

OPENING STATEMENT

BY

HONOURABLE A. BRIAN PECKFORD

PREMIER

NEWFOUNDLAND AND LABRADOR

AT THE

FIRST MINISTERS' CONFERENCE

ON THE

CANADIAN CONSTITUTION

Ottawa

November 2, 1981.

MR. CHAIRMAN: DURING THE SUMMER OF 1980 THE GOVERNMENT OF NEWFOUNDLAND PARTICIPATED WITH ENTHUSIASM IN THE CONSTITUTIONAL DISCUSSIONS AND NEGOTIATIONS. AS PART OF THIS PROCESS THE GOVERNMENT OF NEWFOUNDLAND DEVELOPED A WHITE PAPER ON CONSTITUTIONAL CHANGE ENTITLED - "TOWARDS THE TWENTY-FIRST CENTURY - TOGETHER". AND THAT IS THE WAY THAT NEWFOUNDLANDERS WANT THE TWENTY-FIRST CENTURY TO BE - TOGETHER - WITH ALL OTHER CANADIANS, WITH OUR NEIGHBOURS IN THE MARITIME PROVINCES, OUR NEIGHBOURS IN QUEBEC, ONTARIO, THE PRAIRIES AND BRITISH COLUMBIA.

NEWFOUNDLAND'S CONSTITUTIONAL POSITION IS BASED ON FOUR PRINCIPLES. FIRST, WE ARE COMMITTED TO THE PROCESS OF PARLIAMENTARY DEMOCRACY AND THE CONSTITUTIONAL MONARCHY. OUR CONSTITUTIONAL EVOLUTION FROM A COLONY TO SELF-GOVERNING DOMINION IN THE COMMONWEALTH AND, FINALLY, AS A PROVINCE OF CANADA, ILLUSTRATES THE FLEXIBILITY OF OUR SYSTEM OF PARLIAMENTARY DEMOCRACY.

SECONDLY, NEWFOUNDLAND IS DEDICATED TO A BALANCED FEDERALISM, ONE IN WHICH BOTH FEDERAL AND PROVINCIAL GOVERNMENTS ARE STRONG. WE REJECT ANY VIEW WHICH SEES CANADA AS DEVELOPING INTO A UNITARY STATE. WE ALSO REJECT A VISION OF CANADA AS A LOOSE ASSOCIATION OF PROVINCES.

THIRDLY, WE ENDORSE THE PRINCIPLE OF EQUALITY - EQUALITY OF PROVINCES AND EQUALITY OF PEOPLE. EACH PROVINCE MUST HAVE AN EQUAL RIGHT TO MAINTAIN AND DEVELOP ITS CULTURAL ROOTS AND TRADITIONAL VALUES, NOT MERELY AS AN OBJECT OF FOLKLORIC INTEREST, BUT AS THE LIFE BLOOD OF ITS PEOPLES' IDENTITY. SIMILARLY, THE FEDERAL GOVERNMENT MUST HAVE THE RIGHT TO MAINTAIN AND DEVELOP THE NATIONAL IDENTITY AND TRADITIONS COMMON TO ALL CANADIANS.

OUR FOURTH AND MOST IMPORTANT PRINCIPLE IS OUR CONVICTION THAT A NEW CONSTITUTION, SUITABLE FOR CONTEMPORARY CANADA, WILL ONLY EVOLVE FROM THE PROCESS OF CONSENSUS. I BELIEVE MOST COLLEAGUES AROUND THIS TABLE, PRIME MINISTER, WILL AGREE WITH ME WHEN I SAY THAT UNILATERAL ACTION CREATES DIVISIONS WITHIN CANADA, AND RUNS COUNTER TO THE CANADIAN TRADITION. MOREOVER, IT FRUSTRATES THE HOPES OF CANADIANS WHO LOOK TO THE PROCESS OF CONSTITUTIONAL REFORM AS A MEANS OF STRENGTHENING OUR COUNTRY. THEREFORE, PRIME MINISTER, WE ARE MORE CONVINCED THAN EVER THAT IT IS ONLY THROUGH CONSENSUS THAT THE BEST INTERESTS OF THE CANADIAN PEOPLE WILL BE REALIZED.

YOU WILL RECALL, MR. CHAIRMAN, THAT THIS MOST RECENT PROCESS IN DEVELOPING OUR CONSTITUTION BEGAN WITH A MEETING YOU CALLED AT YOUR RESIDENCE IN JUNE OF 1980. AN AGENDA OF TWELVE TOPICS WAS AGREED UPON. A SERIES OF MEETINGS OF OUR MINISTERS RESPONSIBLE FOR CONSTITUTIONAL MATTERS WAS HELD THROUGHOUT THE SUMMER OF 1980. THERE WAS SUBSTANTIAL AGREEMENT AMONG THE PROVINCES ON MANY OF THE SUBJECTS. THE PROCESS CULMINATED IN A MEETING YOU CALLED IN SEPTEMBER 1980. UNFORTUNATELY, IT WAS NOT POSSIBLE AT THAT TIME TO REACH AGREEMENT.

