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# **Constitutional Development in the Northwest Territories**

**Report of the  
Special Representative**

January 1980

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Special Representative for  
Constitutional Development  
in the Northwest Territories

Représentant spécial pour  
l'Évolution constitutionnelle  
dans les Territoires du Nord-Ouest

December 12, 1979

The Right Honourable C. J. Clark  
House of Commons  
Ottawa, Canada

Dear Prime Minister,

It is my pleasure to submit to you my Report on Constitutional Development in the Northwest Territories. This Report is the result of two years consultation, mediation and study. The interpretation of the issues and the conclusions are my own.

As the direction to be taken by the Territories in constitutional change is of vital interest to the residents and elected officials of the NWT, I am therefore pleased to submit these proposals for their consideration also. While I am not able to report consensus in the NWT on the future direction of government there, I am confident that northerners will themselves be able to achieve agreement. I am further confident that northerners are willing to assume more of the burden of government and to accept the responsibility for collectively presenting their own recommendations to the federal government.

This Report has been translated in full into Eastern Inuktitut and has been orally summarized on tapes in the native languages of Chipewyan, Dogrib, Cree, Loucheux, Hareskin, Fort Simpson Slavey, Fort Franklin Slavey, and Western and Eastern Inuktitut. The background documents will be deposited with the Public Archives in Ottawa and with the archives of the Prince of Wales Northern Heritage Centre in Yellowknife.

It is my hope that these documents, together with my conclusions, may be useful to the people of the NWT in the process of deliberation on government and to the federal government in the consideration of northern recommendations resulting from these deliberations.

Yours truly,

C. M. Drury  
Special Representative



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# 1 INTRODUCTION

This Report is submitted in response to the Prime Minister's request, to report to him on the results of the Special Representative's consultations on government in the Northwest Territories (NWT).

## MANDATE

In August 1977, the Special Representative was instructed to consult with leaders of the territorial government, communities and native groups on political and constitutional development in the NWT. He was asked to seek consensus among the various groups consulted and to recommend measures to:

- modify and improve the existing structures, institutions and systems of government;
- extend representative, responsive and responsible government;
- transfer or delegate federal responsibilities and programs to the Government of the NWT;
- promote native participation in government at all levels;
- devolve powers and responsibilities to the local level; and
- protect native cultural interests.

The terms of reference and the interpretation of the mandate are attached as Appendices A and B.

## PROCESS

Offices were established in Yellowknife and Ottawa, to organize the Special Representative's consultations, to confer with and keep informed all interested parties, and to provide some research and analytical capability. In response to the wide-spread evidence of study-fatigue in the NWT, and the sentiment expressed by many that the southern experts had, for long enough, publicly misconstrued northern purposes, the Special Representative chose not to institute a formal consultative process. He chose instead to respond to invitations from individuals, formally and informally constituted groups, communities and public officials at all levels, leaving the structure and format of the meetings to the hosts. Frequent public meetings were held, although many were private. Most valuable to the education of the Special Representative were the hundreds of conversations with individuals in the NWT, particularly in the smaller communities where the Special Representative's visits frequently lasted several days (Appendix C).

The Special Representative carried out his task of seeking consensus in the NWT primarily through mediation: mediation between the native associations and the Government of the Northwest Territories; between the NWT Council and federal authorities; between the NWT Executive branch and the Council; among the NWT

communities; among the NWT native associations; and between the native associations and the federal government.

The Special Representative was assisted in his examination of government in the NWT in a variety of ways. To avoid duplication, existing analytical and program expertise within federal and territorial departments was used extensively. Through formal requests for study, federal departments were called upon to address specific issues (Appendix E). The preparation of the terms of reference for studies, their monitoring in progress, and analysis of the responses were carried out by the Special Representative and his staff.

Submissions were also sought from the NWT Council and Executive, and from communities, special interest groups and native associations in the NWT, and suggestions were made to them for study and examination. Seminars were held in Yellowknife and in Ottawa, which drew together specialists in comparative government, the constitution, collective and native rights, local and regional government, and representatives of the territorial and federal governments (Appendix D).

In addition, three specific studies were carried out for the Office of the Special Representative; one inquired into the applicability to the NWT of linkages between selected native institutions and formal governmental structures in British Columbia; another examined local and regional governments; and a third analyzed and evaluated alternative constitutional models for the NWT.

Finally, throughout his two-year term of office, the Special Representative tested his observations through public speeches in the NWT, public distribution of documentation and reports, and in public and private consultations.

The Special Representative considered holding a referendum, as proposed in the terms of reference, but concluded that it would be premature. For a referendum to be a reliable measurement of popular opinion, the constitutional options must first be publicly stated and discussed and the public made aware of their consequences. While many of the constitutional options for the NWT have been put to the federal government, in principle at least, they have not as yet been presented or fully explained within the NWT. Thus, it was felt that the conditions did not—and do not now—exist in the NWT for the effective use of a referendum.

## CONTEXT

This Report focuses on political and constitutional change in the NWT. This focus was explicit in the terms of reference. The appointment of the Special Representative itself suggested that the status quo was unsatisfactory and that constitutional change was required. During the course of his two-year mandate, the Special Representative's observations of conditions in the NWT reinforced his conviction that a government structure more relevant to the traditions and the circumstances in the Territories was required.

