

SELECT COMMITTEE
on
CONSTITUTIONAL DEVELOPMENT

REPORT

27th Legislative Assembly

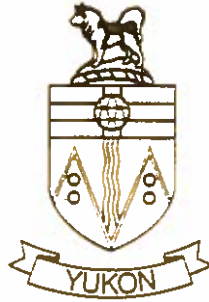
YUKON LEGISLATIVE ASSEMBLY
27TH LEGISLATURE
1991

SELECT COMMITTEE
on
CONSTITUTIONAL DEVELOPMENT

REPORT ON THE
GREEN PAPER ON CONSTITUTIONAL DEVELOPMENT

HON. JOYCE HAYDEN, M.L.A.
Whitehorse South Centre
Chair

BEA FIRTH, M.L.A.
Whitehorse Riverdale South
Member



Yukon Legislative Assembly

Box 2703, Whitehorse, Yukon Y1A 2C6

May, 1991

Honourable Sam Johnston
Speaker
Yukon Legislative Assembly

Dear Sir:

On behalf of the Select Committee on Constitutional Development, appointed by Order of the Assembly on May 14, 1990, I have the honour to present this Report.

Hon. Joyce Hayden, M.L.A.
Chair

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

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REPORT
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SELECT COMMITTEE
ON
CONSTITUTIONAL DEVELOPMENT

INTRODUCTION

The Green Paper on Constitutional Development was tabled in the Legislative Assembly by the Premier, Hon. Tony Penikett, on May 10, 1990.

The Select Committee on Constitutional Development was created on May 14, 1990, by the following motion of the Legislative Assembly:

THAT a Select Committee on Constitutional Development be established;

THAT the Committee be comprised of two members of the Legislative Assembly, one to be appointed by the Premier and one to be appointed by the Leader of the Official Opposition;

THAT the Green Paper on Constitutional Development be referred to the Committee;

THAT the Committee receive the views and opinions of Yukon citizens on the Green Paper, and present a record and interpretation of such views and opinions to this Assembly;

THAT the Committee hold public hearings on the Green Paper in Whitehorse and in at least one community in each of the electoral districts outside Whitehorse;

THAT the Committee invite oral and written representations on the Green Paper from residents of the Yukon and, where appropriate, from individuals and groups outside the Yukon;

THAT the Committee report to the Legislative Assembly no later than the 1991 Spring sitting of the 27th Legislature; and

THAT the Clerk of the Legislative Assembly be responsible for providing the necessary support services to the Committee.

Pursuant to the direction found in the motion, the Leader of the Official Opposition, Willard Phelps, appointed Bea Firth, Member for Whitehorse Riverdale South, to the Committee on June 11, 1990. The Premier, Hon. Tony Penikett, appointed Joyce Hayden, Member for Whitehorse South Centre, to the Committee on June 25, 1990.

The Government of Yukon distributed the Green Paper to territorial agents, community libraries, band halls and municipal offices in May of 1990. At the same time, the Government placed advertisements in local newspapers informing citizens about the Green Paper and where they might obtain a copy of it and about the creation of the Select Committee on Constitutional Development and the public meetings it would be holding.

ORGANIZATION

The Committee held its first meeting on June 26, 1990, at which time Joyce Hayden was elected as Chair. It was decided at that meeting that:

- (1) transcripts of the public meetings would be prepared to allow the Committee to provide the Assembly with a complete record of the views and opinions expressed by those Yukon citizens who participated in meetings of the Committee;
- (2) letters would be sent to certain individuals and groups inviting them to make presentations to the Committee; and
- (3) the report of the Committee, in accordance with the Committee's terms of reference, would focus on presenting a record and interpretation of what it heard rather than on making recommendations.

Preparations were begun for public meetings to be held during the fall of 1990. A number of events which took place during the remainder of 1990, including the failure of the Meech Lake Accord, led the Committee to conclude that it would be advisable to delay public meetings until the spring of 1991.

The schedule for the public meetings was decided upon by the Committee at its meeting of November 29, 1990. In accordance with the direction of the Assembly, meetings were scheduled in at least one community in each of the electoral districts outside Whitehorse; also, three meetings were scheduled to be held in Whitehorse (see Appendix 1 for a complete schedule of public meetings).

On December 27, 1990, letters, totalling 97 in number, were sent to a variety of individuals and groups including, among others, mayors, hamlet council chairs, chiefs of first nations, business organizations, unions and community organizations (see Appendix 2 for a complete listing of those to whom letters were sent). These letters provided information on the timing of the public meetings and invited representations on the Green Paper which was attached.

Citizens were informed of the public meetings through advertising in newspapers and on radio and television. Householders were distributed in communities outside of Whitehorse.

ACTIVITIES

A total of 191 people attended the public meetings (see Appendix 4 for the names of those who were in attendance). The Committee received nine written submissions, five of which were presented during the course of the public meetings (see Appendix 3 for the names of those who gave written submissions).

Transcripts were prepared of all public meetings. A transcript was also prepared of a meeting the Committee held in Whitehorse with Chief Roger Kaye and Stanley Njootli of the Vuntat Gwich'in Tribal Council (this meeting was arranged when the Committee was informed that the Tribal Council leadership would not be present in Old Crow at the time of the public meeting scheduled for that community). Copies of all transcripts are appended to this report.

FINDINGS

There was a wide variety of views and opinions expressed at the public meetings and in the written submissions. The most accurate sense of what was said can, of course, be gained by reading the transcripts. The findings which follow are general statements of what the Committee heard and should not be interpreted as fully representing the thinking of all participants.

1. YUKON'S CONSTITUTIONAL FUTURE

Is the Yukon's best future to remain a territory, perhaps with more powers?

Is the Yukon's best future to develop a new form of government, different from the provinces?

Is the Yukon's best future to continue to pursue provincehood?

The Committee found, when addressing these central questions, that most Yukon citizens who appeared before the Committee:

- (a) are reluctant to express definitive opinions until the settlement of native claims is finalized;
- (b) have a general sense of unease about making choices or even expressing preferences regarding the Yukon's constitutional future while so much uncertainty exists about constitutional issues on a national scale;
- (c) desire more information about:
 - (i) the differences between a province and a territory;
 - (ii) the fiscal implications of becoming a province as opposed to remaining a territory;

- (iii) the effect of First Nations' comprehensive claims settlements and self-government agreements on the options available to the Yukon for future constitutional development; and
 - (iv) the details of constitutional options, other than provincial or territorial status, which might be considered;
- (d) do not believe that provincial status should be pursued at this time;
- (e) do want provincial status to be available as an option for the future constitutional development of the Yukon; and
- (f) feel that the Yukon should have a larger population and a more broadly-based economy before consideration is given to becoming a province.

