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# ***The Ontario Constitutional Conference***

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by Gary Levy

*Since the demise of the constitutional amendments known as the Meech Lake Accord in June 1990 several legislatures have begun to address the principle flaw in the Accord – the lack of perceived legitimacy in the constitutional process that led to its adoption. In Manitoba and Newfoundland, for example, the membership of legislative committees has been extended to include non parliamentary experts. In Quebec a special Commission on the Political and Constitutional Future of Quebec brought together federal and provincial legislators along with representatives of business, labour, and other interests. Another method of extending constitutional consultation was tried recently in Ontario. The Select Committee on Ontario in Confederation organized a three day Constitutional Conference. The meeting, held from October 17-19, was dubbed by the media as a "trial constituent assembly". Its real purpose, according to the organizers, was to augment the traditional process of public hearings thereby helping members of the committee in their deliberations and subsequent preparation of a report. This article looks at the organization of the conference and considers the possibility of wider consultation in the process of constitutional amendment in Canada.*

**T**he Select Committee on Ontario in Confederation was appointed in the fall of 1990 and is made up of legislators representing all three parties. In July 1991 it decided to sponsor a Conference bringing together a wide variety of Ontarians for the specific purpose of discussing the constitution. An organizing committee headed by Dennis Drainville, Chair of the Select Committee was established to plan the conference. The committee also included Gilles Bisson (NDP), Charles Harnick (PC) and Yvonne O'Neill (LIB). One of its first decisions was to engage a consulting firm, Enterprise Canada of Toronto, to co-ordinate the conference.

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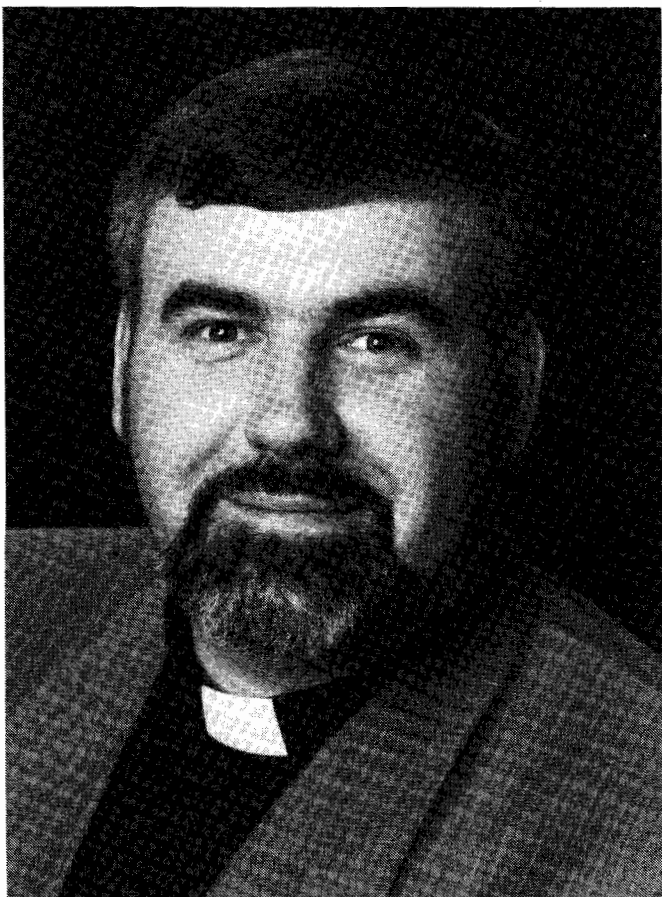
## **Format and Selection of Delegates**

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The format of the conference was not unusual. It opened on Thursday evening with an address by Premier Bob Rae and a reception at Hart House, University of Toronto. In his remarks Premier Rae urged delegates to approach constitutional issues with an open mind and be prepared to change their position.

The following day began with a plenary session at which Hugh Mackenzie of Enterprise Canada outlined the process to be used during the conference. Delegates were assigned to two of eight workshops. These included sessions on: the Fundamental Characteristics and Values of Canada; The Charter of Rights and Freedoms; Aboriginal Issues; Constitutional Change and the Economy; Quebec's Future in Canada; The Division of Powers; National Institutions and the Political System; and the Process of Constitutional Reform.

