

LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
7TH COUNCIL, 50TH SESSION

TABLED DOCUMENT NO. 11-50

TABLED ON OCTOBER 15, 1973

October 11, 1973

ARCTIC ENVIRONMENTAL SEMINAR -
Arctic Petroleum Operators Association &
Canadian Petroleum Association

By D. H. Searle

Mr. Chairman, head table guests, members of the Arctic Petroleum Operators Association and the Canadian Petroleum Association, ladies & gentlemen - May I first thank Mr. _____ for his kind words of introduction. May I also join with Mayor Henne when he spoke to you earlier today in welcoming to Yellowknife those of you who have come from southern Canada. As operators I encourage you to stay and I wish you well in your search for petroleum products, in the hope that our north land will play an outstanding role in satisfying the energy needs, not just of Canada (because I am not a narrow nationalist) but of North American generally.

I notice from your program that you have been discussing today and will continue to discuss tomorrow matters of environmental concern respecting land use, fisheries and marine life, wildlife generally, the impact of exploration on our communities and the training and employment of our northern people. Undoubtedly the matter of aboriginal rights and native land claims will surface even though your seminar organizers have not seen fit to

conduct a panel discussion directly on that rather current and topical subject - presumably to avoid cardiac arrest among some federal officials observing and participating in your seminar. I am confident, however, that the leaders of the native organizations who are participating will lose no opportunity to present the views of their respective organizations.

I will not attempt, therefore, to discuss the foregoing issues as you will have the advice of persons much more competent than I. What then should I do here this evening? I ask myself "what area is of concern to you and to northerners, yet is not part of any of your panel discussions?". That area surely and the subject this evening of my remarks, is the matter of the political involvement by northerners in decision making (not in being merely consulted but in decision making for ourselves) in the important field of resource development.

How should we northerners be involved politically in making decisions for ourselves that affect us in the field of resource development and the associated environmental areas? In answering this question I have made the assumption that our native organizations are not political in nature and that their proper concern is in a native land settlement with the federal authorities. What vehicle, then, is available to us for this political involvement? I conclude that such a field should be, though at present it definitely is not, the Council of the Northwest Territories and the Government of the Northwest Territories. The former should be the policy or

political body and the latter should be the body of officials who carry out, who implement the political policy decisions of the former.

Instead, what we have here in the Northwest Territories is a complete exclusion from the resource fields of the Council of the Northwest Territories and the Government of the Northwest Territories and a complete occupation of these fields by federal agencies, a situation which exists no where else in Canada, except the Yukon Territory, and of course, in the area of off-shore mineral rights - and even the latter area lacks jurisdictional clarity as you operators well know.

HISTORY

Let us look firstly at the history of the Council of the Northwest Territories, and work forward from that aspect.

The first interest in the Northwest Territories, and an interest inherited by Canada after confederation, basically was economic. The interest of the Hudson's Bay Company was primarily in the fur trade of Rupert's Land. The seasonal visits of whalers equally were in the exploitation of a renewable nature resource.

After the acquisition from the Hudson's Bay Company of Rupert's Land by Canada in 1870, the land designated as the Northwest Territories stretched west and north of the new dominion through a vast and largely unexplored residual region, from the southern boundary of Canada to the

Rocky Mountains and north through the Country of the Mackenzie River, through Hudson's Bay and the barren lands between, and yet further north to the Arctic Islands and beyond. The first period after confederation, legislative and executive powers in the Government of the Northwest Territories were vested in the Lieutenant Governor, a complete joinder of power in an appointee of the state. This stage of Government was followed by a second stage which lasted down to 1905. By that time Manitoba, Alberta and Saskatchewan had been created Provinces and the Yukon a separate Territory. During this period the Council of the Northwest Territories acquired a legislative role, and a portion of its' members - eventually a majority and finally the totality - were selected by popular vote. In complimentary development, the office of Lieutenant-Governor evolved from that of a Colonial Governor to the comparatively titular role of the office of provincial Lieutenant- Governor of today.

In 1905 the provinces of Alberta and Saskatchewan were carved out of the Northwest Territories. Manitoba had been created a province in 1870. The Yukon had been created a separate territory in 1898 in response to the gold rush of that year, the border of the territory being calculated to include potential alluvial gold areas.

When Saskatchewan and Alberta became provinces, the government of the residual Northwest Territories was reduced to the status that existed prior to 1870. Elected representation completely disappeared. The 1905 Act provided for a council of four appointed members, but no

appointments were made for 16 years. A commissioner was appointed with all the powers previously enjoyed by the Lieutenant-Governor, the Executive Council, and the Assembly of the Northwest Territories.