The Committee qualifies these findings by noting that a minority of those who appeared before it do believe that provincial status should be actively pursued and do not think that the size of the Yukon's population and the state of its economy should hinder the Yukon's pursuit of that goal.

2. DEVOLUTION

Should the Yukon take over more provincial activities now run by the federal government, such as health and forestry?

Should the Yukon take over more provincial activities even without full authority and funding?

The Committee found, when addressing the questions on devolution, that most Yukon citizens who appeared before the Committee:

- (a) support the devolution of provincial activities from the federal government to the Yukon government so long as it is done carefully and with full attention being paid to the financial implications for the Yukon;
- (b) do not support taking over more provincial activities when funding for those activities is uncertain; and
- (c) have some concern about the Yukon assuming responsibility for provincial activities without, at the same time, gaining full authority for those activities.

3. ENSHRINING SYSTEM OF GOVERNMENT IN THE CONSTITUTION OF CANADA

Should the powers of elected government in the Yukon be put in the Constitution, as they are for the provinces?

The Committee found, when addressing this question, that Yukon citizens:

- (a) are concerned that the Yukon's right to an elected legislative assembly could be removed by an Act of Parliament and that the current system of responsible government (that is, the executive must come from and retain the confidence of the Legislative Assembly) could be taken away by a directive from the Minister of Indian and Northern Affairs; and

- (b) support protecting the right to a system of representative and responsible government by having that right enshrined in the Constitution of Canada.

4. PARTICIPATION IN NATIONAL CONFERENCES

Would the Yukon benefit by being fully represented, as the provinces are, at national meetings on constitutional changes, finances, and other national issues?

The Committee found, when addressing this question, that most Yukon citizens who appeared before the Committee:

- (a) feel that Yukoners are being treated as second-class citizens when the Yukon is denied a full voice at national conferences such as first ministers' meetings;
- (b) feel that the Yukon's interests cannot be adequately stated or defended at national conferences by anyone other than a representative from the Yukon; and
- (c) support the Yukon being fully represented at all national conferences.

5. RELATIONSHIPS WITH OUR NEIGHBOURS

What kind of links should the Yukon build to other parts of Canada and to other parts of the North outside Canada?

The Committee found, when addressing this question, that most Yukon citizens who appeared before the Committee:

- (a) do not have strong feelings about building links to other parts of Canada or to other parts of the North outside Canada; and
- (b) place a higher priority on developing ties with Alaska and the Northwest Territories than with other jurisdictions (communities on the North Highway most strongly expressed interest in ties with Alaska).

6. PROCESS FOR FUTURE CONSTITUTIONAL CHANGE

Should the Yukon make its views about constitutional development known to the rest of Canada through the Premier, through the Member of Parliament, through the Legislature, by a Yukon-wide plebiscite, by a Yukon constitutional conference, by several of these means or some other ways?

The Committee found, when addressing this question, that most Yukon citizens who appeared before the Committee:

- (a) desire a voice in any process leading to a decision on major constitutional change for the Yukon; and
- (b) feel that a Yukon-wide plebiscite would be an acceptable method of providing voice to the people in constitutional matters, with such a plebiscite taking place after the citizens have been provided with a full base of information from which to make a decision.

APPENDICES

APPENDIX 1

DATES AND LOCATIONS OF PUBLIC MEETINGS

February 25	Whitehorse	Hellaby Hall
February 26	Beaver Creek	Community Hall
February 27	Burwash Landing Destruction Bay	Community Hall Community Hall
February 28	Haines Junction	Kluane Park Inn
March 5	Dawson City	Robert Service School
March 6	Mayo	Community Hall
March 7	Pelly Crossing Carmacks	Band Office Heritage Hall
March 11	Watson Lake	Community Centre
March 12	Teslin	Recreation Complex
March 13	Whitehorse	Gold Rush Inn
March 14	Carcross	Community Hall
March 25	Faro	Council Chambers
March 26	Ross River	Ross River School
March 27	Whitehorse	Yukon College
April 2	Old Crow	Community Hall

APPENDIX 2

NAMES OF PERSONS AND ORGANIZATIONS SENT LETTERS
OF INVITATION TO MAKE REPRESENTATIONS TO THE
SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

MUNICIPALITIES

Mayor Don Branigan, City of Whitehorse
Mayor Peter Jenkins, Town of Dawson City
Mayor Sheila Kelly, Town of Faro
Mayor Barry Ravenhill, Town of Watson Lake
Mayor Eric Stinson, Village of Haines Junction
Mayor Luke Lacasse, Village of Carmacks
Mayor Bernice Schonewille, Village of Teslin
Mayor Don Hutton, Village of Mayo
Bonnie Hurlock, Hamlet Council Chair, Hamlet of Ibex Valley
Kathleen Wood, Hamlet Council Chair, Hamlet of Mount Lorne

FIRST NATIONS

Paul Birckel, Chief, Champagne Aishihik First Nation
Doris McLean, Chief, Carcross/Tagish First Nation
George Millar, Chief, Kaska Dena Council
Steve Taylor, Chief, Dawson First Nation
Lena Johns, Chief, Kwanlin Dun First Nation
George Johnson, Chief, Kluane Tribal Council
Eric Fairclough, Chief, Little Salmon/Carmacks First Nation
Dixon Lutz, Chief, Liard First Nation
Hammond Dick, Chief, Ross River Dena Council
Robert Hager, Chief, Na Cho Nyak Dun First Nation
Roger Kaye, Chief, Vuntut Gwich'in Tribal Council
Harry McGinty Sr. and Pat Van Bibber, Chiefs, Selkirk First Nation
David Keenan, Chief, Teslin Tlingit Council
Glenn Grady, Chief, Ta'an Kwach'an Dun Council
Billy Blair and Stanley Peter, Chiefs, White River First Nation