Four of the workshops were held at Hart House, the others in committee rooms in the main Legislative Building. Each workshop was chaired by a professional



Dennis Drainville, MPP

"facilitator" an individual with experience in directing seminars but without any particular expertise on the substantive issue of constitutional reform. The "facilitator" was assisted by two employees of the Legislature: a "recorder" from the Research Service and a Clerk. Each workshop chose a rapporteur whose duty would be to synthesize the discussion and report on the conclusions to the full conference.

Each workshop was held once in the morning and again in the afternoon so that all delegates participated in two different sessions. Simultaneous translation was available for four workshops in the morning and a different four in the afternoon. Two morning sessions and two afternoon sessions were broadcast on television.

On Friday evening a reception and dinner were held for delegates followed by short addresses by the leaders of the two opposition parties, Murray Elston of the Liberals and Michael Harris of the Conservatives. This was followed by a panel discussion chaired by Judge Rosalie Abella and consisting of Judith Andrew, Director of Provincial Policy for the Canadian Federation of

Independent Business, Diane Haskett a lawyer from London Ontario, Peter Leibovitch, president of the Simcoe and District Labour Council, Gordon Peters, Ontario regional chief and vice chief of the Assembly of First Nations, and Jean Tanguay of Ottawa, president of the Association Canadienne-français de l'Ontario.

On Saturday the conference concluded with reports from each of the workshops, statements from the floor by individual delegates and closing remarks by Mr. Drainville.

One of the most difficult aspects of the conference was the selection process. The total number of delegates, 130, was chosen arbitrarily but reflected numbers that could be reasonably handled. This figure included the twelve members of the Select Committee on Ontario in Confederation and fifteen other MPPs, five from each party. In addition each party was entitled to nominate twenty other individuals. To fill the remaining places the organizing committee sent letters to scores of special interest groups in Ontario asking them to submit names of 3 or 4 individuals they would like to see participate in the conference. From this list of several hundred names the final forty-three delegates were chosen by the Committee. In addition all provinces and territories were invited to send one observer. Each of the federal political parties and a number of aboriginal organizations were also invited bringing the total number of observers to about twenty. Delegates were supposed to attend in their capacity as individual Ontarians and not as representatives of political parties or interest groups.

The conference was a relatively low budget affair. Delegates were not paid but travel and accommodation costs for persons coming from outside Toronto were reimbursed. The total personnel required to organize the conference was about 40 with 25 coming from the permanent staff of the legislature. Expenses for the conference were estimated at about \$400,000.

#### Observations on the Discussion

The background material for the workshops, prepared by the Research Service of the Legislative Library, broke down each of the eight issues into three sections - Where are we? Where do we want to go? How do we get there? These were followed by a list of questions for discussion. (What are the fundamental characteristics which define Canada? Should Parliament and Legislatures have the power to override rights and freedoms guaranteed in the *Charter of Rights and Freedoms*? Should aboriginal people have a guaranteed number of seats in the House of Commons, the Senate, and/or the provincial legislatures? Should provinces have the right to secede from Canada? Is it important that national standards in

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certain areas be maintained? Should the Senate be reformed or abolished?

***One delegate observed that discussion in the workshops was a bit like a game of Jeopardy. Everyone has an answer. It all depends on who gets to the button first.***

Discussions did not always follow the route laid out in the working papers. But the format had a great advantage over the traditional type of legislative committee where members spend most of their time listening and asking the odd question to special interest groups instead of publicly discussing the issues among themselves. Such conversations are reserved for the closed drafting sessions. While such a process may be appropriate for ordinary legislation that will eventually be subject to party discipline one must ask if the same process is appropriate for constitutional amendments. Surely there is no Liberal, Conservative or New Democratic position as to whether the Senate should be elected or if representation should be equally divided among all provinces. This is an issue on which all Canadians have an equal interest and the traditional process has been unable to reflect this.