Some of the factors influencing government in the NWT also exist in other parts of Canada but the combination of factors in the NWT constitutes its uniqueness. Of a total population of 46,500, the majority are native peoples, representing six major language groups, distinct traditions and varied lifestyles. The cultural and linguistic distinctions are not only apparent within the NWT, but also between the

NWT and southern Canada. While there is no agreement on the definition of a northerner within the NWT, residents of the NWT, native and non-native, feel themselves to be different from southern Canadians. Diversity and pluralism take the form and expression of distinct nations, of regions, of peoples above and below the treeline, of distinctions between the urban residents of the city of Yellowknife and the four towns and the rural residents of the other 47 communities. This population is distributed across one-third the total land mass of Canada. While air transportation, the telephone and television have reduced the isolation of communities, the pattern of settlement is rural and the distances between communities vast. Employment is primarily government, and government in the NWT is everywhere. For southerners, the economic, if not the major, value of the NWT lies in the potential of the subsurface resources. For the majority of the population in the NWT, the cultural and economic value of the NWT lies in the surface resources. The land, as life support for wildlife, is an extension of the native psyche, the source of their cultural strength, as well as their source of nourishment. Native values and rural organization in the NWT strengthen the traditional dependence of its population on hunting, fishing and trapping. Continuing tension between the developers and non-developers and between the wage economy and the native economy is almost certain.

These historical, geographic, environmental and economic factors in the NWT have been extensively documented by others, as have been the cultural and anthropological characteristics of its residents. But the effect of these factors on governmental structures and functions in the NWT has received little attention.

The Special Representative examined features of other political systems that might have been considered relevant to the NWT, such as Home Rule in Greenland, the evolution and operation of government in Alaska, the Yukon, Australia, New Zealand and Switzerland. Canadian constitutional history and contemporary political developments, such as the James Bay and Northern Quebec Agreement, were also studied. However, upon closer examination, it was felt that the unique features of the NWT limited useful comparison with experiences elsewhere.

The conclusions in this Report reflect the unique characteristics of the NWT. They argue for an organization of government within the NWT that will, in some respects, appear quite different from that in southern Canada. In particular, they suggest a much greater flexibility in the structures and authorities at the local and regional levels. As long as the NWT is a territory of the federal government and the NWT Act an act of the federal Parliament, it may be that the latitude for political distinctiveness of the NWT is even greater than if it were a province.

The conclusions are also predicated on certain fundamental principles of government. First, government can be most responsive when decisions are taken and responsibility is exercised by those most directly affected by these decisions. For this reason, particular emphasis is placed in this Report on the local or community level of government. Second, at every level of government in the NWT, political authority should be commensurate with the capacity to exercise and to be accountable for the exercise of that authority. Third, government should be representative of and accountable to the people of the NWT. This implies not only that the people should be able to elect their governors, but also that the values of that society should be reflected in its public institutions. Fourth, residents of the

NWT should enjoy to the greatest extent possible, political rights and privileges equal to those enjoyed by other Canadians. However, responsible government and provincial status are acquired not through endowment, but through negotiation with the federal government and ultimately, through approval by Parliament. Finally, the residents of the NWT should assume the major responsibility for determining the direction of political change in the NWT and the constitutional framework within which that change should proceed. Government will only work satisfactorily in the long term if it is understood and accepted by those to be governed.

In the light of these principles, the conclusions in this Report reflect an assessment of possible changes to the current state of government in the NWT. The Special Representative believes that government should be evolutionary and that it should develop at a pace that permits the people of the NWT to understand and accept the changes. The basic constitutional framework in the NWT is very much in question. Moreover, while there have been many proposals for constitutional change, there has not been a widely accepted forum in the NWT, generated by the residents themselves, where these proposals have been publicly debated. Although the conclusions of this Report aim at bringing the political rights and privileges of residents of the NWT closer to those of other Canadians and at making government in the NWT more responsive and accountable to the people, they are not intended to define the constitutional direction northerners must follow. That decision should be made primarily by the residents of the NWT.

This Report does not set out either the timing or the conditions for achieving provincial status in the NWT. Nor do the conclusions prescribe a provincial model or any other precise model of government. They are intended, instead, to describe the conditions for better government in the NWT within the inherent constraints faced by the Territories, namely the size of its population in relation to its land mass, its fiscal dependency, its strategic location and its economic and environmental circumstances. Whatever form the NWT may take—whether it remains a territory, is divided into two or more territories, or becomes a province—its autonomy will continue to be limited by these factors.

These real limitations to political autonomy are not yet fully appreciated in the NWT. Expectations have been generated and successive federal and territorial governments have found it difficult to convey the ramifications of these constraints, particularly fiscal restraints. The challenge facing residents and governments in the NWT will be to adjust their expectations to the realities. It will be to maintain the distinctiveness of the NWT, while achieving the desired level of autonomy, notwithstanding that the major determinants of politics in the North will remain outside their authority.

The major issues of government in the NWT are extremely complex. These issues are examined in separate chapters. However, the conclusions of the Special Representative should be read as a whole, for like the issues, they are interrelated. For example, the conclusions on the native claims process are reinforced by the increased authority of community government and regionalism; transfers and delegation of federal responsibilities to the territorial government are dependent on the assumption of authority by the elected Executive and on the development of legislative checks on the Executive; and an increase in territorial authority is conditional upon an increase in community authority.

The conclusions brought together here should in many cases be considered as long-term objectives. The Special Representative hopes that they will be examined by the residents of the NWT and that they will prove useful to those in the NWT and in the federal government responsible for the discharge of effective government.