BUSINESS ASSOCIATIONS

Heather McFarlane, President, Downtown Whitehorse Business Association
Haines Junction Businesspersons' Association
Brian Hemsley, Ross River Businessmen's Association
Terry Bergen, President, Whitehorse Chamber of Commerce
Kim Tanner, President, Women's Business Network
Stu Wallace, President, Yukon Chamber of Commerce
Frank Taylor, President, Klondike Placer Miners' Association
Chuck Holloway, General Manager, Klondike Visitors' Association
Peter Upton, President, Kluane Country Visitors Association
Ken Schneider, President, Silver Trail Tourism Association
Dave Loeks, President, Tourism Industry Association of Yukon
Jesse Duke, President, Yukon Chamber of Mines

George Darbyshire, President, Yukon Trappers Association
Gerry McCully, President, Dawson City Chamber of Commerce
Ted Bartsch, President, Faro & District Chamber of Commerce
Wendy Lythgoe, President, Haines Junction Chamber of Commerce
Ken Schneider, President, Silver Trail Chamber of Commerce (Mayo/Elsa)
Keith Franklin, President, Watson Lake Chamber of Commerce
Mark Wedge, President, Yukon Indian Development Corporation
Rolland Giroud, President, Yukon Livestock and Agricultural
Association
Bruce Patnode, President, Yukon Prospectors' Association

UNIONS

Janet James, President, Canadian Union of Postal Workers
Wendy Baker, Chairperson, PIPS Yukon Branch
Dave Hobbs, President, PSAC Yukon Employees Union
Muriel Clarke, Chairperson, PSAC Whitehorse Regional Women's Committee
Wayne Palmer, Business Agent, Teamsters' Local 213
Don Evans, Business Agent, Teamsters' Local 31
Steve Cardiff, President, Whitehorse and Yukon Area Building and
Trades Council
Grant Dunham, President, Yukon College Employees Union
Ron McDonald, President, Yukon Federation of Labour
Larry Kwiat, President, Yukon Government Employees Union
Ken Taylor, President, Yukon Teachers' Association

SENIORS

Don Fraser, President, Closeleigh Manor Tenants Association
Claire Fraser, President, Golden Age Society (Whitehorse)
Vi Campbell, Golden Age Society (Dawson City)
Joyce Fuller, President, Ladies Auxiliary to the Yukon Order of
Pioneers
Pat Olsen, President, Yukon Council on Aging
Ralph Simpson, President, Yukon Order of Pioneers

ORGANIZATIONS

Ron Gartshore, President, Association of Rural Yukon Social Workers
Skeeter Verlaine-Wright, President, Yukon Conservation Society
Paul Deuling, President, Yukon Fish & Game Association
Diane Freed, Chairperson, Yukon Advisory Council on Women's Issues
Tor Forsberg, Chair, Yukon Human Rights Commission
Mary Kane, Chair, Yukon Legal Services Society Board
Pierre Laroche, Director, L'Association des franco-yukonnaise
Judy Gingell, Chair, Council for Yukon Indians
Yukon Indian Women's Association
Jim Holt, President, Yukon College Board of Directors
Lawyers for Social Responsibility
Physicians for Social Responsibility

RELIGIOUS LEADERS

Bishop Thomas Lobsinger
Bishop Ron Ferris

COMMUNITY ORGANIZATIONS

Gary Burgess, Beaver Creek Community Club
Bob McCauley, Carmacks Community Club
Bernie Phillips, Downtown Residents' Association (Whitehorse)
Claire Briand, Keno City Community Club
Leslie Rowe, Mendenhall Community Association
Dorothy Johnson, Pelly Crossing Community Club
Brian Hemsley, Ross River Community Association
Wes Bucyk, Stewart Crossing Community Club
Kathy O'Donovan, Crestview Community Association
Lorrina Mitchell, Golden Horn Community Association
Lisa Wiebe, Granger Neighbourhood Group
Paul Taylor, Hillcrest Community Association
Kate McGovern, Lobird Community Association
Doug Gilday, Lorne Mountain Community Association
Darwin Wreggit, Marsh Lake Community Club
Catherine Holt, Mary Lake Community Association
Skeeter Verlaine-Wright, McLean Lake Residents Association
Lynda Weigand, McLintock Place Association
Gavin Johnston, Pilot Mountain Community Association
Barb Harris, South Highway Community Association

APPENDIX 3

WRITTEN SUBMISSIONS PRESENTED AT PUBLIC MEETINGS

Steven Smyth - private citizen	Whitehorse	February 25, 1991
Micha Rumscheidt - private citizen	Whitehorse	February 25, 1991
Gord Loverin - Whitehorse Chamber of Commerce	Whitehorse	March 13, 1991
Florine LeBlanc-Hutchinson - l'Association franco-yukonnaise	Whitehorse	March 27, 1991
Larry Carlyle - private citizen	Whitehorse	March 27, 1991

WRITTEN SUBMISSIONS RECEIVED OUTSIDE OF PUBLIC MEETINGS

William Blair - Co-Chief of White River First Nation	Beaver Creek	February 26, 1991
Howard MacDonald - private citizen	Mayo	March 6, 1991
Brian Laird - private citizen	Whitehorse	April 4, 1991
David Roddick - private citizen	Whitehorse	April 5, 1991

APPENDIX 4

NAMES OF PARTICIPANTS AT PUBLIC MEETINGS
OF THE SELECT COMMITTEE
ON CONSTITUTIONAL DEVELOPMENT

Whitehorse (Hellaby Hall)

Monday, February 25, 1991, 7:30 p.m.

Beebe, Jim
Christensen, Ione
Cormie, John
Kassi, Norma (MLA)
McKee, Liz
Percival, Peter
Rumscheidt, Carl
Rumscheidt, Micha
Smyth, Steven
van Oldenbarneveld, Lucy

Beaver Creek (Community Hall)

Tuesday, February 26, 1991, 7:30 p.m.

Berkner, Dwight
Blair, Billy
Blair, Elizabeth
Brewster, Bill (MLA)
Burgess, Gary
Carlson, Bill
Ganley, George
Irons, Bruce
Johnson, Folkie
Langner, Rein
Rogers, Grant
Stephen, Glenn
Stitt, Sally

Burwash Landing (Kluane Tribal Council Band Office)

Wednesday, February 27, 1991, 2:30 p.m.