SUBSEQUENTLY, THE FEDERAL GOVERNMENT DECIDED TO ACT UNILATERALLY. WITH A CERTAIN SADNESS SIX OF THE PROVINCES INITIATED REFERENCES IN THREE COURTS OF APPEAL. AFTER THE APPEAL COURTS' JUDGMENTS WERE FILED, FINAL JUDGMENT WAS GIVEN BY THE SUPREME COURT OF CANADA. IN THIS THE SIX PROVINCES WERE JOINED BY TWO OTHERS.

SPEAKING FOR NEWFOUNDLAND, I DID NOT WELCOME THE PROSPECT OF SEEKING A COURT REFERENCE. THE TRADITIONAL WAY OF RESOLVING OUR DIFFERENCES IN CANADA IS THROUGH CONSENSUS. BUT FACED WITH THE ALTERNATIVE OF UNILATERAL ACTION, NEWFOUNDLAND HAD NO CHOICE. SUCH UNILATERAL ACTION IS DIAMETRICALLY OPPOSED TO THE BASIC PRINCIPLES OF OUR CONSTITUTIONAL POSITION.

IN PARTICULAR, THIS UNILATERAL ACTION WOULD HAVE MADE POSSIBLE THE ALTERATION OF THE TERMS OF UNION BETWEEN CANADA AND NEWFOUNDLAND WITHOUT THE AGREEMENT OF THE GOVERNMENT, LEGISLATURE, OR PEOPLE OF NEWFOUNDLAND. THIS IS THE UNANIMOUS DECISION OF THE SUPREME COURT OF CANADA.

THE GOVERNMENT OF NEWFOUNDLAND HAS A MORAL OBLIGATION TO ENSURE THAT THE TERMS OF UNION BETWEEN CANADA AND WHAT WAS THEN THE DOMINION OF NEWFOUNDLAND, AS SIGNED IN 1949, ARE NOT ABROGATED. NEWFOUNDLAND CANNOT ACCEPT A CONSTITUTIONAL PROVISION WHEREBY THOSE TERMS OF UNION MAY BE ALTERED WITHOUT THE CONSENT OF BOTH CONTRACTING PARTIES. JUST AS IT WOULD BE ABHORRENT TO YOU, PRIME MINISTER, AND TO THE PEOPLE OF CANADA, IF NEWFOUNDLAND WERE TO ATTEMPT UNILATERALLY TO CHANGE ONE OF THESE TERMS OF UNION, SO IT IS UNACCEPTABLE TO NEWFOUNDLAND FOR THE OTHER SIGNATOR TO HAVE IT WITHIN ITS POWER TO SO DO. THE SUPREME COURT DECISION MAKES IT ABSOLUTELY CLEAR THAT UNDER THE PRESENT FEDERAL PROPOSAL IT WOULD BE POSSIBLE FOR THE TERMS OF UNION TO BE ALTERED WITHOUT NEWFOUNDLAND'S CONSENT.

PRIME MINISTER I WISH TO READ INTO THE RECORD A LETTER DATED OCTOBER 9TH WHICH I RECEIVED FROM THE HONOURABLE GORDON A. WINTER, FORMER LIEUTENANT-GOVERNOR OF NEWFOUNDLAND. THE HONOURABLE MR. WINTER WAS ONE OF THE NEWFOUNDLAND SIGNATORS TO THE TERMS OF UNION AND PARTICIPATED IN THE NEGOTIATIONS LEADING UP TO THE SIGNING OF THOSE TERMS. HE IS A HIGHLY RESPECTED AND DISTINGUISHED NEWFOUNDLANDER AND CANADIAN. I SHALL READ HIS LETTER IN FULL:

"MY DEAR PREMIER:

I WRITE TO ACKNOWLEDGE RECEIPT OF YOUR LETTER OF OCTOBER 5TH WHICH I HAVE READ WITH CARE AND CONCERN.