## 2 CONSTITUTIONAL FRAMEWORK

During the last twenty years, division of the NWT has been proposed and argued for in different ways. In 1979 three proposals were made for dividing the NWT into two or more autonomous political units (Map 2). These proposals have been submitted to the federal government by the NWT native claims leadership: the Inuit Tapirisat of Canada, the Dene Nation, and the Metis Association of the NWT. Collectively examined, the proposals give rise to the following fundamental questions: where should the new political boundaries be drawn; what are to be the processes, structures and powers of the alternative governments recommended through division; what should be the process for reconciling the conflicting boundaries proposed, for testing NWT public acceptability of the alternative governments, and for public consideration of the consequences and the alternatives; and, how should the real federal constraints on NWT political autonomy be made known and the implications of these constraints become accepted in the NWT?

Historically, some northerners as well as previous provincial premiers have argued for the absorption of the NWT into the southern provinces. Others in the NWT and federal government have proposed division into two territories with continued direct management by the federal government of the eastern part and provincial status in the west. In January 1960, when the NWT Council debated the question of division, the elected members were all from western constituencies, the eastern Arctic having no elected representation. The western part of the NWT was then, as now, thought to be politically, economically and socially different from the east. A larger population, an economy based upon mineral and hydrocarbon exploration and development, a more advanced transportation and communication system and more developed social service infrastructure were examples cited to differentiate the more developed west from the east. In addition, elected members argued that the existing territory was simply too large to administer and that varying social, economic and geographic conditions made impossible effective territorial legislation, policy or responsive administration. This basis for division, which argues the difficulties of administrative efficiency, was largely appealing to the federal government, charged with the major responsibility for administration of the NWT.

The then NWT Council proposed division and looked at the southern provinces as models for further and more rapid development of responsible government in a new, western territory. Federal legislation to create two separate territories was brought forward in 1963, and died on the order paper with the dissolution of the federal Parliament. The question of division next appeared in the terms of reference for the Report of the Advisory Commission on the Development of Government in the Northwest Territories (the Carrothers Report). During his two-year inquiry, Dean Carrothers encountered pressure for division of the NWT



largely from the west. However, as Carrothers described it then, the case for division appeared to have been made as a means to achieve a particular end. The belief was that, although Ottawa would not consider political advancement for the whole of the NWT, it might be persuaded to do so for a smaller area which comprised an articulate, politically discontented, white population. However, Dean Carrothers recommended against division for a number of reasons: the aspirations of the non-native residents of the NWT for greater self-government could be achieved as fully without division; division would be prejudicial to the political development and interests of the native peoples of the NWT; and it would effectively mean a non-native unit in the west. He suggested that the question be considered in the future at a time when the native, as well as the non-native, populations of the NWT could consider division on the basis of a shared political consciousness and a more equal political footing.

While the historic arguments persist to some extent, the contemporary issue of division is now less the argument of the territorial government and Council, or the federal objective of administrative efficiency but has emerged in a new definition, through the native claims proposals. With respect to these proposals for division, two important factors should be noted at the outset.

First, the definition of new political boundaries and the suggested separation into independent political states is accompanied by proposals for alternative systems of government. It is clear that the political boundaries proposed to divide the NWT result from the geographically defined jurisdictions of these alternative governments. The negotiation of division is therefore negotiation of alternative governments. The recommendation is not for division under whatever circumstances, but rather division under the terms of the governments proposed.

Second, none of these proposals for alternative governments in the NWT is based on ethnicity. In each case, the proposal addresses public government, universal franchise, representativeness and accountability based on residency within the proposed state. There is little provision for publicly guaranteed special rights on an ethnic basis and no provision for collective ethnic representation through the public institutions of government.

The invitation issued by the federal government to the native peoples in the NWT to propose political and constitutional changes was based on their status as territorial residents and as majority peoples in their homeland. The Inuit, Inuvialuit, Dene and Metis responded to this invitation, either through the claims process, as discussed in chapter 3, or the constitutional process, or both. And as recommendations for the reorganization of public government in the NWT, their proposals have been and should be considered.

The Dene Nation's submission of March 1979, entitled "Recognition of the Dene Nation Through Dene Government," proposed a reorganization of public government and the definition of institutions and structures of government based on a new territory, with political boundaries circumscribing the Mackenzie Valley and Delta. The Dene propose transfer of provincial-type jurisdictions to a Dene Parliament, a parliament to which may be elected by universal franchise native or non-native residents of this territory. While the Dene proposal suggests that a Dene nation can only be maintained through a reorganization of public government, the intent of this reorganization is not to make it exclusive to the Dene. Its

intent is to achieve more equitable representation in the institutions of government and more direct political accountability to the people in the territory defined. Through more direct participation of the Dene in these new institutions, and through the transfer of authority for land, resources, and other provincial-type responsibilities, the Dene postulate that the continuation of their nation will be assured.

The Metis Association of the NWT, in its claims proposal submitted in August 1977, proposed an alternative boundary for division of the NWT. The Metis recommended a northern extension of the provincial boundary between Saskatchewan and Manitoba. They recommended establishment of a Senate of the Mackenzie Corridor, made up of delegates from the elected community councils in the Mackenzie. The Senate would be responsible for decisions on proposed government or industry exploration and exploitation of aboriginal lands.

The latest Inuit Tapirisat of Canada (ITC) proposal, dated September 7, 1979 and entitled "Political Development in Nunavut," recommends that a province of Nunavut be created and developed through three stages. The geopolitical boundary proposed corresponds generally to the treeline, including the western Arctic region and the Mackenzie Delta. A united NWT, and the possibility that the structures of local and regional government can be made satisfactory to the peoples of the eastern, central and western Arctic, are argued against by the ITC. The cultural, linguistic and geographic diversity of the NWT is not believed to have been accommodated by the territorial government in the past, nor is it believed possible that any one government can accommodate such different interests in the future. Certainly, territorial decisions have not been perceived as responsive to the people of the east, nor has participation in the institutions of territorial government been seen as effective.