At the Constitutional Conference legislators and ordinary citizens exchanged views on an equal basis. While the views were varied one had the impression that given enough time to discuss the issues some agreement could be found on most items. Of course there were delegates who had particular axes to grind such as the individual who wanted to repeal laws that allow funding for Roman Catholic education in Ontario and to amend the constitution to prevent "preferential" treatment of any religious group. He carried this idea with him from workshop to workshop and usually managed to provoke a lengthy discussion on what has always been a volatile issue in Ontario politics.

In many ways the most interesting workshops dealt with the process of constitutional amendment for that is what the conference was really about. A preliminary opening round of statements indicated general dissatisfaction with the process used for the Meech Lake Accord as well as with the present process. Not surprisingly, most people were philosophically attracted to the idea of a constituent assembly convened for the express purpose of examining constitutional changes. Further discussion revealed several difficulties with constituent assemblies including the way they are selected, the difficulty of ever accurately reflecting the

interests of the entire society and the non binding nature of their conclusions. Delegates then turned their attention to the use of referenda and whether they are a better way of giving citizens a sense of ownership of the constitution. But here too there were difficulties ranging from the framing of the question to the real legitimacy of amendments passed with 51% of the popular vote. A third option, the use of expanded parliamentary committees, was considered and it seemed to hold considerable attraction for many delegates.

### **Problems and Prospects for the Future**

The Ontario Constitutional Conference solved no problems but did fulfil its limited objective of providing input to the Committee on Ontario in Confederation. It also served an important educational function by giving a number of Ontarians the experience of trying to make decisions acceptable to an extremely diverse group of individuals. Perhaps those who attended will be a little more understanding of the problems faced by politicians on a daily basis. For many it was also the first time they found themselves confronted by articulate spokesmen for the aboriginal community. In the long term such experiences can only be beneficial but what about the short term problem of finding an answer to the present constitutional dilemma? Does the Ontario Constitutional Conference indicate the way of the future?

The main difficulty with this approach, aside from the issue of representativeness, is the lack of focus. It was unfortunate that most workshops did not discuss more directly the federal government's constitutional proposals released on September 24. Some delegates had copies of the proposals and certain points of agreement did emerge during the discussion. For example there appeared to be a good deal of support for some recognition of Quebec as a distinct society. There was also a wide degree of consensus in more than one workshop on the inherent right of aboriginal people to self government. The federal proposal, with its ten year time-table was seen as insufficient.

But these were exceptions and most discussion took place in splendid isolation of the federal proposals. Regardless of what one thinks of the proposals is it not too much to ask a random group of ordinary Canadians, be they students, teachers or delegates to a Constitutional Convention, to come up with constitutional proposals starting only from a set of questions or abstract principles? Such an approach is unlikely to bear fruit. It makes more sense to ask such a group to discuss, criticize perhaps even vote on specific proposals put forth by one or more legislature. There would be disagreements but what are we afraid of? Given time, proper procedures

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and a set of proposals to begin with does anyone really think that a representative group of Canadians cannot find reasonable compromises on most issues?

*The challenge of the present is to find a process to allow the people, not to draft constitutions, but to consider and pronounce upon constitutional proposals with the expectation that their decision will be followed by the legislators who have the formal duty to pass amendments.*

At the provincial Premiers meeting in August 1991 three leaders, Clyde Wells of Newfoundland, Bob Rae of Ontario and Gary Filmon of Manitoba, were reportedly in favour of some form of extra-parliamentary assembly. Subsequently elections in British Columbia and Saskatchewan have returned New Democratic

governments bringing to five the number of provinces likely to favour some form of extra-parliamentary process for considering constitutional amendments. If two more provinces can be brought on side perhaps these seven provinces with 50% of the population could convene a single extra-parliamentary body to examine the federal proposals or some of their own. If this body could agree on certain amendments and if the individual legislatures followed through by enacting the amendments the federal government would then have, under the existing constitution, three years to accept or reject the amendments. This approach is also consistent with Quebec's position about wanting "a binding" offer before re-entering constitutional discussions.

Are we on the verge of stumbling across a key to unlock the constitutional stalemate that has prevailed since 1982. If so, the meeting of the Ontario Constitutional Conference may prove to have been a first small step towards a return to constitutional sanity and legitimacy in this country.