Brewster, Bill (MLA)
Cant, Timothy
Cook, Dave
Cox, Cecile
Eikland, Barb
Eikland, Charles
Johnson, Jessie
Johnson, Joe
Johnson, Kathleen
O'Brien, Fred
O'Brien, Marg
Ranson, Dillys

Destruction Bay (Destruction Bay Community Hall)

Wednesday, February 27, 1991, 7:30 p.m.

Biddell, David
Brewster, Bill (MLA)
Eikland, Mark
Flumerfelt, Jim
Van Der Veen, Garry
Wilson, Iris

Haines Junction (Kluane Park Inn - Backe Room)

Thursday, February 28, 1991, 7:30 p.m.

Brewster, Bill (MLA)
Brewster, Ricky
Butterfield, Pam
Riedl, Wolf
Stinson, Eric
Tomlin, Al
Tomlin, Tish

Whitehorse (Legislative Assembly Committee Room)

with Vuntat Gwich'in Tribal Council

Friday, March 1, 1991, 12:00 noon

Kaye, Roger (Chief)
Njootli, Stanley

Dawson City (Robert Service Community School Library)

Tuesday, March 5, 1991, 7:30 p.m.

Berger, Fred
Berger, Palma
Bowie, Bill
Dann, Norm
Davidson, Dan
Hendley, Gail
Joseph-Rear, Angie
Kaplicky, Jan
Kosuta, Kathy
Mendelsohn, Roger
Nagano, Debbie
Ryant, Ronald
Shannon, Harold
Webster, Art (MLA)

Mayo (Mayo Community Hall)
Wednesday, March 6, 1991, 7:30 p.m.

Davies, Sue
Hager, Robert (Chief)
Heasley, Dennis
Lindstrom, Cal
Lindstrom, Jan
McGinty, Vera
Martel, Leo
Mehaffey, Hal
Peter, Albert
Ronaghan, Joyce
Snider, (Rev.) Ken
Van Bibber, Sr., Pat

Pelly Crossing (Selkirk First Nation Band Office)
Thursday, March 7, 1991, 2:30 p.m.

Alfred, Emma
Alfred, Kathy
Anderson, Elizabeth
Baker, Charlene A.
Baumgartner, Diane
Blondin, Bertha
Boudrau, Glen
Boudrau, Janie Lee
Harper, Jim
Hesleer, Roberta
Joe, Danny (MLA)
Joe, Julia
Joe, Laura
Joe, Lois
Joe, Shirley
Johnson, Milly E.
Kisul-Pennell, Babs
Luke, Elmer
McGinty, Harry
McGinty, Mary
Roberts, Bessie
Schell, Ernestine
Schell, Cliff
Silverfox, Mona
Thorpe, Kathleen
Tom Tom, Jane
Van Bibber, George
Van Bibber, Pat
Williams, Al

Carmacks (Heritage Hall)

Thursday, March 7, 1991, 7:30 p.m.

Fairclough, Eric (Chief)

Joe, Danny (MLA)

MacDonald, Jo-Anne

Marino, Dawn

Marino, Don

O'Brien, Joseph

O'Brien, Lorraine

Roberts, Ken

Skookum, Happy

Smith, Vance Conrad

Tracey, Howard

Watson Lake (Community Centre)

Monday, March 11, 1991, 7:30 p.m.

Devries, John (MLA)

Lang, Archie

Peet, Nora

Peters, Jean

Skelton, Jenny

Thomas, Mickey

Trusz, George

Teslin (Teslin Community Centre)

Tuesday, March 12, 1991, 7:30 p.m.

Aylard, Rev. Bruce

Chatterton, Sharron

Guevremont, Michele

Johnston, Hon. Sam (MLA)

McCormick, John

McCormick, Marilyn

Person, Dick

Saligo, Frank

Schonewille, Bernice (Mayor)

Whitehorse (Gold Rush Inn - Town Hall Meeting Room)

Wednesday, March 13, 1991, 7:30 p.m.

Brideau, Omer

Carlyle, Larry

Duncan, Pat (Manager, Whitehorse Chamber of Commerce)

Loverin, Gord (Director, Whitehorse Chamber of Commerce)

McDougall, Gill

Matthews, Clayton

Olsen, Pat (President, Yukon Council on Aging)

Smyth, Steven

Carcross (Community Hall)
Thursday, March 14, 1991, 7:30 p.m.

Alexandrovich, Bea
Anstee, Ron
James, Patrick
James, Stanley
Kemble, Ed
Martin, Willie
Matthies, Ken
Patterson, Beth
Peterson, Albert
Phelps, Willard (MLA)
Pringle, Bill
Stephens, Jennifer
Tulway, Peter
Van Zoest, Bill
Wally, Ann

Faro (Council Chambers)
Monday, March 25, 1991, 7:30 p.m.

Atwood, Miranda
Bamford, Russell
Bamford, Thomas
Byblow, Maurice (MLA)
Graham, Deborah
Graham, Iain
Jansen, Anne Kinsey
Johnston, Barbara
McLachlan, Jim
Peever, S. Bruce

Ross River (Ross River School)
Tuesday, March 26, 1991, 7:30 p.m.
Sennett, David

Whitehorse (Yukon College)
Wednesday, March 27, 1991, 7:30 p.m.

Carlyle, Larry
daCosta, Marco
Grenier, Alain
Horn, Steven
Laird, Brian
Laroche, Pierre
LeBlanc-Hutchinson, Florine
McLaughlin, Brian
Ouellet, Rino
Penikett, Tony (MLA)
Savoie, Elda
Smyth, Steven
Vienneau, Gilles
Zimmermann, Steve

Old Crow (Community Hall)

Tuesday, April 2, 1991, 2:00 p.m.

Amirault, David

Bruce, Robert Sr.

Charlie, Joanne

Frost, Alice

Frost, Brenda

Jansen, Carlyle

Josie, Edith

Kay, John Joe

Kaye, Roger

Netro, Florence

Netro, Hanna

Netro, Kathy

Nukon, Kathie

Peter, Joel

TRANSCRIPTS OF PUBLIC MEETINGS



Yukon Legislative Assembly

27th Legislature

Select Committee on Constitutional Development

PROCEEDINGS

Hellaby Hall, Whitehorse
Monday, February 25, 1991 — 7:30 p.m.