Within Nunavut, the Committee for Original Peoples Entitlement (COPE) has proposed a political boundary circumscribing the western Arctic region, in an area to be called the Western Arctic Regional Municipality (WARM). As a distinct regional government, WARM is intended to form part of the Nunavut province, or until that comes about, a regionally-based political and administrative level of government within the NWT.

Other less formal suggestions and opinions have been expressed on division. Some residents of the western part of the NWT continue to subscribe to the historic argument of division as a means to an end, the end being provincial status for the west. The socio-economic and political factors, including the political sophistication and economic development of the more advanced west, are thought still to contribute to the desired political objective of a separate western province. Others of the eastern Arctic have proposed division in response to what might be described as a feeling of legislative and administrative isolation from Yellowknife and the lack of effective and representative government for the east. In recent years, a growing political awareness in the eastern Arctic has reinforced this desire for division among a number of both native and non-native residents, community councils, administrators of the territorial and federal governments and public interest groups.

The NWT Council, in its March 1979 document, *Position of the Legislative Assembly on Constitutional Development in the Northwest Territories*, based

its constitutional proposals on a united NWT. The then Council suggested that the prospects for achieving a successful negotiation with the federal government to achieve provincial status were dependent on the NWT remaining undivided. Implicit in the argument of the last Council and the supporters of unity in the NWT is the belief that an appropriate balance of power, not only between the NWT and the federal government, but also in the federal-provincial forum, is less likely if the NWT divides. However, the Council proposed that once provincial status has been achieved in the NWT, the question of division could be subsequently considered and put to a referendum.

There are many common objectives in the arguments for division and in the principles underlying the recommendations for alternative governments. They include: improved representation of the people of the NWT, native and non-native, in government at every level; greater direct accountability of elected officials for decisions taken; the transfer of power from senior governments, federal and territorial, to bring it closer to the people affected by these decisions; decentralization of provincial-type responsibilities from the federal government to the NWT; recognition by the federal government and southern Canada of the uniqueness of the NWT; the prevailing cultural and socio-economic values and conditions peculiar to the NWT; and the distinction between permanent northern residents and transients, and the importance of the former's representation in government.

Explicit in the division arguments is the belief that government in the NWT is not responding to the needs of the people. Governmental structures are not seen to be representative of the peoples they are intended to serve, and, it is thought, the processes of government represent neither the values of northern society, nor the basic substance of politics most affecting its citizens. Representation and the best exercise of political authority are thought to be better assured through new governments which are sovereign and politically separate from one another.

In every case the objective of those espousing division is to achieve more effective government. Historically, argument for the division of the western NWT was motivated by the prospects of better government, that is, that more responsible government could be achieved through a self-governing political unit divided from the east. The native leadership in the NWT today believes that good government, that is, government fashioned after the values of the native people, is only attainable through separation into several parts.

The proponents for retaining the NWT as a single political unit have in recent years not always argued the case of good government in the NWT. They have rather argued that the creation of two or more independent political states in a territory one-third the land mass of Canada, with a total population of 46,500, will result in still greater dependence on southern Canada. Fiscal dependence on the federal Parliament to support the incremental administrative and political costs will increase. Immigration of southern experts to administer provincial-type jurisdictions will enlarge the size of the transient population. Bureaucracy and government structures will expand in a territory where administration is already omnipresent. They argue that the linguistic, cultural and geographic pluralism of the NWT can be accommodated through decentralization and devolution of authority by the federal and territorial governments.

The undesirability of division because of economic vulnerability, a small population base, or fiscal and administrative dependency is not a convincing argument to the current proponents of division whose aim is to achieve better government. Only a thorough examination and testing of the potential for good government in a united NWT will settle the question.

A reasoned decision on division requires examination of the conflicting political boundaries proposed, reconciliation among their respective proponents, and the understanding and agreement of those to be governed within such boundaries as are finally agreed upon. Thus, the processes, structures and functions of the proposed governments require elaboration, understanding and acceptance by all peoples in the Territories.

Since the legislative and administrative authorities sought, particularly those with respect to land and resources, are currently within federal jurisdiction, a federal undertaking to transfer these and other provincial-type jurisdictions would presumably be required before the proponents of division could be assured that separation would, in fact, result in better government through greater independence.

The federal concern over division is threefold. First, as long as the NWT, and the government of one or any of its parts, is financially dependent on the federal Parliament, any increase in the fiscal burden will be subject to parliamentary scrutiny. As is described in chapter 6, the present financial arrangements for local and territorial government in the NWT reflect the limited tax base and the extraordinary costs in the NWT compared to the rest of Canada. No cost estimates have yet been made for the alternative forms of government proposed on the basis of division, and indeed it would be impossible to do so at this point in their conceptualization. However, new governments in the NWT calling for federal public funding will require parliamentary ratification. To ensure fiscal responsibility and a correspondence between expectations and ultimate feasibility during the creation of these proposed alternative governments, development should not proceed in the abstract or in the ignorance of federal fiscal constraints. Second, the federal government and Parliament, together with the provinces, would presumably want to see a distribution of powers not exceeding those held by provinces, and consistent with the constitution of Canada and the contemporary conventions of federalism. Third, in the negotiation of the transfer of powers there is a continuing federal interest in ensuring that the legislative and executive functions will be carried out in a responsible manner by the new governments.

