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# *The Future of the Northern Territories*

**Tony Penikett**

**O**n June 1, 1987 eleven men in a locked room got together and made a deal. That deal consigns the people of the northern territories to a constitutional limbo – forever. That deal we now know as the Meech Lake Accord.

We have three problems with it as it affects us. First, it makes provincial status practically impossible. Second, it was done without any consultation with us whatsoever. Finally it reduces us to the class of second-class citizens in a number of important respects, among those the matter of nominating Senators and Supreme Court judges.

Quebeckers know only too well the taste of constitutional estrangement that comes from being excluded. Ironically, the Meech Lake Accord which was intended to bring Quebec home constitutionally, will have the effect of frustrating the political destiny of northerners.

We think it remarkable that the first ministers have not drawn any lesson from the past or realized that their proposed accord will permanently alienate two potential partners in Confederation, the Northwest Territories and the Yukon. This, in our view, is even more remarkable in that reconciliation with Quebec in no way requires the North to be frozen out. But at Meech Lake the First Minister's in essence said yes to Quebec and no to the North.

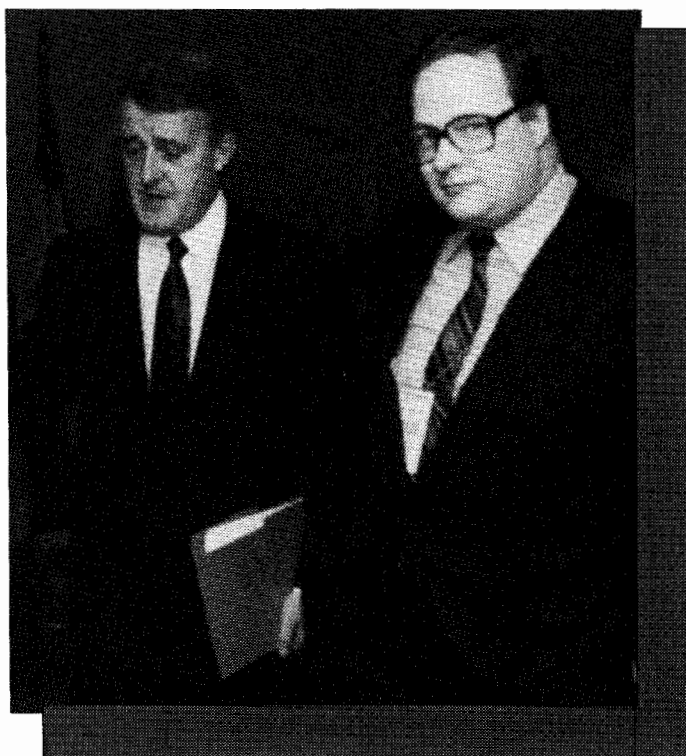
Few people in the North would argue that Yukon and the Northwest Territories have reached the point where we should be immediately granted provincial status. That is not the question. What is at issue is whether the two territories will have a fair chance to become partners in Confederation one day.

As it stands, they do not. Each province will have a right of veto over the creation of new provinces. Worse, this power is being granted without any consultation or any explanation for northerners, the people most affected. If the Meech Lake Accord is ratified without revision, Senators and Supreme Court judges will be appointed from lists presented by the provinces. Northerners will be excluded.

