

THE NEW DEMOCRATIC PARTY

The New Brunswick New Democratic Party supports the signing of the Meech Lake Constitutional Accord and, at the same time, the signing of a Parallel Accord dealing with the five following matters:

- (1) the federal spending power;
- (2) the notwithstanding clause in the *Charter of Rights and Freedoms*;
- (3) the Canadian Senate;
- (4) the creation of new provinces; and
- (5) the agenda of future constitutional conferences.

In addition, the New Brunswick New Democratic Party supports the entrenchment of Bill 88 in the Constitution by means of a bilateral constitutional agreement between New Brunswick and the Government of Canada.

I. Statement of Principles

(a) Co-operative Federalism

New Democrats have always supported the principles of co-operative federalism. We share a vision of Canada with ten provinces united under a strong federal government working together towards regional fairness and social justice for all.

The people of Canada, while they are first and foremost Canadians, also have strong regional identities. The Meech Lake Accord makes it possible for our institutions of government, not just in Quebec but in every region, to be more responsive to different regional concerns.

The essence of co-operative federalism is an appropriate balance of federal and provincial government powers. The Meech Lake Accord improves the balance between the two levels of government by, for example, providing for provincial consultation in the appointment of Supreme Court judges.

However, in order to achieve an appropriate balance of power, it is necessary to assert clearly the integrity of the federal spending power. The federal government must have the clear constitutional authority to allocate the funds it raises according to the national priorities it defines and the standards it sets.

(b) Individual Rights

New Brunswick New Democrats believe in a society in which the rights of individuals are balanced with the rights of the society, as expressed through Parliament and the legislatures. The *Charter of Rights and Freedoms*, enacted in 1982, has gone a long way toward achieving this balance. At the present time, the most serious threat to individual rights is the "Notwithstanding" clause in the *Charter of Rights and Freedoms* which gives governments in Canada the power (albeit limited) to take away from individual citizens certain legal and equality rights which have been upheld by the Courts. A better balance between individual

rights, on the one hand, and the rights of governments, on the other hand, can and should be achieved in the Constitution.

(c) Innovation and Reform

New Democrats believe that the institutions of government should always be responsive to the needs of the people. One of the strengths of the Meech Lake Accord is that it provides for an on-going process for constitutional reform through annual constitutional conferences. For this process to work, however, it is essential that the method of constitutional amendment not be too rigid, with regard to matters such as the Senate and the creation of new provinces. It is also essential that the rights of our Native Peoples be a top priority in the on-going process of constitutional reform.

(d) Promoting New Brunswick's Two Linguistic Communities

New Brunswick has a unique constitutional position in the 1982 Constitution as the only province with both French and English as "official languages". We believe that this special status also carries with it a special obligation. Our responsibility as a province should not be limited to merely preserving the equal rights and privileges of the two official linguistic communities, but should also extend to taking positive action to promote the cultural, economic, educational and social development of the official linguistic communities.

II. Detailed Constitutional Proposals

(a) Meech Lake Accord

The New Brunswick New Democratic Party supports three concurrent actions to amend the Constitution: first, the signing of the Meech Lake Accord; second, the signing of a 5 point Parallel Accord; and third, the entrenching of Bill 88 in the Constitution.

(b) Parallel Accord

It is our view that the Parallel Accord currently being discussed by a number of governments should contain the following five provisions:

(1) To Protect the Integrity of the Federal Spending Power: In Section 106A(1) delete "compatible with national objectives" and add "consistent with national standards."

The present wording is unclear, and might well result in billions of dollars of taxpayers' money not being spent on social programmes as intended by the Government of Canada, but instead, diverted to other uses. The federal government must clearly have the right and indeed the political responsibility for identifying national goals and for allocating funds at its disposal to programmes to achieve these goals.

(ii) **To Protect the Legal and Equality Rights of Individuals:** In clause 33(1) of the *Charter of Rights and Freedoms*, delete "sections 7 to 15" in the list of sections to which the Notwithstanding clause applies, and add "Section 7."

The effect of this provision in the Parallel Accord would be to reduce the number of sections in the *Charter of Rights* which would be subject to the Notwithstanding clause from ten to two.

In particular, it would prevent governments from ever overriding the right of any individual to equal protection and equal benefit of the law without discrimination on the basis of race, national or ethnic origin, color, religion, sex, age, or mental or physical disability. As long as the equality rights in the *Charter* can be taken away from citizens in any part of Canada by an Act of Parliament or a provincial legislature, the rights of women, visible minorities and others in this country are not secure.

For the same reasons, the legal rights of every person in Canada to due process in the judicial system should not be subject to legislative override. Indeed, the Notwithstanding clause should only be available to governments to override Court decisions under section 2 and section 7 of the *Charter of Rights*, in order to reaffirm through the political process basic social values.

(iii) **To Preserve Flexibility for Senate Reform:** In Section 41 as amended by the Meech Lake Accord, delete (b) and (c) relating to constitutional amendments affecting the Senate, and retain the existing amending formula for the Senate.

Under this provision, the composition, method of selection and powers of the Senate would continue to be subject to amendment by the federal government and seven provinces rather than requiring unanimous agreement. Reform of the Senate should not be caught in a constitutional straight-jacket. This country needs Senate reform, and it needs it badly.

Many people in the West are talking about a "Triple E" Senate - elected, effective, and equal. It is my view that this would further complicate the already complex process of governing Canada. Personally, I favour a "Single E" Senate - eliminated. I know that there are many people across Canada who share the view that the only useful way to reform the Senate is to eliminate it.

(iv) **To Preserve Flexibility for New Provinces** In Section 41 as amended by the Meech Lake Accord, delete (i) relating to constitutional amendments affecting the establishment of new provinces, and return to the existing amending formula for new provinces.

Under this provision, new provinces could be established by agreement of the federal government and seven provinces, rather than requiring unanimous agreement. Yukon and the Northwest Territories deserve the opportunity to become provinces without facing unnecessary constitutional roadblocks.

(v) To Set the Agenda for the First of the Regular Constitutional Conferences: In section 50(2) redraft to make clear that the agenda is only for the initial conference, and add to the list of agenda items for this conference "the rights of Canada's Native Peoples."

This provision in the Parallel Agreement would correct some poor drafting in the original document, and would at the same time recognize as a priority the constitutional rights of Canada's Native Peoples.

(c) Entrenching Bill 88

To ensure the preservation and promotion of the rights of both official linguistic communities in our province, a motion should be passed by our Legislative Assembly requesting that Bill 88 be entrenched in the Constitution of Canada.

III. Role of the Legislative Committee

This Committee has, potentially, an important role to play at this time in our constitutional history, particularly in influencing the shape and content of a Parallel Accord, and in providing impetus for entrenching Bill 88 in the Constitution.

In order to have real impact, the Committee must report its findings and recommendations at an early date. Delay in a matter as important as the Constitution of our country serves neither the interests of New Brunwickers nor of Canada.