The timing of federal transfers would depend upon the progress made by the new governments in developing a capacity to assume responsibilities for management of the environment, health and social services, justice, public finance and so forth.

## **Conclusions**

- 2.1. The objective of strengthened representative and responsible government in the NWT is common to each proposal considered above, and is strongly

supported in this Report. However, the alternatives in structures of government and the discrepancies in the boundaries proposed lead to the following questions: which alternatives will most effectively strengthen government and best serve the interests of the people within the NWT; which will give greater political autonomy, greater strength to resist the gravitational forces of southern Canada, and maintain equitable representation of the NWT or its parts in the federal-provincial balance of power? To maintain the level of political autonomy desired in the NWT, any eventual province or provinces must themselves have the internal political and economic infrastructure for endurance. The risk otherwise is substitution of the current dependency, federal or territorial, for another dependency, in the form of increased federal, provincial, international or other external accountability.

There may be little meaning to the concept of "northerner" as shared by all residents of the NWT. The present political boundaries may be an historic accident. The nations of distinct peoples that make up the NWT may reflect greater differences than they do similarities. The creation of separate states corresponding to the realities of pluralism in the NWT may appear easier than the working out of solutions within a single political system. The disadvantages of existing political and economic dependency may appear to be greater than the potential unknown dependencies. The infrastructure necessary for political survival may appear to be less important than the determination of political boundaries. And the risks in unity of the NWT appear to the native peoples to be greatest to themselves. For, while they are minority peoples in the rest of Canada, opportunities exist for them to enjoy majority government in those areas of the NWT where they overwhelmingly predominate.

The conclusion advanced here is that the longer-term external consequences of division have not yet been adequately considered. The proponents of division have not examined as thoroughly the constraints on autonomy in the realpolitik of federal-provincial relations as they have the weaknesses of current government in the NWT. On the other hand, the proponents of unity in the NWT have not considered as seriously the strengthening of the internal political infrastructure and conditions for better government within the NWT as they have the conditions for progress towards provincial status. The consequences and conditions of division have not been fully examined, the education of the peoples and communities of the NWT on the alternative governments proposed has not yet been undertaken, nor has the testing of their public acceptability in the NWT. Chapter 7 suggests means by which these fundamental questions might be examined and agreement on division ultimately tested.

The conclusions that follow in this Report will support a united NWT. They argue for changes in the federal, territorial and community processes and structures of government, designed to promote increased representation, accountability and responsiveness of government throughout the NWT. Major transfers of authority to the community order of government, autonomy in local political procedures, community-based choice on language use and delegation to regional structures, and regional decentraliza-

tion of territorial administration are advanced as reforms to the present institutions. What emerges is an alternative to separate political states in the NWT. This Report argues that, for the wisest decision on division or unity ultimately to obtain, the conditions and consequences should be widely understood and accepted in the NWT. Evolution and reform of the existing structures of government should permit the residents and their elected leaders to be more informed on the real, as opposed to the perceived, obstacles posed by a single territorial political system, as well as the possible advantages of such a system, before a recommendation to divide is made to Parliament.

The task before the Government and Council of the NWT and for the many supporters of unity is how best to reflect and represent the cultural, political, geographic and economic diversity of the NWT and its population, and how to enable this diversity to co-exist and express itself within a single constitutional framework. The task for the proponents of division is to examine and to test the alternatives before assuming that new political boundaries will necessarily bring about greater political autonomy. The task for the federal government is to explain clearly in the NWT the real federal constraints on transfer and delegation of authority. It must also facilitate discussion and permit a mechanism for northern resolution of these questions before any decision is made federally.

### **3 NATIVE PEOPLES AND CLAIMS IN THE NORTHWEST TERRITORIES**

The native peoples in the NWT can be thought of as Canadians having "special" interests. They enjoy a social, cultural and political uniqueness, which derives from their aboriginal ancestry and homeland in the NWT, their cultural and economic traditions, their relationship to the natural environment and their political values. While their aboriginal ancestry has no agreed-upon legal consequences in Canada, by tradition it carries a moral and ethical dimension of considerable weight.

The relationship of native peoples to the land and its wildlife resources is not only economic but also mystical. Their cultural organization is based on the family unit rather than on organizational hierarchies and they traditionally have been collectivist rather than individualist. They are inclined to the sharing of property and material goods rather than to individual ownership, and to oral rather than to written expression. Their political values may be expressed in terms of consensus rather than recorded majority vote; a preference for delegates rather than representatives; decentralization rather than centralization; a sharing of information and knowledge; and the rule of man rather than the rule of law.

The social, cultural and political traditions and values of native peoples in the NWT have been evolving continually in the face of changing influences and external exigencies, which, as with their counterparts in southern Canada, has required adaptation and has, at times, threatened assimilation. Unique to the NWT, however, is the fact that the native peoples still comprise the majority of the population; they are distributed into relatively homogeneous population groups, and have retained a cultural strength. This last point is eloquently demonstrated, for example, in the survival of six major native languages: Dogrib, Slavey, Loucheux, Chipewyan, Cree and Inuktitut.