WHEN THE TERMS OF UNION WERE BEING NEGOTIATED IN THE AUTUMN OF 1948 IT WAS AT ONE POINT SUGGESTED BY OFFICIALS OF THE CANADIAN GOVERNMENT THAT NEWFOUNDLAND MIGHT ENTER CONFEDERATION THROUGH PROVISIONS WHICH ALREADY EXISTED IN THE B.N.A. ACT WHICH MAKE IT POSSIBLE FOR NEWFOUNDLAND TO JOIN THE CANADIAN UNION BY MEANS OF ADDRESSES TO THE SOVEREIGN FROM NEWFOUNDLAND AND CANADA. THIS METHOD WAS REJECTED BY THE NEWFOUNDLAND DELEGATION AND OUR CHAIRMAN EXPLAINED THAT WE COULD ONLY AGREE TO TERMS OF UNION THAT WERE TO BECOME PART OF THE BNA ACT AND THEREBY PART OF THE CONSTITUTION OF CANADA.

WE WERE GIVEN THE FULLEST ASSURANCES AT THE TIME THAT THIS WOULD MAKE IT IMPOSSIBLE TO CHANGE ALL OR ANY OF THE TERMS WITHOUT NEWFOUNDLAND'S CONSENT.

THIRTY ODD YEARS LATER IT IS EASY TO SPECULATE ON WHAT ONE MIGHT HAVE DONE HAD A DIFFERENT SET OF CIRCUMSTANCES APPLIED, BUT GIVEN THE ATMOSPHERE IN THIS PROVINCE AT THAT TIME WHEN 49 PERCENT OF THE PEOPLE HAD EXPRESSED OPPOSITION AND IN SOME CASES ADAMANT OPPOSITION TO NEWFOUNDLAND'S ENTRY INTO THE CANADIAN UNION, I THINK IT IS UNLIKELY THAT I WOULD HAVE FELT ABLE TO BE A PARTY TO WHAT I REGARD AS A CONTRACTUAL ARRANGEMENT HAD THERE BEEN ANY THOUGHT IN MY MIND THAT AT SOME LATER DATE IT WOULD BECOME POSSIBLE TO CHANGE WITHOUT THE CONSENT OF BOTH PARTIES THE TERMS OF WHAT WAS A TREATY BETWEEN TWO INDEPENDENT DOMINIONS.

THE PROBLEMS WHICH FACE THOSE WHO ARE NOW TRYING TO DEAL WITH THE CONSTITUTION ARE DIFFICULT AND COMPLEX. PATIENCE AND GOODWILL ARE REQUIRED TO FIND THE RIGHT SOLUTION BUT THIS SHOULD NOT INVOLVE THE POSSIBILITY OF BREAKING UNILATERALLY TREATIES OR CONTRACTS THAT WERE MADE IN GOOD FAITH."

PRIME MINISTER, WE ARE HERE TODAY AS A RESULT OF THE RECENT DECISION OF THE SUPREME COURT OF CANADA. THE HIGHEST TRIBUNAL IN OUR LAND HELD THAT THE CONSTITUTIONAL CONVENTIONS OF CANADA REQUIRE SUBSTANTIAL AGREEMENT AMONG ALL PARTNERS IN OUR FEDERATION AS A PREREQUISITE FOR CONSTITUTIONAL CHANGE. THOSE CONVENTIONS WHICH HAVE SERVED OUR COUNTRY AND OUR PEOPLE SO WELL CANNOT, WITHOUT IMPUNITY, BE DISREGARDED. THOSE CONVENTIONS, WHICH THE SUPREME COURT OF CANADA RECOGNIZES AS MORE IMPORTANT THAN SOME LAWS, MUST BE RESPECTED. IF WE DISREGARD THE LESSONS OF HISTORY AND OUR OWN CONSTITUTIONAL EVOLUTION, IF WE TURN OUR BACK ON CONSTITUTIONAL CONVENTION, WE ARE LEFT WITH AN UNACCEPTABLE ALTERNATIVE. WE ARE LEFT WITH A CONSTITUTION IMPOSED ON CANADA BY ONLY ONE ORDER OF GOVERNMENT. THE RESULT WOULD BE A CONSTITUTION WHICH WOULD BE DIVISIVE RATHER THAN UNIFYING, A CONSTITUTION, THE VERY LEGITIMACY OF WHICH WOULD BE OPEN TO QUESTION.

NEWFOUNDLAND REALIZES THAT IT WILL NOT BE POSSIBLE TO REACH SUBSTANTIAL AGREEMENT ON THE VARIOUS SUBJECTS DISCUSSED DURING THE SUMMER OF 1980. WE HAVE, THEREFORE, AGREED TO DEFER MATTERS OF VITAL IMPORTANCE TO OUR PEOPLE IN ORDER TO ACCOMPLISH THAT SUBSTANTIAL AGREEMENT WHICH IS POSSIBLE WITH RESPECT TO PATRIATION AND THE AMENDING FORMULA.



