

A PRESENTATION
BY
THE GOVERNMENT OF YUKON
TO
THE SPECIAL JOINT COMMITTEE
OF THE SENATE AND HOUSE OF COMMONS
ON THE CONSTITUTION

PRESENTED BY C.W. PEARSON
GOVERNMENT LEADER
NOVEMBER 27, 1980

WHERE DOES YUKON FIT?

Yukon is unknown to most Canadians. The site of the oldest recorded human settlement in the country, it is today the locale of the largest city in the Canadian north. To southerners it is a last frontier. To northerners it is among the last of the colonies.

Yukon history lives in the lives of our citizens who are aboriginal peoples, traders, prospectors, miners, but the majority live in our modern capital city.

Our geography is impressive. Yukon is a land of great mountains, rich river valleys, glaciers and tundra, but our image is one of cold and ice.

Robert Service and Jack London have made Yukon a magic name, but even Canadian tourists have to be reminded to put Canadian stamps on their postcards.

Yukon is news in Ottawa during a gold rush, the construction of major highways or a pipeline, and negotiations for native land claims. But for the most part we have been a neglected child of Canada. Canada has not seen our community mature and grow. Because of this extremely important turning point in Canada's history, we appreciate this occasion to outline Yukon's place in confederation.

Yukon burst upon the world stage in 1896 with the Klondike Gold Rush, one of the most dramatic mass movements of people in Canadian history. Within two years, the Parliament of Canada had created the Yukon Territory and granted it the privilege of having a Legislative Council. Within a short time, the Council had grown to five elected and six appointed members, and by 1908 a fully elected Council of ten members was permitted.

A measure of responsible government in Yukon was achieved in 1960 with the appointment of an Advisory Committee on Finance, consisting of three elected members of the Legislature, which acted as financial advisors to the Federally appointed Commissioner. Elected members accepted additional responsibilities in 1968 with the formation of legislative and budgeting committees.

While these steps were being taken, the Commissioner still had almost complete authority over Yukon. He had the power to take almost any steps he thought necessary for the good government of Yukon with or without the consent of the Legislature.

In 1970, the Commissioner received permission to establish a five member quasi-Cabinet known as the Executive Committee with two elected representatives. The Executive Committee, gave direction to the budget and legislative committees. Additional elected members were added to ExCom in 1974, 1977 and 1979.

After the November 1978 General Election the majority party, in the sixteen member legislature formed the government.

One year later the Federal Government issued new and historically significant instructions to the Commissioner. The Commissioner was placed in the role of a quasi-Lieutenant Governor and is presently bound by the advice of Cabinet as it is now formally called. The leader of the majority party, (known as the Government Leader) was granted permission to establish Yukon's first wholly elected Cabinet, and was further permitted to officially use the title of Premier.

The Federal Government, through the Yukon Act, is still legally responsible but the effective management of Yukon's affairs is in the hands of the Yukon Government. Yukon continues to willingly accept the transfer of more powers from the Federal Government in areas which are normally perceived to fall under the control of provincial governments. Following the settlement of Yukon Indian Land Claims Yukon will be, with the consent of its peoples, ready to become a full partner in confederation.

In view of what we have outlined, we have five principal concerns. They are:

1. Aboriginal rights
2. Yukon constitutional development
3. Northern resources
4. First Ministers' conferences
5. Mobility rights

CANADIAN CHARTER OF RIGHTS AND FREEDOMS - ABORIGINAL RIGHTS

The Government of Yukon notes with concern the failure of the resolution to recognize the rights of the aboriginal peoples of Canada.

If Canadian unity depends on the protection of French or English minority rights, Yukoners fail to understand why the existing rights of the native minority, whose occupancy of our land predates the arrival of both French and English settlers, do not deserve at least equal status.

The Canadian Constitution should recognize not only the essential duality of Canada but also the fundamental cultures of all its regions. We believe a clear and direct declaration that Canada recognizes the rights of its original peoples must be contained in the Charter of Rights. We cannot detail these rights, because in Yukon they are now subject to negotiations.

We suggest that the native minority is at least as deserving of protection in the Canadian Constitution as the French minority of Ontario or the English minority of Quebec.

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YUKON CONSTITUTIONAL DEVELOPMENT

The Government of Yukon has given careful consideration to the proposed Canada Act and its underlying objectives. While we accept the desirability of "patriation" of the British North America Act, we have a number of concerns related to specific aspects of the proposed Act.

The Government of Canada is suggesting that the resolution is of major historical importance since its approval will signal the final requiem of Canada's former status as a British colony. Yukoners agree, and submit that Yukon's status as a colony of Canada will continue so long as the power to amend "our" constitution, the Yukon Act, remains with an extra-territorial legislature, the parliament of Canada. We believe that Canada should no more want to be a colonial power than a colony, and further, that we should have the right to enjoy with other Canadians, a say in determining our future in confederation.

Unfortunately, the proposed resolution does not make provision for either a time-frame or an appropriate constitutional mechanism whereby Yukon can ultimately enter confederation. This omission is of grave concern to the Government of Yukon, and is a disservice to the people of the Territory.

Since the proposed resolution is perceived as the vehicle whereby Canada divests herself of the last vestige of her colonial status, the Government of Yukon and the people it represents feel it is essential that a comparable mechanism be included which will also enable Yukon to divest itself of its colonial status. We are simply asking that our right to self-government, albeit at some appropriate time in the future, be enshrined in the Canadian Constitution.