The Canadian government has historically assumed a responsibility for the protection of the native peoples, although the form of this protection has changed over time. While there are few direct legal consequences of Subsection 91(24) of the British North America (BNA) Act in the NWT, it is because of this article that the federal government is seen to have a special or "trustee" relationship with the native peoples. Compared to southern Canada, the Indian Act is largely inoperative in the NWT because its focus is upon the reserve system and there is only one small reserve in the NWT, at Hay River. Nonetheless, the BNA Act serves as an instrument for the federal government in dealing directly with status Indians and, by extension, with Inuit residents of the NWT.

The Government of the Northwest Territories (GNWT) makes special provision for the native peoples through a variety of instruments. The NWT Act contains in subsection 14(3) provisions precluding the Commissioner from passing laws that restrict or prohibit the traditional hunting rights of Indians and Inuit, and in March

1978, the NWT Council passed Council motion 12-64, which recommended that the Metis be accorded similar protection.

Territorial ordinances extend privileges to native peoples in such areas as hunting and trapping, small business loans and education. Programs for status Indians and Inuit in the NWT are administered by the GNWT under agreement with the federal government. However, the native claims content and process, as a responsibility of the Minister of Indian Affairs and Northern Development and of the Office of Native Claims within his department, is currently the most important element of the special federal relationship with the native peoples in the NWT. The claims process has effectively given recognition to four main native groups in the NWT: the Dene, Metis, Inuit and Inuvialuit.

### **Federal Claims Policy**

Federal government policy with respect to comprehensive land claims in the early 1970s was drawn up to respond to the obligations and needs of native peoples who had not yet entered into a treaty relationship and were faced with the loss of traditional use and occupancy of their lands. The federal government's response to the land claims issue grew out of its historical and constitutional responsibility for the native peoples, federal ownership of resources in the NWT, particularly hydrocarbons, and the need to proceed with exploration and development of these resources in the national interest. A federal government policy paper in 1973 established the broad lines of the federal approach. The policy statement suggested that, in exchange for native interests arising out of traditional use and occupancy of land, native peoples would be compensated by a combination of cash, hunting, fishing and trapping privileges, resource revenue sharing, participation opportunities in local and regional government, economic opportunities and fee simple absolute ownership of certain lands. Specification was added to this concept by the 1975 James Bay and Northern Quebec Agreement, although the terms of this agreement were declared by the federal government to be indicative and not an absolute precedent. The federal government clearly intended land claims settlement to preclude the possibility of future claims based once again upon historical use and occupancy.

In 1975, and again in August 1977, the federal government expressed in policy statements on political development in the NWT that structures and functions of government were not negotiable as part of the land claims. Thus, while supporting the desirability of increased participation and opportunities through public government, such support was not intended to be the object of claims negotiation with the native peoples. Government would not be negotiated on the basis of collective political rights, nor would public government based on ethnicity be acceptable to the federal government, Parliament, or to the Canadian people in general.

### **Impact of Claims in the NWT**

The provisions of the claims and the process and timing of their resolution and settlement are of prime importance for the constitutional and political future of the NWT. Their significance in the NWT resides partly in the number of people



directly affected by them. In the Territories as a whole, approximately 60 percent of the population will be directly affected by native claims settlements. In the eastern and central Arctic, more than 80 percent of the population will be direct beneficiaries of a claims settlement. The claims provisions will substantially affect not only these large native collectivities, but also the development of public government for all residents of the NWT, native and non-native.

Maps 3 and 5 and Appendix H indicate the distribution of population in the NWT according to settlements, hamlets, villages, towns and the city of Yellowknife. The non-native population of the NWT is concentrated in the city of Yellowknife and in the towns of Hay River, Inuvik, Fort Smith and Pine Point. Approximately 80 percent of the native population of the NWT live in the settlements, hamlets and villages.

These predominantly native communities have historically been, and are currently, public communities. They are not exclusively native in law, nor is the native population within them always homogeneous. In addition to the native and non-native mix within these communities, the native population is itself frequently a mix of Dene and Metis. In Aklavik the native population is a mix of Inuvialuit, Dene and Metis.

The numbers of potential beneficiaries and the mix of beneficiaries within the NWT and within many NWT communities again suggest a major impact on territorial and local governments. The amounts and location of land and land-use privileges subject to claims agreements between the federal government and native claimants, for example, will substantially affect easements, servitudes, rights-of-way and other aspects of local government and GNWT planning, management structures, and authorities related to land use. New concentrations of economic authority and private administrative infrastructure, such as investment and development corporations, will affect government economic planning, public demand on the service industry, hard services, transportation and communication. Land privately acquired by the native collectivities and located near or around communities will affect community expansion opportunities and the function of local government in the management of and access to lands and wildlife resources within the vicinity of the communities. Finally, inasmuch as the claims are being discussed and are likely to be settled on a regional basis, regionalism in the NWT will be reinforced. This will undoubtedly require the GNWT to rationalize further its regional administrative structures.

### **NWT Claims by the Native Peoples**

The importance of claims to the native peoples in the NWT lies in the political, economic and cultural benefits that may thereby be achieved. Undeniably, native peoples in the NWT have greater confidence in their special relationship with the federal government than they have in local and territorial government.

However, neither the history and experience of native peoples in Canada, a history of exclusion and separation on reserves, nor their dependent relationship with the federal government has been marked by success. Indeed, this dependency factor, in the provinces as in the NWT, has provoked the desire for

self-government, for sufficient resources and a land base, for participation in the decision-making processes of government, and for autonomy within the Canadian constitutional framework.

