

LEGISLATIVE ASSEMBLY OF THE  
NORTHWEST TERRITORIES  
7<sup>TH</sup> COUNCIL, 45<sup>TH</sup> SESSION

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Report of the  
Northwest Territories Council  
Committee on the Constitution

submitted to

The Joint Parliamentary Committee  
of the  
House of Commons and Senate  
on the Constitution

June 25, 1971

## 1. THE PRESENT STATUS OF THE NORTHWEST TERRITORIES

The Northwest Territories, constitutionally speaking, is a colony of the Federal Government, and does not enjoy independent status, representation or responsibility other than that afforded it by representation in the Federal Parliament.

To illustrate this fact, we quote from a June 15, 1971 decision of Mr. Justice W. G. Morrow, of the Territorial Court of the Northwest Territories, in the case of the Royal Bank of Canada and Scott and the Commissioner of the Northwest Territories:

"In the new Northwest Territories Act, R.S.C. 1906, c. 62 the designation of Lieutenant Governor disappears from the legislation. Section 3 of the new act makes provision for the appointment of a chief executive officer, viz. the Commissioner of the Northwest Territories. Whether this was a deliberate step to demark the difference between the self-governing provinces which had just emerged into what is referred to as southern Canada and that vast area to the north, is not known. From this time on however, except for changes in the numbers of the Council and in the numbers who are elected, there has been no serious legal change in the manner of Government in the Northwest Territories."

"Substituting a 'Commissioner' for the 'Lieutenant Governor' seemed to indicate a change from 'colonial status' to one more akin to a mere department of the Federal Government. And this is the way it has continued to the present date. For a court reference to the Territories being referred to as a colony see the remarks of Wallbridge, C.J. found at page 11 of The Queen v. Connor (1885) 1 Ter. C.R. 4."

"Although the government of the Northwest Territories as presently constituted may give the appearance of a province and the Commissioner in Council may appear to have much the same powers to legislate as are to be found enumerated in Section 92 of The British North America Act, 1867 (supra), the overriding phrase 'subject to the provisions of this Act and any other Act of the Parliament of

Canada' (Sec. 13 of The Northwest Territories Act) must in law have the effect of maintaining it in a subordinate position to the Parliament of Canada or in the condition 'of an infant colony', in the words of Wallbridge, C.J. in the Connor Case (supra.)"

## 2. IMMEDIATE INTERIM STEPS REQUIRED

### A. Lands and Resources

#### I) Surface Land Rights

We recommend the transfer, in the shortest possible time, of management of surface rights to land in the Northwest Territories, from the Federal Government to the Government of the Northwest Territories. There is a clear statement of the way these lands are held in trust by the Federal Government, with regard to certain public lands, in Part III, Sec. 40, of the Northwest Territories Act:

"40. The following properties, namely,

- (a) lands acquired before or after the coming into force of this Act with territorial funds;
- (b) public lands, the administration of which has before or after the coming into force of this Act been transferred by the Governor in Council to the Territories;
- (c) all roads, streets, lanes and trails on public lands; and
- (d) lands acquired by the Territories pursuant to tax sale proceedings,

are and remain vested in Her Majesty in right of Canada, but the right to the beneficial use or to the proceeds thereof is hereby appropriated to the Territories and is subject to the control of the Commissioner for the beneficial use of the Territories."

This statement should be expanded to include all surface lands.

## II) Subsurface Rights

We recommend the section of the Northwest Territories Act quoted above also be expanded to include all non-renewable natural resources, in accordance with Motion No. 15, carried unanimously, at the 35th Session of the Council of the Northwest Territories:

"I move that the Commissioner make representation on behalf of this Council to the appropriate federal authorities requesting that the Federal Government acknowledge its role as a trustee of natural resources for the future province of the North and establish guidelines for a proper accounting of that trusteeship when same comes to a close (when the province of the North comes into being) coupled at that time with a transfer of ownership of said mineral resources to said province of the North."

## B. Responsible and Representative Government

### I) Executive Council

We recommend amendment of the Northwest Territories Act to permit the creation within the Government of the Northwest Territories of an Executive Council with four or more members, whose existence and rights are protected by this legislation. This would be in accord with recommendation 4(c) of the 'Report of the Advisory Commission On the Development of Government in the Northwest Territories', Ottawa, 1966.

### II) Fully Elected Council

We recommend legislation to permit the Government of the Northwest Territories to proceed further and more quickly toward a fully elected Council. Three of the four appointed offices should be made elective in time for the 1975 elections, leaving the office of Deputy Commissioner as sole appointee.

### III) Police and Prosecution Functions

We recommend that the police and prosecution functions be transferred from the Federal to the Territorial authority. This recommendation is in conformity with the recommendations of the Carrothers Commission (Advisory Commission on the Development of Government in the Northwest Territories), and identical to the recommendation of the "Report of the Study Committee on Correction Services in the Northwest Territories" by Real Jubinville, Associate Executive Director, Canadian Criminology and Corrections Association, in February, 1971. That report says:

"A harmoniously integrated system of criminal justice must also be developed for the Northwest Territories. At present, the situation appears to be rather disjointed with responsibility for some aspects of the system in the hands of authorities outside the Territories."

### 3. FUTURE STATUS OF THE NORTHWEST TERRITORIES

We expect within the foreseeable future, (i.e., within our own lifetimes) the constitutional development of the Northwest Territories to full Provincial status. This development will require a transfer of the management of non-renewable natural resources, and the revenue therefrom, to the Government of the Northwest Territories from the Federal Government. It is our firm belief (see sec. 2.A.II, above) that these resources are held in trust for the Northwest Territories and that their management is to be transferred from a Federal department to a Provincial department.

The current operating deficit of the Government of the Northwest Territories, balanced by Federal subsidy, can only increase so long as this transfer is delayed.

In our opinion, it should not be delayed beyond the time when competent management is available in the Northwest Territories.

For this reason we do not agree with the position of The Honourable Jean Chretien, Minister of Indian Affairs and Northern Development, on this subject in his "Statement on The Development of Government in The Northwest Territories", at Yellowknife, Nov. 10th, 1969:

"(1) In the first place, I firmly believe that at this time and for the foreseeable future, the granting of provincial status to either Territory is not a realistic alternative."

"(2) I further believe that the Federal Government should continue to manage and develop the natural resources of the North for the benefit of both Northern residents and all Canadians.

#### 4. ANCILLARY ITEMS

##### A. Senate Representation

We take no position on whether the Senate should be retained within the Canadian constitutional framework. However, so long as it exists, we recommend there be a Senator appointed from and for the Northwest Territories.