

R-1130



Minister of Justice and
Attorney General of Canada

Ministre de la Justice et
procureur general du Canada

→ MINISTER'S FILE: 30-3 (176)
DEPARTMENTAL FILE: 228600-82

MAR 17 1981

Mr. G. Braden
Leader of the Elected Executive
of the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9

Dear Mr. Braden:

In your letter of January 23, 1981, you informed me that you supported a number of changes in the Charter of Rights adopted by the Joint Committee. You also raised concerns related to aboriginal rights and the constitutional amendment process.

Since then, amendments to the proposed Resolution were adopted by the Joint Committee respecting aboriginal rights: the new sections 25, 33 and 35(2). Representatives of the aboriginal peoples gave me assurances that these changes were adequate to meet their concerns. Furthermore, section 35(3) provides for the participation of elected representatives of the Yukon and the Northwest Territories in discussions on any item on the agenda of a Constitutional Conference that, in the opinion of the Prime Minister, affects them.

In your subsequent letter of February 6, 1981, you raised five issues for consideration.

- 1) You maintain that elected representatives of the Northwest Territories should be granted full participation in the interim amending process. The amending procedure provides only for the full and formal participation of the federal government and Parliament and of the provincial governments and legislatures, the only orders of government that exercise legislative authority under the terms of the British North America Act. Until such time as the Territories have achieved the same status as the provinces under the Constitution of Canada, it would not be appropriate to provide for the full and formal participation of the Territorial governments or assemblies in the amending procedure. This is not to say,

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Ottawa Canada
K1A 0H8

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however, that there will not be discussions and consultations with the Territories. Section 35(3) makes it clear that such discussions and consultations will, indeed, occur.

2) You note that after Part V (now Part VI) comes into force, the governments of the North will have no involvement in the procedure for amending the Canadian Constitution, whether it be the Victoria formula or any other formula that may be adopted during the interim period. The situation would be the same as during the interim period: until the Territories have attained provincial status, it would be inappropriate to make provision for their full and formal participation in the amending procedure.

3) It is your view that if the permanent amending procedure is adopted in its present form, there will be no constitutional mechanism to permit the government of Canada, either on its own initiative or on the initiative of the assembly of the Northwest Territories, to establish a new province or provinces in the Territories. This is not exact. The British North America Act, 1871 (retitled the Constitution Act, 1871), will continue to apply. Section 2 provides:

"The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament."

4) Your view that the assemblies of the Territories will not be able to initiate amendments, or referenda proposals under the terms of the Constitution Act, 1981, is correct. Until the Territories have achieved the same status as the

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provinces, they cannot exercise the powers that are reserved to the two orders of government that exercise legislative authority under the terms of the British North America Act.

- 5) You are correct in assuming that subsection 15(2) preserves the validity of affirmative action programmes that might otherwise be struck down as discriminating on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The provisions of the Canadian Charter of Rights and Freedoms apply to the Territories as well as to the provinces so that the rights and freedoms of Canadians may be exercised and respected throughout the federation. Treating the Territories the same way as the provinces in this respect does not, however, confer upon the Territories the same status as the provinces with respect to the constitutional exercise of legislative authority.

Yours sincerely,

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR

Jean Chrétien.

TYPED ON: February 23, 1981
 ORIGINATED BY: James Ross Hurley/jam
 APPROVED BY: Stuart MacKinnon
 RETYPED ON: February 27, 1981 /frp)

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R-1131



Northwest Territories Leader of the Elected Executive

Yellowknife, N.W.T.,
X1A 2L9.
January 23, 1981

The Honourable Jean Chretien, P.C., M.P.,
Minister of Justice and Attorney General of Canada,
Justice Building,
Wellington and Front Streets,
Ottawa, Ontario.
K1A 0H8

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Dear Mr. Chretien: *Jean*

I am writing with reference to your statement of January 12, 1981 before the Special Joint Committee on the Constitution where you offered a series of amendments to the proposed Resolution to Her Majesty. We particularly welcome the amendments you have put forward with respect to Section 1 and the legal rights of individuals. Ideally, these new provisions will further safeguard the freedom of the individual against the potentially arbitrary power of the state. Moreover, we support the broadening of the anti-discrimination provisions of Section 15 of the Charter of Rights and Freedoms, with the maintenance of the flexibility needed to enable the courts to rule against other potential forms of discrimination. At the same time, we also hope that Sub-section 15(2) as amended, permitting affirmative action programs, will afford the Northwest Territories sufficient latitude, particularly in the areas of local employment and business development, to address the unique socio-economic problems in the North.