The first Commissioner was Lieutenant Colonel Frederick White, Comptroller of the Northwest Mounted Police, who administered the Territories from Ottawa along with his other duties. Police posts were few, and the Northwest Territories seem to have managed much as it always had since the beginning of the fur trade.

After Lieutenant Colonel White's death in 1918, the Deputy Minister of the Department of the Interior was appointed Commissioner of the Northwest Territories in 1919, inaugurating a practice that lasted for the next 43 years. Not until 1963 were the offices of Commissioner of the Northwest Territories and Deputy Minister of the federal department responsible for northern administration separated. No territorial legislation was passed between 1905 and 1920 and most of the ordinances in effect applied to conditions on the prairies rather than to the area north of the 60th parallel. In 1921, new legislation was finally forthcoming. An ordinance was proclaimed by the Commissioner in order to control the entry of persons into the Northwest Territories. Its validity, however, was immediately challenged. Could the Commissioner alone, without a council, make laws? The federal Department of Justice ruled that he could not and that a council must participate in the making of laws for the Northwest Territories.

In 1921, the Council provided by the Act of 1905 was finally appointed with two additional members to give a total of six Councillors. The duties of the Councillors do not appear to have been very onerous for the next decade. From 1922 to 1930 only 11 ordinances were passed and in some years the Council did not meet at all. As the Council was composed entirely of the senior officials of the various federal departments involved in northern administration, it acted as something much more than a legislative body. It became, through the years, an interdepartmental committee of consultation and co-ordination, a general advisory body on all northern administration.

The growing significance of the Council is demonstrated by the increasing frequency of its meetings during the 1930's, the war years and the immediate post-war period. Monthly meetings became regular and in addition, special meetings were often held when business demanded urgent consideration. A major advance came in 1946 when the first territorial resident was appointed to the Council, Mr. J. G. McNiven of Yellowknife. By 1955, all the legislation passed before 1905 had been replaced. Nevertheless, for 45 years the constitution of the Northwest Territories remained very much the same, until 1951 when provision was made for the election of three members of the Council. So 1951 was the first time members of the Council of the Northwest Territories, as we now know it, were elected.

In 1951, therefore, the amendments increased the size of the Council from six to eight and provided for the election of three members. It thus became possible for

residents of some areas of the Territories to vote at all three levels of government, federal, municipal and now territorial. It was also stipulated that there was to be a minimum of two Council sessions each year, one of which was to be held in the Territories.

By the Northwest Territories Act of 1952 (proclaimed in 1955), the legislative powers conferred on the Territorial Government in 1905 were extended to embrace additional subjects over which the provinces had jurisdiction. A Territorial Court was established, and provision was made for the appointment of police magistrates in lieu of stipendiary magistrates, as well as for the appointment of justices of the peace.

In July 1954, the Council was enlarged to nine members by the addition of a fourth elected member. The three electoral districts created in 1951 were now altered to make four territorial constituencies: Mackenzie North, Mackenzie South, Mackenzie Delta and Mackenzie River. There was still no representation from the Eastern or Central Arctic, only the Mackenzie District elected members to the Council.

Following the changes in the form of the Territorial Government came changes in the composition of the Council. In 1960, three councillors were appointed from the general public. They were individuals who could bring a variety of talents and experience to deliberations, and yet be as detached from administration as the elected members. Furthermore, the appointed members came from all parts of the country, not

just from the national capital. These changes reduced the voice of the federal administration in the Council since representatives from federal agencies formerly on the Council, particularly the Royal Canadian Mounted Police, the Department of Citizenship and Immigration and the Department of National Defence, were not appointed. By 1964, the Deputy Commissioner was the only federal employee still holding a seat on the Council. In addition, of course, there is the Commissioner, but he is not regarded as part of Council and does not have a vote.

The accelerated pace of development in the Northwest Territories, especially in the Mackenzie District, provoked the consideration of even more profound changes in the structure of the Territorial Government. At the January Session of the Northwest Territories Council in 1961, the elected member for Mackenzie Delta suggested that consideration should be given to dividing the Northwest Territories in order to establish resident territorial government in the Mackenzie Valley. Over the next three years, both the principle and the details of division were discussed at every session of the Council.

Some months elapsed between the first and second readings of those two bills, and when they finally did reappear in the House of Commons opposition to their provisions had developed. The bills were sent to the Standing Committee on Mines, Forests and Waters which gave them detailed examination and called numerous witnesses for their views. A number of

the witnesses were critical, either because they were opposed to the principle of division or because they disliked certain details of either or both of the bills as introduced.