ALL ARE AGREED ON THE PRINCIPLE OF PATRIATION. WITH RESPECT TO THE AMENDING FORMULA THERE ARE CERTAIN TESTS WHICH NEWFOUNDLAND REQUIRES FOR THE PROTECTION OF ITS FUNDAMENTAL INTERESTS. THE FORMULA SHOULD REFLECT THE EQUAL CONSTITUTIONAL STATUS OF ALL PROVINCES. NEWFOUNDLAND INSISTS ON THE PROTECTION OF ITS TERMS OF UNION AND ITS TERRITORIAL INTEGRITY. NO CHANGE AFFECTING A PROVINCE'S RESOURCES, PROPERTY, OR LEGISLATIVE JURISDICTION, SHOULD BE MADE WITHOUT THE CONSENT OF THE PROVINCE CONCERNED. THERE SHOULD BE AGREEMENT THAT THE AMENDING FORMULA ITSELF CANNOT BE CHANGED WITHOUT THE UNANIMOUS CONSENT OF ALL GOVERNMENTS OF CANADA.

IN OTTAWA ON APRIL 16TH, EIGHT OF THE ELEVEN CANADIAN GOVERNMENTS SIGNED A CONSTITUTIONAL ACCORD. THE ACCORD PROVIDES FOR PATRIATION WITH AN AMENDING FORMULA WHICH MEETS THESE REQUIREMENTS. I WOULD SUGGEST, PRIME MINISTER, THAT IN A COUNTRY AS DIVERSE AS OURS IT IS ESSENTIAL THAT THE AMENDING FORMULA BE SUCH AS TO PROTECT THE FUNDAMENTAL INTERESTS OF ITS CONSTITUENT PARTS.

MR. CHAIRMAN, FOR A PERIOD OF A FEW YEARS IN THE LATE 1940'S A BATTLE WAS WAGED IN OUR SMALL PART OF NORTH AMERICA. THE BATTLE FOR CONFEDERATION WAS FOUGHT, NOT WITH GUNS, BUT WITH WORDS. THE CULMINATION OF THE CONFEDERATION DEBATE WAS A RADICAL CHANGE IN THE CONSTITUTION OF NEWFOUNDLAND. I USE THE WORD "BATTLE" DELIBERATELY BECAUSE IT HELPS EVOKE SOME OF THE DEPTH OF EMOTION WHICH CHARACTERIZED THAT PHASE OF NEWFOUNDLAND'S HISTORY.

MUCH TIME HAS PASSED SINCE 1949, BUT THE PEOPLE OF NEWFOUNDLAND AND LABRADOR STILL FEEL DEEPLY ABOUT FUNDAMENTAL CONSTITUTIONAL QUESTIONS. IN THE LATE FORTIES, THE DECISION WAS FRAMED AS A CHOICE BETWEEN CONFEDERATION AND RESPONSIBLE GOVERNMENT. BUT IF YOU STEP BACK A LITTLE, YOU CAN SEE THAT THE CHOICE WAS BETWEEN TWO FORMS OF RESPONSIBLE GOVERNMENT - A FEDERAL FORM OR A UNITARY FORM. NEWFOUNDLAND CHOSE FEDERALISM. NOW, THIRTY-TWO YEARS LATER, IT SEEMS THAT WE ARE FACING ANOTHER FUNDAMENTAL CONSTITUTIONAL QUESTION.

JUST AS NEWFOUNDLANDERS CHOSE FEDERALISM IN 1949, SO WE CHOOSE FEDERALISM IN 1981. WE CALL UPON THE FEDERAL GOVERNMENT, PRIME MINISTER, TO RESPECT THE DECISION OF THE SUPREME COURT OF CANADA AND TO JOIN WITH US IN ORDER TO EFFECT CONSTITUTIONAL CHANGE IN A MANNER CONSISTENT WITH THAT JUDGMENT.

WE ARE AT A CRITICAL TIME IN THE HISTORY OF CANADA. WE CANNOT AFFORD THE LUXURY OF A "WINNER-TAKE-ALL" ATTITUDE. THE STAKES ARE MORE IMPORTANT THAN ANYONE'S PERSONAL VISION OR IDEOLOGY. AT STAKE IS THE FUTURE OF THE COUNTRY. CANADA IS MORE IMPORTANT THAN ANY OF US OR ALL OF US.

NEWFOUNDLAND APPROACHES THESE NEGOTIATIONS WITH AN OPENNESS OF MIND. WE HAVE THE RIGHT TO EXPECT AND REQUIRE A SIMILAR OPENNESS OF MIND FROM ALL OTHER PARTICIPANTS.