PRINTED ON RECYCLED PAPER

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

The Select Committee on Constitutional Development was created by the following motion of the Yukon Legislative Assembly on May 14, 1990:

THAT a Select Committee on Constitutional Development be established;
THAT the Committee be comprised of two Members of the Legislative Assembly, one to be appointed by the Premier and one to be appointed by the Leader of the Official Opposition;
THAT the Green Paper on Constitutional Development be referred to the Committee;
THAT the Committee receive the views and opinions of Yukon citizens on the Green Paper, and present a record and interpretation of such views and opinions to this Assembly;
THAT the Committee hold public hearings on the Green Paper in Whitehorse and at least one community in each of the electoral districts outside Whitehorse;
THAT the Committee invite oral and written representations on the Green Paper from residents of the Yukon and, where appropriate, from individuals and groups outside the Yukon;
THAT the Committee report to the Legislative Assembly no later than the 1991 Spring sitting of the 27th Legislature; and
THAT the Clerk of the Legislative Assembly be responsible for providing the necessary support services to the Committee.

MEMBERS OF THE SELECT COMMITTEE
Hon. Joyce Hayden, M.L.A., Whitehorse South Centre
Bea Firth, M.L.A., Whitehorse Riverdale South

STAFF
Patrick Michael, Clerk of the Assembly
Missy Follwell, Clerk Assistant

PARTICIPANTS
at the Whitehorse Meeting of February 25, 1991

Beebe, Jim	Percival, Peter
Christensen, Ione	Rumscheidt, Carl
Cornie, John	Rumscheidt, Micha
Kassi, Norma	Smyth, Steven
McKee, Liz	van Oldenbarneveld, Lucy

WHITEHORSE, YUKON

February 25, 1991 — 7:30 p.m.

Ms. Hayden: Thank you to those of you who made it out tonight for this first meeting of the Constitutional Development Committee. I am Joyce Hayden, Chair of the Committee, and the other Committee member is Bea Firth, MLA for Riverdale South.

We were appointed in June, 1990, by the Legislature to hear Yukoners' opinions on the constitutional development of the Yukon. Some of the broad questions are: how do we fit into Confederation; do we stay as a territory; do we try to become a province, or do we have some other options? Of course, there are many subquestions that fit into that area.

We will be reporting what we hear back to the Legislature at the Spring Sitting. The Legislature will then deal with the responses you give. One of the questions is: how do you want the rest of the country to learn about your opinion: through your Member of Parliament, through the Legislative Assembly, through a territory-wide plebiscite, constitutional conference, the Premier, all of the above or some other way?

That is the general gist of the hearings and some of the logistics for tonight. Our meetings will be as informal as we can keep them but, in order to report accurately, we are having all the sessions taped. So, we would ask you to speak one at a time. You may give a written or an oral presentation, or both. After the presentations are given, we will have a break, and we will then go to discussions.

As you give your presentation, I would ask you to address the Chair and to give your name and, if you are representing a group, I am sure the group would want to be known. That is about all I have to say, in terms of logistics.

We have three presentations that I am aware of tonight, and I would ask Steven Smyth to make the first one. If you do not mind coming over to the table, you will be closer to the microphone. You can use the table over here.

Mr. Smyth: Thank you, Madam Chairperson. My name is Steven Smyth, and I am a long-time resident of Whitehorse. I am here representing my own viewpoint, and not the viewpoint of any organization. I would like to begin with a few preliminary comments to thank the Members of the Legislative Assembly for establishing this Committee. I think it is a tremendously important committee, and I am sure its recommendations will have a significant impact on the Yukon's future. Thank you very much for this opportunity.

Ms. Hayden: We thank you for coming.

Mr. Smyth: I have a short paper to present to the Committee. It is entitled "The Quest for Provincial Status in the Yukon Territory". If you do not mind, I will read it into the record.

Ms. Hayden: Yes, please.

Mr. Smyth: The question for provincial status for the Yukon has become a Yukon tradition. It began in 1905, when the Yukon's Commissioner, William McInnes, proposed it in a speech in Dawson City. Unfortunately, the economics of the day dictated a different course of events and, soon after a wholly-elected Council had been established, the federal government decided to reduce the size and powers of the

Council, and the Yukon became just another arm of the federal government. Despite *Yukon Act* amendments in 1960, which sought to establish elected representation in the Yukon's budget process, a 1962 court case indicated that the Yukon was still a "colony" of Canada in legal terms. Mr. Justice Sissons comments that:

"The Yukon is still a Crown Colony. The legislation and administration are controlled by the Dominion Government. There is no Legislative Assembly. The Executive Body and the Legislative Body are one and the same. The Council is to aid and advise the Commissioner. It is not a Legislative Assembly and is not responsible to any Legislative Assembly.

"I know of no Government of the Yukon Territory distinct from the Commissioner or the Commissioner in Council and the home government of the colony is the Government of Canada."

Thus, the demands for responsible government and provincial status continued. In 1966 and 1968, the Yukon Council passed motions calling on the federal government to set in motion processes, including amendments to the *Yukon Act*, which would have led to provincehood.

The demands for provincial status for the Yukon were not confined to the Yukon Council. In 1967, the publisher of the *Yukon Daily News*, Ken Shortt, published a pamphlet entitled "Blueprint for Autonomy: 8 steps to Provincehood". This document restated the case for Yukon provincehood in forceful terms, and outlined a strategy for attaining it.

These demands had some impact. They paved the way for the appointment of an Executive Committee in 1970 and various program transfers and delegations of responsibilities to elected representatives through to 1979.

In 1976, the Leader of the Opposition, Joe Clark, promised Yukoners the opportunity to opt for provincial status during his first term of office as Prime Minister. The following year, the Yukon Legislature's Standing Committee on Constitutional Development was established, and it recommended provincehood through the adoption of a new *Yukon Act* in its Second Report.

In 1979, it again appeared that the Yukon's demands were being given serious consideration. Joe Clark reiterated his 1976 promise of granting the Yukon provincial status during his first term of office, providing Yukoners demonstrated that they wanted it. Unfortunately, his government fell before the question could be put to the people of the territory.

The next section is entitled "Roadblocks to Provincehood".

The quest for provincial status did not die in 1979, but the challenges and roadblocks to achieving this objective have become increasingly onerous. The constitutional amending formula was changed in 1982, over the protests of northerners. The process for becoming a province went from one of negotiation with the federal government, and ratification by Parliament, to one of obtaining concurrence from eight governments. The Meech Lake Accord threatened to make the process even more difficult by requiring the consent of 11 governments while, at the same time, stripping northerners of the right to nominate people for Senate and Supreme Court appointments.