The Government of Yukon submits that our right to self-determination must be guaranteed in the constitution to ensure that our political aspirations are not subject to the vagaries of the ordinary processes of political evolution. The inclusion of a formula anticipating our future entry into Confederation would provide Yukoners with a sense of security respecting our position in the Canadian family and it would be a reminder to future federal and provincial governments that Yukon does indeed have political rights which ultimately must be recognized and accepted.

The Government of Yukon therefore recommends that the proposed Canada Act be amended to include the following:

Upon satisfying Canada that a majority of the electors in Yukon have indicated, by means of a referendum, that provincial status is desirable, the Government of Yukon may apply to Canada to become a province with all the powers and jurisdictions held by the provinces of Canada according to the Constitution Act in force at that time.

RESOURCES

Just as the proposed Canada Act makes no provision for the entry of Yukon as an equal partner in confederation, neither does it provide for ownership of those resources from which the future Province of Yukon would accrue the revenue to maintain the lifestyle of the residents therein. We are seeking no more privileges than those which are enjoyed by all other Canadian provinces. Further, we contend that provision be made that all residents of Yukon be assured the same rights and privileges as provincial citizens when we assume our rightful place in confederation.

Today, the provinces enjoy ownership of their land and natural resources. Equitable enjoyment of the benefits of those resources with other Canadians has been afforded through the development of the equalization process, a process from which Yukon has realized a great many benefits. We are dismayed, however, when it is suggested that the resources of the north be owned by all Canadians. We disagree that the ownership of resources should not be turned over to any new provincial jurisdiction. Just as we, in Yukon, are cognizant of the benefits received from southern Canada, we are no less cognizant of the value of our resources and the beneficial use that the revenue from these resources could be put to for Yukoners and for the good of all Canadians through the equalization process.

Therefore, it is our recommendation that any amendment to the Canada Act concerning ownership of resources should include a provision whereby any new province entering confederation would have control and ownership of its resources similar to all other provinces.

FIRST MINISTERS CONFERENCE

Section 32 of the proposed Constitution Act makes provision for an annual constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces, until Part V of the Act comes into force. As mentioned previously, we are fully aware of the fact that we are not a province and cannot expect a place of equality at the conferences contemplated by Section 32. The Government of Yukon submits that this is an impossible predicament and can only be rectified when this Government participates in these meetings as the official representative of the people of Yukon.

It is our conviction that the decisions made by the Prime Minister of Canada and the first ministers of the provinces will have significant, long term effects on our future. Without allowing the Yukon Government official access to the conferences it is difficult for us to delineate our position on the various constitutional proposals. Without our presence Canada cannot expect the official participants to gain an understanding of our current political situation, our political aspirations, and what the ramifications of decisions made will be to Yukoners.

Therefore it is recommended that Section 32 of the Canada Act be amended to allow the Government of Yukon to participate in First Ministers' Conferences.

MOBILITY RIGHTS

Another pressing concern of the Government of Yukon is the potential clash between the mobility provisions of the proposed Canada Act and established policies and/or legislation of both the Government of Canada and the Government of Yukon, related to employment, training and recruitment practices. These policies have been formulated over a period of years and are intended to ensure that the social and economic benefits of any major development in Yukon, during the construction and operation phases, will be maximized and the adverse social and economic impacts will be minimized.

Traditionally, Yukoners have been at a disadvantage with respect to both employment and training opportunities on major projects undertaken in Yukon. The magnitude of most capital projects often requires the utilization of southern contractors who normally bring their experienced labour force with them, to the detriment of northern residents. There is generally minimal opportunity for a Yukoner to be employed by these "boomer" contractors and virtually no opportunity for access to on-the-job training. In addition, the frequent absence of union hiring halls in Yukon compounds the employment problems of our residents.

In commenting on this conflict between the proposed Canada Act and preferential hiring practices it should be made perfectly clear that in seeking special concessions for Yukoners in the areas of employment, training and recruitment, the Government of Yukon has not and does not, advocate discriminatory employment practices. The concessions, in fact, are intended to provide equality of access to employment and training for Yukoners and to reduce, where possible, the adverse impacts of massive in-migration.

If we are to succeed in our quest for more responsible government, we must be in a position to develop our physical resources as well as our human resources. So long as we rely on the southern contractor with his southern workers, we will remain at a disadvantage and our Yukon labour force will continue to receive discriminatory treatment. Yukoners today are discriminated against and our concessions are meant simply to reduce this disparity in employment and training opportunities.

In view of the above, it is our recommendation that Section 6 be amended to reflect the principle:

"That in regions of Canada where significant economic development is taking place, various preferential hiring and purchasing policies may be implemented provided that the Government of Canada and the provincial government agree that it is in the public interest."

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SUMMARY

We have outlined here our position respecting the proposed new Canada Act. In stating our case, we have dealt with the five areas of concern which are of primary importance to Yukon.

In conclusion, it is recommended that the Canada Act 1980 which is being considered by this committee be amended to reflect the following:

1. *That a clear and direct declaration that Canada recognizes the rights of its original peoples be included in the Canada Act.*
2. *A provision be included in the Canada Act which would establish a mechanism for the entry of new provinces into Confederation and which would guarantee the same rights and privileges enjoyed by the existing provinces of Canada for any new provincial jurisdiction.*
3. *Any amendment to the Canada Act concerning ownership of resources should include a provision which would provide future provinces with equal control over their resources.*
4. *That the Government of Yukon be included as a participant in all future First Ministers Conferences.*
5. *A formula be established which would permit Canada and the provinces to establish, on an individual project basis, a method whereby preferential hiring and purchasing policies may be developed through mutual agreement.*