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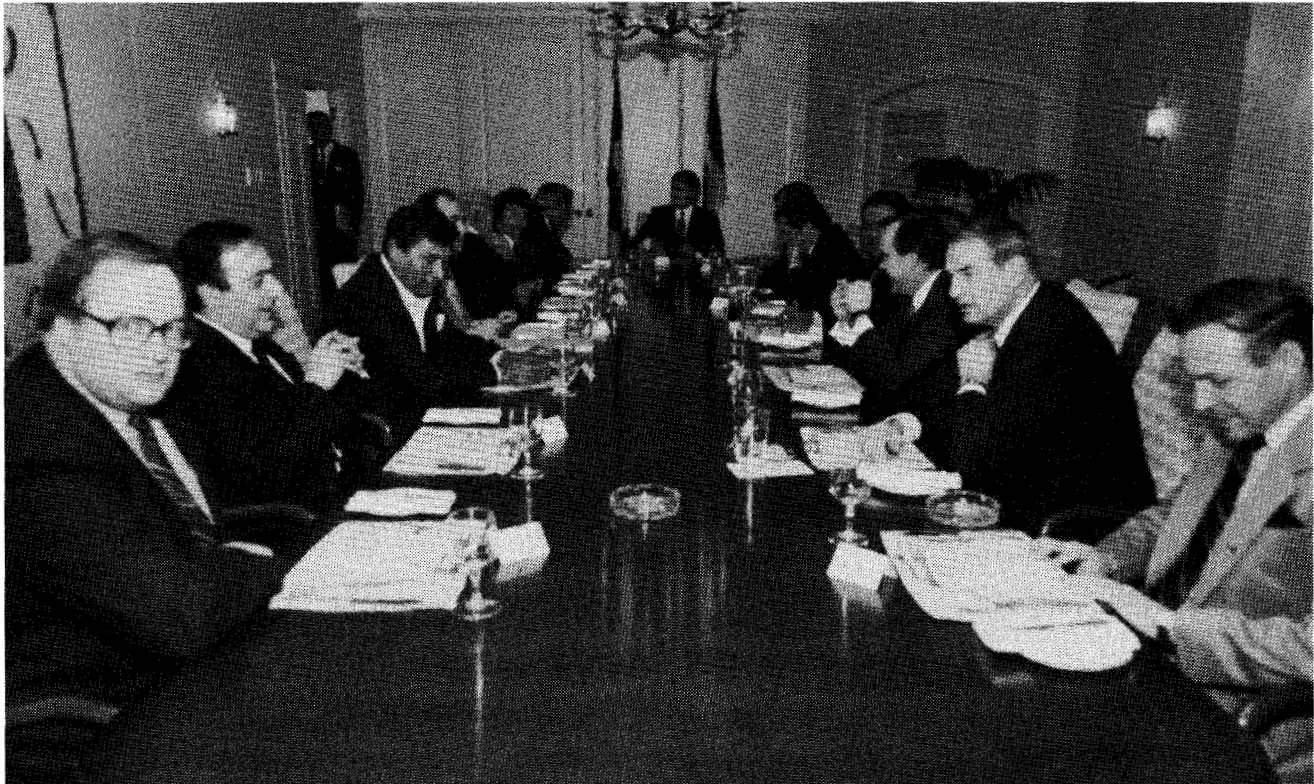
*This article is based on an address to the annual seminar of the Canadian Region of the Commonwealth Parliamentary Association held in Toronto in 1987.*

Let me just recite some constitutional history from a northern point of view, which is different from that outlined by our friends from Quebec and Ontario.



*The Leader of the Government in the Yukon, Mr. Penikett, (right) with Prime Minister Mulroney a few months before the Meech Lake Accord.*

Much of what we call southern Canada was part of the Northwest Territories in 1867. The current northern territories are what was left after new provinces were carved out of the original British North America. In each case these territories and colonies took the initiative to petition the federal government for provincehood when they felt they were ready for it. New provinces were created through a process which involved negotiation with the federal government and approval by Parliament alone.



*The governments of Yukon and Northwest Territories have participated in many federal-provincial constitutional conferences since 1982 but were not invited to talks leading to the Meech Lake Accord.*

Other democracies such as the United States, India and Australia, require only agreement between the federal government and a territory. I do not want to sound offensive at all, but our closest neighbour Alaska joined the United States simply by an act of Congress. They did not require Rhode Island's permission or consent. Neither should the Yukon or the Northwest Territories require Prince Edward Island's consent.

The fate of new Canadian provinces was foreseen prior to Confederation. The London resolutions of 1865 required that Prince Edward Island, British Columbia and any provinces created "from the Northwestern Territories" be admitted to Canada on "equitable terms." No one here, by any stretch of the imagination, could possibly describe what has happened in section 42 in the Meech Lake Accord as equitable terms.

Between 1870 and 1950, the federal government alone negotiated the terms of entry of Confederation for six provinces – the majority. In none of these cases was the assent of any other provinces required, but the conditions of entry that now apply to the Yukon and Northwest Territories are extremely onerous.

