constitution Act, 1980 comes into force, no Act of the Parliament of the United Kingdom would extend to Canada as part of its law.

As indicated to you earlier, I now propose to deal with some of the provisions of the proposed Constitution Act, 1980 which are of particular concern to the Northwest Territories. The first such concern relates to the very status of the Legislative Assembly of the Northwest Territories. As members of this distinguished Committee are aware, the Legislative Assembly has full legislative competence to enact legislation

in respect of various areas listed in Section 13 of the Northwest Territories Act. These areas are roughly akin to the legislative powers of the provinces as contained in the British North America Act. The Legislative Assembly has, in the exercise of the power given to it, enacted legislation on a number of subjects. Again, as in provincial legislatures, the Legislative Assembly of the Northwest Territories is a fully elected body and its members are answerable in the final analysis to the people. We believe that it is in recognition of this status of the Legislative Assembly that Section 27 of the Constitution Act, 1980 is proposed to be enacted. This section provides that a reference in the Charter of Rights and Freedoms to a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

It is however most regrettable from the point of view of the Northwest Territories that, by implication, a reference in any other part of the Constitution Act, 1980 to a legislature of a province, is not deemed to include a reference to the Legislative Assembly of the Northwest Territories. We find this proposition most unfair - we are either a legislature for the purposes of the Constitution Act, 1980 or we are not, but to be deemed a legislature for a certain part of that Act and not for others I would submit, is most unfair. On behalf of the Legislative Assembly of the Northwest Territories, I would

urge the Members of this Committee to give most careful consideration to this matter. If the Legislature of the Northwest Territories is to be bound by the constraints laid down in the Charter of Rights and Freedoms, then it must also have the right to actively participate in other areas of the constitution and must be recognized as the legitimate law-making body for the residents of the Northwest Territories. The Northwest Territories may be sparsely populated but it consists of a vast area of land covering nearly a third of Canada; an area which is rich in minerals and badly needed hydrocarbons. I suggest to you that the interests of the Northwest Territories ought not to be ignored or treated lightly. The application of section 27 of the Constitution Act, 1980 to all parts of that Act and not just the Charter of Rights and Freedoms would ensure that the representatives of this vast area of Canada would be able to make effective contribution towards constitutional questions affecting all Canadians. I would therefore urge this Committee to recommend appropriate amendments to the proposed Constitution Act, 1980 so that the Legislative Assembly of the Northwest Territories can participate effectively in all other areas of the Constitution, including the interim amending procedure as outlined in Part IV and the procedure for amending the Constitution as set out in Part V. If it is truly the intent not to amend the Constitution during the interim period without unanimous consent, then surely the legislature of the Territories ought not to be ignored.

Section 24 of the Proposed Constitution Act provides:

"The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the native people of Canada."

In my view, the wording of this provision is general and vague. If enacted in its present form, I suspect that its real meaning will not be clear until it has been tested and defined more clearly by the highest Court in the land. However, that aside, the Legislative Assembly and the Government of the Northwest Territories are of the view that native rights should be clearly and categorically set out in any Constitution of Canada rather than being given no more attention than a passing reference in a provision dealing generally with acquired rights and freedoms. Native people in Canada have enjoyed a special status which must be clearly recognized in the Constitution of Canada. As Mr. Justice Berger stated in his report on the Mackenzie Valley Natural Gas Pipeline, on page xxiii (23):

"Special status for native people is an element of our constitutional tradition, one that is recognized by the British North America Act, by the treaties, by the Indian Act and by the statement of policy approved by Cabinet in July, 1976."

We in the Northwest Territories are acutely aware of the need for the special status for native people. We have a sizeable population of Dene, Inuit and Metis. Our legislation recognizes their special status and the need to protect their way of life. As Mr. Justice Berger has stated, special status for native people is an element of

our constitutional tradition. We would not want to demolish that constitutional tradition which is so unique to Canada and yet the proposed Constitution Act, 1980 makes just a passing reference to it. I would therefore submit that this Committee give very serious consideration to the entrenchment of native rights and freedoms and the recognition of their special status in the proposed Constitution Act, 1980.

A matter closely related to Native Rights is that of native languages. The Charter of Rights and Freedoms preserves English and French as the official languages of Canada with equality of status. The Legislative Assembly and the Government of the Northwest Territories both support the preservation of English and French as the official languages. However, the reality in the Northwest Territories is that the people of that area speak several native languages, the preservation of which is far more crucial to them than the preservation of English or French. I submit that the recognition of the right of native people to use native languages is in keeping with their special status. The preservation and indeed the propagation and advancement of native languages should be an aim to be recognized clearly in the Constitution of Canada.

If I may now turn to the subject of mobility rights guaranteed under the Charter of Rights and Freedoms. The Northwest Territories has a small population consisting largely of native people, many of whom are only now beginning to develop the skills in the trades which will enable them to compete in the Southern Canadian job market. Now, with the probability of



substantial activity in the oil and gas field in the Territories, there is every likelihood that a sizeable labour force will be required. In the absence of any legislation to give preference in hiring to Northern residents, it is most probable that companies engaged in such economic activity in the Territories will import labour from the South and may make little or no effort to train and employ Northern residents. The concept of mobility rights would be acceptable if there is indeed going to be an equal exchange of labour between various parts of Canada. I am afraid however that in the North-South context, the traffic is going to move only one way - that is, Southern labour coming North. There will be hardly any movement of labour going South. Economic conditions for Northern residents are difficult at the best of times. In my view, the Constitution should recognize the reality of the Northern frontier with its delicate balances. In their present stage of development, the Native people of the Northwest Territories are simply not able to compete with an unrestricted flow of labour from the South and I would urge you to find some means by which the Territories could be exempted from the mobility rights provisions.

My last comment deals with Part III, Constitutional Conferences. Members of this Committee may be aware that, for the last several years, the Government of the Northwest Territories has sought participation in the First Ministers' Conference. Up until last September, we were told that we would form part of the Federal delegation and that the Minister of Indian Affairs and Northern Development would protect our interest. Last

September, at the First Ministers' Conference, we were accorded an observer status which, though an improvement on earlier invitations, was far short of being given the opportunity to participate in a conference that was of vital importance to us.

The Government of the Northwest Territories is a legitimate government established pursuant to an Act of Parliament. It is able and willing to speak for the residents of the Northwest Territories, yet, with one quick decision, the Federal Government chose to deny nearly 65,000 Canadians in the two Territories the right to be represented at a constitutional conference, the outcome of which would have affected them directly. What Part III seeks to do from our point of view is to perpetuate that disenfranchisement of Northerners for all time to come or at least until the Territories attain provincehood. It is ironical that a constitutional proposal that champions the freedoms and rights of individuals, denies to a very substantial number of those individuals the right to be represented at a constitutional conference. I would therefore urge this Committee to recommend appropriate amendments to Part III to ensure that the elected leaders of the Territories are invited to attend the annual conference.

I thank you and the Members of your distinguished Committee for having given me time to make these submissions to you on behalf of the Legislative Assembly of the Northwest

Territories. If you or the Committee have any questions,  
I shall be glad to answer them.