In addition to the hurdle of a more onerous amending formula, the federal government could specify further condi-

tions, by policy, which would have to be met before the Yukon could become a province. For example, in 1982, the Minister of Indian and Northern Affairs, John Munro, stated that amendments to the *Yukon Act* granting further constitutional development would only be processed after a land claims settlement had been achieved. Other "preconditions" could include the ability to be totally self-financing, at least to the level achieved by other provinces, and the achievement of an arbitrarily-determined population base.

The Report of the Royal Commission on the Economic Union and Development Prospects for Canada noted that:

"Over the past two decades, the Northern Territories have evolved from virtual colonial status to the acquisition of responsibility for a wide range of "provincial" services. The logical end of this process is provincehood, although four barriers might delay progress towards provincial status for a decade or more. These are the Territories' small populations, their uncertain revenue base, their unresolved internal disputes, and the practical considerations of a national interest in the North."

Two conclusions are apparent from this analysis: (1), the obstacles to provincial status seem to increase with the passage of time and, (2), northerners are being required to overcome hurdles to achieve provincial status that no other provinces entering Confederation had to overcome.

The next section is entitled "Overcoming the Barriers", the first section being "The "7 and 50" Rule".

Perhaps the least fair of any of the requirements to attain provincial status is the "7 and 50" rule. Paragraph 42(1)(f) of the *Constitution Act, 1982*, specifies that new provinces can only be established pursuant to the provisions of subsection 38(1) of the act. Subsection 38(1) states:

"38.(1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

"(1) resolutions of the Senate and House of Commons; and

"(b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces."

The application of this formula to the creation of new provinces was vehemently opposed by the Yukon's Member of Parliament, Erik Nielsen, and by other northern leaders, when it was originally proposed. The Meech Lake Accord threatened to impose an even more onerous requirement: the unanimous consent of all the provinces. This measure was also loudly protested by northern Canadians and, eventually, the First Ministers agreed to discuss the requirement at further First Ministers Conferences in an attempt to end the impasse over the Accord. One might conclude that the reasonableness of the northern governments' position on this issue was tacitly recognized by the First Ministers. However, it is unlikely the issue will again be addressed by the First Ministers until some constitutional accommodation is reached with the Province of Quebec.

This constitutional requirement is particularly offensive, when one considers that the Premier and Government Leader of the territories are not entitled to attend First Ministers

Conferences — not even if the issue to be addressed is provincehood for northern territories.

It would appear that the Yukon has few options for overcoming this obstacle.

1. The territorial governments could mount a lobbying campaign to try to persuade the federal and provincial governments to amend the formula now that they have publicly supported the concept of reviewing it in the June 9, 1990 "Ottawa Accord".

2. The Yukon government could lobby the federal and provincial governments to grant the Yukon provincial status under the existing amending formula.

3. The territorial governments could take the issue directly to the people of Canada, through a public information and education campaign, in order to embarrass the federal government into taking a firm stand in favour of provincial status for the northern territories.

4. They could adopt a combination of approaches from those noted above.

Before concluding this section, it should be noted that the feasibility of option number 2 will be enhanced should Quebec decide to separate from the rest of Canada. The provisions of the current amending formula could be met if six provinces, including Ontario, or seven provinces, excluding Ontario, and the federal government passed resolutions supporting provincial status for the Yukon. I have attached an appendix analyzing that scenario.

The next subsection is entitled, "Uncertain Revenue Base".

Perhaps the most difficult practical obstacle to achieving provincial status is the development of a strong, sustainable economy capable of generating sufficient revenues to provide essential services to residents and reduce reliance on federal transfer payments.

Gordon Robertson and Jack C. Stabler have examined this issue in some detail and concluded that the Yukon would not be able to generate enough revenue to enable it to qualify for equalization payments under the formula used to fund provinces. However, Stabler's analysis did suggest that the NWT could achieve this objective if sufficient revenues were generated from the Beaufort oil and gas production. Stabler's analysis, however, did not factor in the possibility of the Yukon obtaining any revenues from Beaufort production. The Yukon government is now engaged in negotiations with the Government of the NWT and the federal government, which will lead to the signing of a northern oil and gas accord. This accord, once signed, will entitle the Yukon government to a portion of the royalties generated from Beaufort production and, thus, there is significant potential for the Yukon to reduce its dependency on federal transfer payments.

Furthermore, the Yukon government has recently completed its Yukon Economic Strategy, which provides a blueprint for developing and diversifying the Yukon economy, which will reduce the Yukon's dependence on non-renewable resources extraction in the long term.

Finally, it should be noted that fundamental economic and revenue transfer issues will ultimately be addressed in the agreement negotiated between Canada and the Yukon at the time the Yukon formally enters Confederation. We can look to the resource transfer agreements reached between Canada

and the Provinces of Alberta and Saskatchewan, and the "Terms of Union" agreement reached between Canada and Newfoundland, for some clues as to what resource and revenue arrangements can be written into such constitutional agreements. It should be evident that the unique problems associated with the Yukon economy, and the high cost of living and doing business in the north, would justify special financial and revenue-sharing arrangements being written into a "Terms of Union" agreement between Canada and the Yukon. These arrangements should provide adequate lead-time for achieving revenues from taxation and resource royalties sufficient to satisfy the formula that applies to the other provinces.

The next subsection is entitled "Settlement of Land Claims".

The requirement to settle land claims as a precondition to constitutional amendments leading to provincial status was particularly unfortunate for Yukoners. It resulted in the whole issue of constitutional development being relegated to the status of a "bargaining chip" in negotiations, instead of unifying all Yukoners in a common cause.

Negotiations to achieve a land claims settlement and to devolve responsibilities to the territorial government are both empowering processes, designed to meet the legitimate needs and demands of Yukoners. The linking of the two processes meant that one group came to view the other as an obstacle to their legitimate interests, and both processes suffered as a consequence.

The argument that native and non-native interests in the constitutional development of the territory are different or distinct can no longer be sustained. Yukon Indians are now full participants in the Yukon political process, and they have sought election as candidates in each of the Yukon's political parties. Once elected, they have been appointed to the highest positions within government, including the post of minister, House Leader and Speaker. These elected officials have promoted devolution, constitutional development, and the settlement of land claims as fervently as their non-native counterparts.