The native groups laying claims with the federal government are motivated in part by their collective mistrust of public government institutions and their perception of government's historic failure in Canada to advance native interests or to accommodate native cultural values in its processes and decisions. In the NWT, this mistrust has been demonstrated by some native leaders in the lack of formal recognition and participation in the territorial government. This mistrust of government is fundamental in that Canada's native peoples have a traditional and cultural affinity for collective action and collective participation. Yet the traditions and institutions of government in Canada—including those in the NWT—are based upon individualism. Thus, parliaments are legitimate in Canada and the Canadian provinces because individual Canadian citizens are represented therein through the principle of one-man-one-vote. Institutions based upon the concept of the individual, however, appear less legitimate to peoples who believe in the concept of the collectivity. Such peoples accept less readily one person speaking for them, representing their interests, and deciding for them, than they accept the delegate, who communicates only the collective wishes of the group. The concept of popular sovereignty and use of the instruments of direct democracy are more natural to the native political value system than is representative government based, as it is, on individual rights and privileges. Claims settlements are expected by native peoples to offer an alternative to parliamentary-style government through the assurance of an independent economic and land base. More importantly, the claims settlements are expected to guarantee participation in governmental decision-making on a collective basis, and confirm constitutional recognition of these collectivities equal to that enjoyed by the provinces. As control of their collective destinies cannot be guaranteed through ownership of land alone, but must also include control of the decision-making processes, the claims have become inseparable from the political or constitutional content and process.

The substance of the collective benefits, privileges and rights sought by the claimants varies considerably from group to group although, in a general way, they may be summarized under the headings of land ownership, control of resources, and control of lifestyle.

The native leadership in the NWT asserts historic and current sovereignty over the lands and resources in the NWT. In the native perspective, therefore, to negotiate these matters is to discuss the disposition, control and management of lands and resources that have always belonged to native peoples. Therefore, the benefits and rights that are being sought by the native leadership from the federal government are sought in fair exchange for the ownership and usufruct which the claimants are giving up, and which they see as privileges of ownership and use extended by them to the federal government. The surface and subsurface land rights claimed under fee simple absolute ownership usually refer to lands which have been traditionally used and occupied and which the native leadership believes must not be given up to the federal government under any circumstances.

In the case of the Committee for Original Peoples Entitlement (COPE), which represents the Inuvialuit and has made the most detailed of the claims proposals presented so far, some preferred lands have been traded off against others with similar potential to support life. Further, limited ownership of land and surface resources has been accepted under specified conditions, which accord land use privileges to public government. A third category of land has been identified which specifies terms of special access and wildlife privileges for the Inuvialuit. Confirmation of native authority is sought over renewable resources and the traditional economy: hunting, fishing, trapping, and husbanding of forests and fields. On lands that will continue to be owned exclusively by the native collectively, exclusive managerial control would apply. In other areas, the extent of exclusive managerial control would diminish proportionately with the degree of ownership. Varying arrangements for revenue and royalty sharing and financial compensation are sought, dependent on the amounts and categories of land, and on the usufructuary privileges negotiated.

Native organizations also seek financial compensation for the loss of traditional ways of life and land use. Development and protection of their languages and cultures are sought through management of their own cultural affairs and through supplementation of government programs with privately-sponsored measures to meet language and cultural objectives. Since the native intellectual tradition has not included the same sharp break between culture and politics that western society has experienced, control of lifestyle, for the native peoples, translates easily into control of governmental decision-making.

The following summary highlights the benefits, privileges, and rights sought by the Dene Nation, the Metis Association of the NWT, Inuit Tapirisat of Canada and COPE. The positions described are the latest official positions of the respective native groups. As the positions are still being developed, what follows should not be considered final.

The Dene Nation, in documents officially approved by its National Assembly during 1976 and 1977, proposed that the existing NWT be divided into three separate territories. Dene lands would include the 400,000 square miles lying below the treeline, with the exception of a territory reserved for non-native people residing in and around the Great Slave Lake municipalities of Yellowknife, Hay River, Fort Smith and Pine Point.

The Dene Nation called for the establishment of new legislative and administrative institutions based upon the decision-making traditions, institutions and practices of the majority of the new territory's population, although all residents would be guaranteed political rights to vote and hold office. A "Metro," or United Nations, model of government was proposed to replace the present NWT Council, a new structure that would be developed collectively by the three new territories to deal with matters of common internal and external concern.

In March 1979, the Dene Nation Executive released a discussion paper that further asserted the Dene position on the principle of native self-determination in the NWT. Northern native peoples were said never to have abrogated their right to self-determination, including their right to establish systems of government based upon traditional native institutions and decision-making practices. The Dene proposed that the basis of government should be the recognition of

aboriginal nations and collective rights to self-determination in the North and suggested that one, two or more territories be a matter of negotiation. A new form of government in the "Dene Homeland" was to replace the GNWT, through a universally elected Dene Parliament.

A division of powers between the Dene and the federal government was proposed, including provincial-type authorities, concurrent federal-provincial powers, BNA Act federal powers, and freedoms to be enjoyed by the Dene as aboriginals.

The Metis Association of the NWT, in its last claims submission dated July 1977, proposed the division of the NWT into two territories along the Manitoba-Saskatchewan meridian, and a number of legislative and administrative initiatives for land and resource management in these territories. The initiatives proposed for the western territory included the establishment of a new federal department of the Northwest Territories to replace the existing federal departments and programs directly or indirectly responsible for social, political and economic development in the NWT. At the local level, community councils would be organized into settlements of the Mackenzie Corridor, each sending one delegate to a Senate of the Mackenzie Corridor responsible for decisions on development proposed for aboriginal lands, and assisted in this process by an administrative Native Land Use Regulatory Board. The Metis Association left a number of executive and managerial responsibilities to the GNWT and the federal government. However, to protect native rights with respect to lands and resources, the proposed Senate was assigned the power to exercise a veto on territorial and federal government decisions.