The hearings of the Committee were late in the parliamentary session and neither bill reappeared in the House of Commons before the current session of Parliament ended, so both died on the Order Paper.

As a result of what was heard in Committee by the House of Commons and as a result of a special recommendation by the Council of the Northwest Territories, the Carrother's Commission was appointed on 3 June, 1965. The report of this Commission was concluded and submitted on the 30th of August, 1966.

Prior, however, to receiving this report, the Minister of Indian Affairs, in 1966, amended the N.W.T. Act and enlarged the Council by 3 further elected members, bringing the number of elected members to 7, with 5 appointed members.

Then on the 18th of January, 1967, Yellowknife was declared to be the capital of the N.W.T. and in September of that year the Commissioner and a nucleus of his headquarters staff moved to the Capital at Yellowknife. Since then, the size of the Council has again been increased by 3 further elected members to a total of ten elected members and the number of appointed members has been reduced from 5 to 4, for a Council of fourteen plus the Commissioner. That, then, is where we stand today respecting the form of the Council.

TODAY

Today the Commissioner is the Senior Executive Officer of the Government of the N.W.T. He and his Deputy are appointed at pleasure by the Governor in Council and their salaries are paid directly by Ottawa and not voted by Council in Councils Estimates. The Commissioner has the rank of a federal Deputy Minister and is therefore a public servant who must carry out his Minister's instructions, as I believe the recent Hire North fiasco over Mr. Stu DeMelt demonstrates.

The Commissioner, therefore, is responsible to the Minister, not to the Council, nor to the people of the Northwest Territories.

Only the Commissioner may recommend spending. He does so according to moneys made available to him by the Department of Indian Affairs and Northern Development as a result of exhaustive negotiations and budget reviews carried on through an inter-departmental committee of officials. There is no participation on this Committee by elected representatives. Federal Treasury Board guidelines are strictly followed. You budget on two levels. In your "A" level budget is put that amount of money required to finance the same programs at the same level of services as in the year past plus a percentage increase for salary raises. In the "B" level budget are put the other programs which you would like to undertake if you could obtain the funds.

The important point is that the Territorial Government is involved mainly in the expenditure areas. The major expenditure areas of Education, Health & Welfare, Industry and Development, and Local Government have been the areas transferred by the federal government to the Territorial Government, subject of course to the financial constraints imposed by the Treasury Board guidelines above referred to and subject to the policy instructions of the Minister. The areas of revenue, the resource areas, have been retained under direct Federal jurisdiction.

So what kind of autonomy do you have when you have been excluded from the revenue areas of resources, when the Federal Government directly administers surface and sub-surface rights (except land within municipalities), inland fisheries, inland water and forestry. The Federal Government even controls directly highway construction and reconstruction as well as the matter of housing.

How did this happen? It stems from two basic philosophical policy positions enunciated by the Minister on 10 November, 1969, in his White Paper statement on the Development of Government in the Northwest Territories, which reads as follows:

- "(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."

The foregoing two policy positions leave no doubt that "for the foreseeable future" we can expect continued control by the Federal authorities in the area of resources, and indeed a build-up of the Federal presence. Respecting provincial status, this is not even a possibility as far as the Minister is concerned.

In summary, then, you have a body called the Government of the Northwest Territories, which at best is a delegate or agent of the Federal Government with responsibility for expenditure areas, subject then to Treasury Board Guidelines and ministerial policy direction, purposefully excluded from the revenue areas of resources, with no hope in the foreseeable future to get into the resource area or to go forward from delegated status to provincial status, as far as this particular national government is concerned.

THE FUTURE

What then does the future hold for northerners? The Minister by January of 1975 (which is the time of the next Territorial general election) will likely amend the N.W.T. Act and make the Council fully elected, with the exception of the Deputy Commissioner. Two members of the Council may be appointed to an Executive Committee. But is this a step forward? I say not necessarily. The debating society will be enlarged but their jurisdiction respecting the resource revenue areas is not, so at best you have a lateral movement. As to two members being part of any executive

committee, since the Commissioner would undoubtedly chair that committee and since the Committee through the Commissioner would be responsible to the Minister, not to the people, such elected members would undoubtedly be subject to the influences and dictates of the Federal Government - an impossible position for them to be in.