However, the Government of the Northwest Territories continues to have a number of key concerns, with the Resolution, which the new amendments have not addressed. These issues relate to aboriginal rights and the constitutional amendment process.

As you are well aware, the unresolved status of aboriginal rights in the N.W.T. is a matter of overriding concern to all of our people. We have not had the opportunity to consult with Inuit Tapirisat, the Dene Nation, the Metis Association of the N.W.T. and the Committee for Original Peoples' Entitlement to fully ascertain their views on Section 25, but will be doing so very shortly and will advise you of our joint perspective. It should be noted that our Legislative Assembly considers language rights

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to be an essential element of aboriginal rights, and will be making efforts to promote the status and usage of aboriginal languages.

We generally support Sub-section 38(1) as amended, granting sole approval authority for an alternative amending formula to the Legislatures rather than simply the governments of the provinces concerned. However, we must express, in the strongest possible terms, our disappointment that the elected representatives of the people of this part of Canada continue to be excluded from any possible participation in the interim amendment process. We are also shut out of annual constitutional conferences (Section 32) and the permanent procedure for amending the Constitution, including the initiation of referenda proposals. We reiterate that it is most inconsistent for the institutions of government in the Territories to be treated as provincial-like bodies for the purposes of one part of the proposed Constitution Act while being totally ignored in other vital parts.

We will continue to apprise yourself and Mr. Kirby of our constitutional position.

Yours sincerely,

George Braden
George Braden

I express appreciation for the Government of the Northwest Territories' position on territorial conferences, indicated in the additional Section 32 of the proposed Constitution Act, which would give a number of participating members who are not members of the Senate. These issues are as follows:

- 1) While we expect that the Prime Minister will exercise considerable sensitivity in expressing which States at the upcoming constitutional conferences will be of concern to elected representatives of the Northwest Territories, we nonetheless maintain our position that our representatives should be granted full participation in the interim amendment process.
- 2) After Part V of the proposed Constitution Act comes into effect, Governments in the North will have no involvement in the normal procedure for amending the Canadian constitution, according to clause 38(1), essentially the "Victorian formula".
- 3) However, if the proposed amending procedure is adopted in its present form, there will be no Constitutional mechanism to permit the Government of Canada, either on its own initiative or on the initiative of the Legislative Assembly in the N.W.T., to establish a new province or provinces within the Territories. We submit that, in view of the overall Federal authority in the North, the process of creation of new jurisdictions in the North is not a matter of concern to the Northwest Territories, but should be a matter of concern to the Government of Canada and the people of the North.

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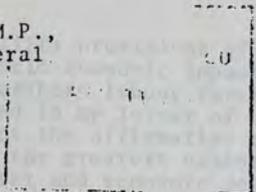
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Northwest Territories Leader of the Elected Executive

February 6, 1981.

The Honourable Jean Chretien, P.C., M.P.,
Minister of Justice and Attorney General
of Canada,
Justice Building,
Wellington and Front Streets,
OTTAWA, Ontario.



Dear Mr. Chretien

Jean

On behalf of the Ministers of the Government of the Northwest Territories, I express appreciation for the modification in your Government's position on Territorial participation at constitutional conferences, indicated in the addition of sub-section 32(3) of Section 32 of the proposed Constitution Act. However, we have a number of outstanding concerns which we have expressed consistently to you and the Joint Committee of the House of Commons and the Senate. These issues are as follows:

- 1) While we expect that the Prime Minister will exercise considerable sensitivity in assessing which items at the upcoming constitutional conferences will be of concern to elected representatives of the Northwest Territories, we nonetheless maintain our position that our representatives should be granted full participation in the interim amendment process.
- 2) After Part V of the proposed Constitution Act comes into effect, Governments in the North will have no involvement in the permanent procedure for amending the Canadian constitution, according to clause 41(1), essentially the "Victoria formula."
- 3) Moreover, if the permanent amending procedure is adopted in its present form, there will be no constitutional mechanism to permit the Government of Canada, either on its own initiative or on the initiative of the Legislative Assembly in the N.W.T., to establish a new province or provinces within the Territories. We submit that, in view of the overall Federal authority in the North, the process of creation of new jurisdictions in the North is not a matter of concern to existing provincial governments, but should be a matter negotiated strictly between the Federal Government and the people of the North.

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The Honourable Jean Chretien

February 6, 1981

- 4) Also, according to Section 45, the Legislative Assemblies in the Northwest Territories and Yukon will not be able to initiate amendment or referenda proposals pursuant to Section 41 and Section 43.
- 5) Finally, we maintain that the mobility provisions of Section 6 could produce adverse socio-economic impacts on our developing, but vulnerable, Northern labour force and business community. As I indicated in my letter of January 23, 1981, we will interpret the affirmative action provision of sub-section 15(2) to the greatest extent possible, consistent with the social and economic goals and objectives of our Legislative Assembly.

We hope that you, the Prime Minister, and the Members of the Joint Committee will be prepared to recognize our concerns and accommodate them in additional amendments to the proposed Constitution Act. Copies of this letter are being sent to the Honourable Harry Hays and Mr. Serge Joyal, M.P., Co-Chairman of the Joint Committee.

Yours sincerely,



George Braden

Attachments

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Northwest Territories Leader of the Elected Executive

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Yellowknife, N.W.T.,
X1A 2L9.
January 23, 1981

The Honourable Jean Chretien, P.C., M.P.,
Minister of Justice and Attorney General of Canada,
Justice Building,
Wellington and Front Streets,
Ottawa, Ontario.
K1A 0H8

MINISTER OF JUSTICE
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Dear Mr. Chretien: *Jean*

I am writing with reference to your statement of January 12, 1981 before the Special Joint Committee on the Constitution where you offered a series of amendments to the proposed Resolution to Her Majesty. We particularly welcome the amendments you have put forward with respect to Section 1 and the legal rights of individuals. Ideally, these new provisions will further safeguard the freedom of the individual against the potentially arbitrary power of the state. Moreover, we support the broadening of the anti-discrimination provisions of Section 15 of the Charter of Rights and Freedoms, with the maintenance of the flexibility needed to enable the courts to rule against other potential forms of discrimination. At the same time, we also hope that Sub-section 15(2) as amended, permitting affirmative action programs, will afford the Northwest Territories sufficient latitude, particularly in the areas of local employment and business development, to address the unique socio-economic problems in the North.

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As you are well aware, the unresolved status of aboriginal rights in the N.W.T. is a matter of overriding concern to all of our people. We have not had the opportunity to consult with Inuit Tapirisat, the Dene Nation, the Metis Association of the N.W.T. and the Committee for Original Peoples' Entitlement to fully ascertain their views on Section 25, but will be doing so very shortly and will advise you of our joint perspective. It should be noted that our Legislative Assembly considers language rights

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to be an essential element of aboriginal rights, and will be making efforts to promote the status and usage of aboriginal languages.

We generally support Sub-section 38(1) as amended, granting sole approval authority for an alternative amending formula to the Legislatures rather than simply the governments of the provinces concerned. However, we must express, in the strongest possible terms, our disappointment that the elected representatives of the people of this part of Canada continue to be excluded from any possible participation in the interim amendment process. We are also shut out of annual constitutional conferences (Section 32) and the permanent procedure for amending the Constitution, including the initiation of referenda proposals. We reiterate that it is most inconsistent for the institutions of government in the Territories to be treated as provincial-like bodies for the purposes of one part of the proposed Constitution Act while being totally ignored in other vital parts.

We will continue to apprise yourself and Mr. Kirby of our constitutional position.

Yours sincerely,

G. Braden
George Braden

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