The *Constitution Act (1982)* changed the admission formula to require the approval not only of Parliament but

also two thirds of the provinces with at least 50 per cent of the population. I want to remind anyone who may have forgotten, that the North protested furiously this outrage. Every single member of the Northwest Territories Legislature, as I recall, travelled to Ottawa to lobby on this point.

The Yukon's member of Parliament of the day, Erik Nielsen, told Parliament, "For over half a century, the dream of provincial status has been the lodestone of northern hopes. It has been central to the vision of the north, which sees the development of the Yukon and the Northwest Territories as the best and brightest hope for Canada's future. When the Prime Minister (Mr. Trudeau) accepted the inclusion of two clauses relating to the extension of existing provinces into the territories and 'notwithstanding any other law or practice the establishment of new provinces,' he dealt a crushing blow to the hopes and aspirations of thousands of Canadian citizens resident above 60. He gave away what was not his to give away, the rights and privileges of Canadians of northern Canada above 60."

What seems to have been forgotten is that by 1983 the federal government of Mr. Trudeau seemed to have recognized that these provisions of the 1982 act were indeed unfair. Attached to the 1983 constitutional accord on aboriginal

rights, which I would urge people to take a look at, is the agenda of outstanding items unresolved in the aftermath of the debate surrounding the 1982 Constitutional Act. I would like to refer you to that agenda, because item 4 on that document specifically requested the repeal of section 42(1)(e) and (f), the extension and the creation of new provinces, extension of provincial boundaries north and the creation of new provinces.

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***“Everybody else in the country gets to decide our constitutional future except us. People who could not even find us on the map will get to decide, but we shall have no say.”***

As well, in its discussion of draft amendments the federal government noted, “The intention would be that the *Constitution Act, 1871* would operate, rather than subsection 38(1) of the *Constitution Act, 1982*.” In other words, they recognized that 1982 was unfair and they were going to go back to the old rules. As a result of that signal from the federal government, we in the Territories thought the problems of the 1982 formula were clearly understood to require change. As it turned out, we were wrong.

Incredibly, from our point of view, the parties to the 1987 constitution accord did not improve the 1982 formula. They made it worse by requiring unanimity. We therefore ask: what was it that changed between 1983 and 1987 to reverse what was originally intended, without consultation or involvement of the elected representatives of the people directly affected? Why did the first ministers in 1987, three of whom had signed the 1983 accord, suddenly decide that the establishment of new provinces demanded the impossible: the unanimous agreement of 11 disinterested governments? What could be the rationale for such a step?

I think it can be convincingly argued that there is no historical justification whatsoever. Why, for example, was the Yukon Territory invited to the first ministers’ conference in March 1987 where the creation of new provinces was on the agenda – item 4 – but not in April 1987, when the first ministers decided there would be no more new provinces – at least under the old rules – and where the very opposite of self-determination was decided to be the rule for the north?

Why was it decided that we should suffer not only federal colonialism, but provincial imperialism as well? We are curious on this point because to date we have had no explanation from the Prime Minister or from Senator Murray. We do not know if it is because the Northwest Territories has oil and some in the east have sworn there shall be no more Alberta; or is it worse, and more insidiously, somehow related to the major aboriginal presence in northern governments?

Some have suggested that the territories’ hopes can be resurrected later in the second round, but in our view that will be too late and we think the first ministers know it. You will not be able to exhume our dreams after they have turned to dust; because we think the Constitution will be very hard to amend and we will be permanently frozen out. For this reason our legislature has unanimously passed a resolution asking that the Meech Lake accord be reopened and that consultation begin with us.

Canadians ought to, eventually, come to understand that this kind of constitutional Yalta, where the future of the North was decided by these 11 men, is wrong and a situation where provinces are given power over our future, to which they have absolutely no entitlement, is fundamentally wrong.

The Meech Lake Accord condemns citizens of the North to a second class status forever. We do not like what was done to us. We think the major reason it was done to us is because we were not there. We will be fighting this aspect of the accord in the courts and in every other way we can.

But I want to make one final point. We do so without rejecting the basic concept of the accord and without rejecting the basic idea that such a step was necessary to resolve the legitimate grievances of Quebec. ▼