All Yukoners have an interest in the local management, ownership and control of land and resources, regardless of their location within the territory. Yukon's Indians will be as affected by major hydro-electric projects and resource extraction activities as non-Indian residents. They will be as powerless as non-natives to affect the decision-making processes that might approve or reject such projects as long as land and resource control remains under direct federal ownership and control.

Yukoners who wish to achieve full equality within the Canadian Confederation need to work together to achieve a fair and equitable land claims settlement and to obtain the same rights as are guaranteed to the residents of the provinces.

The next subsection is entitled "The Small Population Base".

The small population in Canada's north has been used as an argument against granting provincial status to the people who live there. The argument is a tenuous one and has not been supported by logical argument. People who live in the smallest provinces are accorded the same rights as those who live in the largest provinces, and people are free to move to whatever

province or territory they wish to live in. Consequently, populations fluctuate as people seek economic opportunities around the country, but nobody would suggest that people should lose basic rights when they move to another province, as happens when they move to a territory.

Many Canadians simply choose not to live in the north, and that is a right they are free to exercise, but why should the exercise of freedom of choice impact on the right of northern Canadians to govern themselves in the manner of their choice?

Secondly, it is clear that any given population size criteria will simply be an arbitrary figure that will have little validity. Populations ebb and flow for many reasons that governments have little control over, and it is doubtful that a province would lose its status as a province if its population fell to that of the Yukon's. There is simply no provision within the federal constitution to justify granting or removing provincial status on the basis of population. Thus, Yukoners should simply reject any arguments that favour this ridiculous requirement.

The next section is entitled "The Consequences of Not Being a Province".

The consequences of not being a province are both numerous and substantial.

First of all, as residents of a territory, Yukoners are not entitled to representation in forums where decisions are made that directly affect them. The most obvious examples are First Ministers Conferences. The Yukon's Premier was specifically excluded from the negotiations leading up to the signing of the Meech Lake Accord, despite the fact that those negotiations traded away the rights of Yukon's residents. Furthermore, when the Premier is invited to a First Ministers Conference, he is only permitted a brief statement for the record and is not afforded the opportunity to dialogue or debate the Yukon's interests.

A second consequence of being a territory is that it lacks a "Crown in the Right of Yukon". This precludes the Yukon government from having ownership over land, water and resources. The federal government now manages the majority of Yukon lands, all of its water resources, as well as its forests, minerals, gravel, oil and gas. Yukoners are afforded roles as advisors in some resource allocation decisions, but their advice can be rejected by the officials and ministers in Ottawa, who make the final decisions. Furthermore, federal ministers and Parliament have seen fit to pass legislation, such as the *Canada Oil and Gas Act* and the *Northern Pipeline Act*, over the protests of northern Canadians, and approve such things as mining projects and land use activities without the consent of the people of the territory.

Another consequence of not having a "Crown in the Right of Yukon" is that the Yukon government cannot prosecute offenses under the *Criminal Code of Canada*. These prosecutions must be handled by a person appointed by the federal government.

A third concern with territorial status is that the Yukon's constitution, form of government, political boundaries, and the political rights of Yukon residents, can all be removed or rearranged without the consent of those affected by the changes. The *Yukon Act* is a federal statute that can be amended without the consent of the Yukon legislature. Regulations pursuant to the *Yukon Act* can be promulgated without the

consent of Parliament, and the Minister of Indian and Northern Affairs can, at any time, direct the Commissioner to take unilateral action to block territorial legislation, alter the form of the Yukon government, or take other "administrative" actions he deems necessary.

Finally, it should be noted that the Yukon government has no guaranteed federal funding, as provinces have. The Yukon government is given grants by the Department of Indian and Northern Affairs through a formula arrangement, but there are no constitutional requirements to provide such grants. Consequently, the Yukon government is subject to the vagaries of the federal budgeting process and federal government priorities, and territorial programs could be drastically reduced as a consequence.

In summary, the rights and privileges that are denied Yukon's citizens are one that are guaranteed to the residents of provinces. It would be unthinkable to deny such rights to the people of Atlin, British Columbia, but they are absolutely denied to every Canadian living in the Yukon. Such practices are morally, if not legally, repugnant in a democratic society that prides itself on its record of granting equality to all its citizens.

The final section is entitled "Conclusions and Recommendations".

If the people of the Yukon clearly indicated that they wished to be granted provincial status, would the people of Canada object? Apparently not. In 1982, the Department of Indian and Northern Affairs sponsored an opinion poll on the issue of granting provincial status to the northern territories. The results, released on December 1 of that year, were a clear indication of support: 87 per cent of southern Canadians who were polled believed that the Yukon and NWT should be granted provincial status as quickly as possible. Furthermore, 82 per cent agreed that the territories should be granted the same resource ownership rights as provinces have.

The Yukon has more than public opinion to rely upon in its struggle for provincehood. In 1985, the Royal Commission on the Economic Union and Development Prospects for Canada issued its report and recommended:

"... though even territorial leaders who aspire to provincehood are not demanding it immediately, the people of the North are making a legitimate request for *de facto* status. Commissioners believe that the federal government should indicate its commitment to some form of provincehood for the Territories as an ultimate goal and should grant Northerners all the benefits of Canadian citizenship."

More specifically, they recommended:

"On the basis of federal commitment to the ultimate goal of some form of provincehood in the Northern territories, the government's involved should establish a timetable for the transfer of provincial-type responsibilities in areas such as health, labour relations, inland waters, renewable resources and the institution of criminal proceedings. Additional measures should be taken to:

"- Advance the process of transferring to territorial governments responsibilities for Crown lands that do not bear directly on the national interest and that have not been ceded to the Native people through claims settlements

"- Institute resource-revenue/sharing arrangements comparable to the types of agreements worked out with Nova Scotia and Newfoundland

"- Confirm participation of the territorial governments in federal-provincial forums where matters of direct concern to Northern residents are being discussed. Joint-management arrangements may be valuable transitional procedures."

Finally, it should be noted that federal policy itself has now evolved to the point where the legitimate aspirations of the people of the north are acknowledged. The most recent northern policy statement, adopted in 1987, states:

"Northerners want to join the Canadian political mainstream. They want greater control over land and resources and over Programs which, in all other regions of Canada, are the responsibility of the provinces. Northerners also expect to shape their own political and economic future and to be the architects of their own constitutions in ways that reflect the unique challenges of the North. In a real sense, the north is the "unfinished business" of Canadian nation building."