Going back to the matter of the political involvement by northerners in decision making in the important field of resource development, I am not too optimistic, as you can see, that this will occur in any reasonable time frame. As a result, the people of the Northwest Territories can look forward to remaining frustrated with their lack of participation in the meaningful areas of development now going forward in the Northwest Territories. The people will remain confused as the Territorial and Federal Departments continue to compete for areas of jurisdiction, continue to operate at cross purposes and continue to overlap. Federal Departments will continue to fund opposing views and interests, all to the serious detriment both of northern residents and of Canadian tax payers generally.

What should be done? Firstly, the Federal Cabinet must reverse its' position that provincial status shall not come to either Territory for the foreseeable future and must further reverse its' position that the Federal Government should continue to manage and develop the natural resources of the Northwest Territories and the Yukon Territory. Once this is done then those

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objectives should be achieved with a minimum of delay in a definite time frame and coupled with that the Department of Indian Affairs and Northern Development should disappear as an entity. The responsibility for Indians should be transferred to the Department of the Secretary of State which is concerned mainly with cultural affairs. Any residual resource responsibility for off-shore minerals should go to the Department of Energy, Mines and Resources. Responsibility for parks and historical sites should of course go to the Department of the Environment. The Indian Act can simply then be repealed as and when native land claims are settled. The N.W.T. Act can be repealed as and when provincial status in the Northwest Territories, within the above mentioned time frame, is achieved.

The foregoing suggestions are the answer, they should be done in accordance with a predetermined time table, but the most important thing now is for the executive of the Canadian Government to realize that these things have to be done, for them to make decisions to do them by way of a public White Paper.

There will be those, of course, who will say that Provincial Status within the next 5 to 10 years is ridiculous. The arguments vary. Not so long ago it was argued that we could never pay our way. If that were a consideration then there should be only 4 provinces today. With the oil and gas possibilities becoming more and more apparent, that argument is not heard so much any more. Instead one federal Minister concerned with northern matters was recently reported as having complained that it is not

in the national interest to have a "Koweit". So we are damned if we cannot afford to pay our way (as irrelevant a test as that is) and we are now damned if we can.

Finally, the most recent argument is that we do not have a sufficient population. Yet, we cannot obtain a decision on what that magic number should be. Surely that is irrelevant. We have no bamboo curtain preventing southern Canadians from coming north, we do not discourage immigration South to North; we encourage it. We cannot be denied justice and be prevented from entering Confederation because Canadians generally choose to crowd the U.S. - Canada border. Is it not a national disgrace that all of Canada is not part of Confederation after 106 years. Should that not have been our national centennial objective in 1967? Is it not even arguable that Canada today breaches the U.N. Charter by retaining colonies within her own national boundaries. Where is this just society north of the 60th parallel?

Let us, as Canadians be frank with each other. If our north remains a Territory for the foreseeable future and if our minerals remain for the foreseeable future under the management and control, and indeed ownership of our National Government then the reason is because Ottawa has the smell of oil and gas in her nostrils and wants the revenue and that is the sole justification. Further, as Canadians we permit that to continue because if Ottawa obtains massive revenue, in time, from our north then presumably we will not be called upon in southern Canada to cough up additional tax dollars to pay for ever expanding federal services and

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programs in southern Canada. In other words, let us admit, as Canadians generally, that we can be bought, that we have a price - that northerners may be denied their right to participate in Confederation on that basis and that basis only.

I encourage you, therefore, on behalf of all northern residents to assist us in carrying this message to southern Canadians, who are the voters, to whom Federal members of Parliament listen. When southern Canadians demand these things of the Federal Government, and only then, will these steps take place.

May I conclude by thanking you once again for giving me this opportunity to review the position of the Council of the Northwest Territories and the Government of the Northwest Territories with you, in what is a frustrating time for we resident northerners who really do want to work with you in the resource field. We still, however, wish you the best and hope that development will take place along the lines that we would have wished it, had we had a right to a say.

The position of your industry, therefore, is an unenviable one. You must guess at what northern residents want, you must act in accordance with federal directions, regulations and policies in the hope that they reflect northern wishes, knowing that such is unlikely to be the case. You must also appreciate that if your actions, even though they may be dictated by federal regulation,

cause a local furor you will be left standing alone to fight the populace. The federal authorities in the recent Caveat case have proved that. If the case is not proceeding to their satisfaction they just withdraw, and the next time they withdraw your industry may be left as the only ones standing there, to defend itself and to pay the price for a situation over which you have had absolutely no control. You the innocent and we the innocent - do we not therefore have something in common - a common goal? Is not that goal for your industry and for northerners - a provincial government that reflects the political views of the people of the Northwest Territories with whom your industry can deal with confidence and in safety.