The policy also recognized that, while the federal government could no longer unilaterally grant provincial status to northern territories, it could "support and encourage" this result.

"Northerners expect their governments to continue evolving towards full provincial status ... [however] the federal government can no longer unilaterally confer provincial status. But it can support and encourage the evolution of responsible government by transferring responsibility for the administration and management of the remaining provincial-type programs."

Building on the recommendations of the Royal Commission on the Economic Union and Development Prospects for Canada, the federal government's most recent policy statement on northern development, the June 9, 1990 First Ministers' communique, and the historical precedents set by the Yukon Legislature, the following course of action is recommended.

1. The Yukon Legislative Assembly should, once again, endorse a resolution in favour of provincial status for the Yukon. This would send a clear message to the federal and provincial governments that would be consistent with positions taken historically by the Yukon Legislature.

2. The Yukon Legislative Assembly should establish a permanent Standing Committee on Constitutional Development to promote the goal of provincial status and to monitor the Yukon government's progress towards achieving this goal.

3. The Yukon government should make constitutional development — that is, provincial status — its primary goal and establish a secretariat dedicated to achieving it.

4. The Yukon government should develop a detailed strategy for achieving the goal of provincial status, which would include:

(1) accelerating negotiations on devolution, land claims and a northern energy accord;

(2) opening negotiations with the federal government on amendments to the *Yukon Act*, a "Terms of Union" agreement and the wording of a resolution to be placed before Parliament to effect the entry of the Yukon into Confederation;

(3) opening discussions with the provincial governments to obtain their support to amend section 38 of the *Constitution Act* to allow new provinces to be admitted with federal consent alone; and

(4) establishing a timetable for the achievement of provincial status.

5. The "Terms of Union" agreement for the Yukon should be based on some variation of the Newfoundland agreement and should incorporate provisions respecting the transfer of non-renewable resources to Yukon control at an appropriate time.

Thank you.

Ms. Hayden: Thank you. I think that covered almost all our questions. Would it be fair to say that what you are advocating is provincehood that is guaranteed sufficient funds as soon as possible? Would that generally summarize your position?

Mr. Smyth: My position is that we should negotiate provincial status with the federal government, and that negotiation should build in a formula financing arrangement that would allow us to become a province in the near term with these special funding arrangements in place until such time as we are able to generate sufficient revenues from our own resources to allow us to adopt the same formula arrangement that applies to the provinces.

Mrs. Firth: You made a comment about the Yukon becoming more self-sufficient economically and financially, and made reference to the revenues from the Beaufort. What other areas do you see where the Yukon could become more self-sufficient, in an economic capacity?

Mr. Smyth: There are a number of opportunities available. The northern oil and gas accord is the primary mechanism where most of the revenues could potentially come from. Developing our renewable resources would certainly have a great benefit over the longer term, because it is going to take some time to develop mechanisms for taking full advantage of those resources. Certainly in the areas of agriculture and fisheries, there is significant potential, through aquaculture.

Mrs. Firth: Mining?

Mr. Smyth: Yes, mining is going to continue to play a very important role in the economy but, as we all know, the problem with the mining economy is that it tends to be boom and bust. There are mechanisms that could be put in place again, at this point in time, with federal consent, which could help to level out those cycles. For example, putting a heritage fund in place would be one mechanism that could be utilized, by tapping into some of the royalties from mining activities, and putting them into a fund that could be tapped when the economy ... down.

Mrs. Firth: Do you think that the Yukon is a potentially very rich area economically, and that is perhaps why some other areas of Canada are so interested in us and our territorial status?

Mr. Smyth: Yes, very much so. The potential is always down the road. To some extent, that is somewhat frustrating. The resources are definitely there. It is just a matter of time before the prices climb to the point where they can be economically extracted.

Mrs. Firth: You feel that the formula financing arrangement that we would have to make with the federal government, depending on our economic ability, would not necessarily be one of our stumbling blocks if, for example, we had more control over our economic destiny.

Mr. Smyth: Yes. When Newfoundland entered Confederation, they had a special funding arrangement in place that applied only to Newfoundland. I do not see why the Northwest Territories and the Yukon could not negotiate a similar arrangement, which would give us a period of time where, once we have more control over our own resources, to get on our own economic feet.

Another possibility would be to continue as we are, but without resource control. Both Alberta and Saskatchewan became provinces without having any control over their natural resources. That did not seem to pose any kind of a stumbling block. The same type of arrangement could apply to the Yukon. There is certainly precedent for both those types of formulas that would allow us to become a province without having to automatically opt into an equalization formula.

Mrs. Firth: As a Yukoner, do you have a personal preference as to the progress you would like to see?

Mr. Smyth: With respect to those options?

It would be preferable to have control over our own resources. One of the problems these days is the fact that we cannot control the pace of development in the territory. If we could, perhaps we would have a better ability to control our destiny.

The other issue that recently came to the fore was the Auditor General's report, and the fact that DIAND was essentially undervaluing their resource, and they were charging royalties and fees that were so ridiculously out of date, and did not reflect reality. We do not know what we have lost, in terms of resource royalties and fees payments that should have been made to the government, which were never paid. That is, of course, totally lost to us.

It bolstered the arguments of people like Mr. Robertson, when he said that we could not pay our own way. We do not know now whether we could or not, because we do not know how much we have lost out on royalty payments.

Ms. Hayden: There is one other area that you have not touched on, and perhaps you do not care to. Do you have any thoughts around what kind of circumpolar links we should or should not be making?

Mr. Smyth: We should utilize our circumpolar links to the greatest possible amount. One of the things we have found is that other northern jurisdictions have done things that we have not thought of, or they have gone into economic development opportunities that we could learn from. The maximum amount of exchange of information that we can generate, the better. They certainly have things that we can learn from.

We also have constitution and political examples that we can learn from. Greenland, for example, has now for 11 or 12 years, so there are constitutional examples to learn from, as well as economic opportunities.

Ms. Hayden: Thank you.

Mrs. Firth: I have one last question. I found the comment you made about the Legislative Assembly once again endorsing a resolution in favour of provincial status interesting. Can you remember when they last did that?