Since its claims submission in 1977, the Metis Association has turned its attention to the elaboration of proposals for economic development in the Mackenzie Valley, the consideration of political reform, particularly at the community level, and the reform of existing territorial institutions. Difficulties in reconciling the political and ideological differences on claims between the Metis and Dene leadership in the Mackenzie Valley during the last two years have prompted the Metis to take the position that development of a claims position is no longer the first objective of their association.

The Inuit Tapirisat of Canada (ITC), in 1976, and most recently at the Igloodik meeting in September 1979, have restated their right to self-determination. They maintain that this right requires a division of the NWT. The Inuit have designated Nunavut as a new territory north of the treeline, within which an Inuit majority would determine the structures and processes of government. While representation and participation in the Nunavut government would be non-discriminatory, the institutions and processes of government would be created by the Inuit majority. The Inuit envision Nunavut acquiring full provincial status over a period of 10 to 15 years. In the interim, a "Planning Regime" would determine land use and resource development, in response to proposals by the Nunavut communities and Inuit corporations. These corporations would acquire financial compensation from the federal government, as well as ownership, control, and management of traditional lands and waters within Nunavut.

On October 31, 1978, an Agreement-in-Principle was concluded between the federal government and COPE, on behalf of the Inuvialuit of the western Arctic.

By the terms of this agreement, the Inuvialuit were to receive financial compensation for the loss of their traditional way of life, as well as title to three different categories of land: land in fee simple absolute and adjacent to five western Arctic communities; land exclusive of sub-surface resources but inclusive of the right to negotiate "participation agreements" with developers of those resources; and land where Inuvialuit interests were recognized and special privileges accorded. The financial compensation, lands and resources were to be administered by the Inuvialuit through their own private corporations established for that purpose, and through land use and wildlife management committees. These committees were to link the responsibilities of public government with those of the Inuvialuit. To support the economic and cultural aspirations of the Inuvialuit, various governmental commitments were declared and a social development program was detailed. Finally, the agreement stated in principle the Inuvialuit interest in government in the Western Arctic Region, and in the processes and structures of government responding to Inuvialuit traditions. The agreement-in-principle suggested that Inuvialuit rights could be assured through a combination of land and financial privileges and by regional government.

In recent months, COPE and the GNWT have held discussions on the potential achievement of COPE's political objectives through reform of government in the western Arctic, greater decentralization and devolution of authority to the region, and rationalization and linkages between the private agencies and functions of the claims settlements and those of public government. The discussions between COPE and the GNWT are a hopeful beginning in an environment where considerable irritation on all sides has attended the subject of native claims.

Few non-native northerners have a clear idea of the native peoples' objectives or the likely outcome of the claims negotiations. The claimant groups themselves feel threatened by each other in their respective negotiations with the federal government. The objectives of some groups place them in conflict with others, with the continued existence of the GNWT, and in some cases with the constitutionally established federal powers. The GNWT and Council are perceived as extensions of the federal government, and as such their advice is rarely sought by native groups. The more moderate claims demands and reforms proposed to government are unhappily not distinguished from extremist positions and progress in both claims resolution and constitutional reform is consequently stalemated. Indeed, the moderate native groups seem singularly in jeopardy, both with the federal government, which is reluctant to consummate claims agreements with the more militant claimants, and with their own constituents, who are frustrated by protracted and unproductive claims discussions.

The current difficulties between the associations and leaderships of the Dene and Metis arise out of the changeability and fluidity of federal and native positions on claims content and process. Native and non-native confusion as to the purpose of claims is exacerbated by disagreement among the Dene and Metis, who live side by side in the communities lying south of the treeline, in the Mackenzie Valley.

The status Indians of the NWT, as defined by the federal Indian Act, are subject to the provisions of that act, which is administered by the Department of Indian Affairs and Northern Development. While the provisions that relate to reserves are, with the exception of the Hay River Reserve, inoperative in the NWT, there

are band councils and band chiefs in the Mackenzie Valley communities, which represent the status Indian interests and serve only the status Indians as directed by the Indian Act. Apart from the federal definition of status Indian, Indian peoples of the Mackenzie communities, including status, non-status, and half-breed or Metis, are not distinguished in law or administrative practice, either locally or territorially. Distinctions between the Dene and Metis derive from two sources: first, historic tribal affiliations, historic inter-tribal conflicts, and the still-widespread use of distinct tribal languages; and, second, the current political division of the two native associations, the Dene Nation and the Metis Association of the NWT. Membership in one or other of these associations is a function of ideological commitment to the land claims proposal and not of bloodline. The result is that, in the heterogeneous Mackenzie Valley communities, division among the Indian peoples is exacerbated by political differences and locally-organized boards and associations representing conflicting ideological interests.

In September 1978, the federal government, through the Minister of Indian Affairs and Northern Development, stated its intention to negotiate one claims agreement with all Indian peoples in the Mackenzie Valley. The then Minister, in a *Communiqué* dated September 27, 1978, explained the government position as follows:

A single final settlement is needed because all the native people in the Valley, whether they be Indians, Metis or non-status Indians, live in the same communities, use the same land and the same resources, and in many cases share common family ties. A jointly negotiated settlement would recognize the historical fact of shared land use and occupancy in the Valley, and would strengthen the entire native community residing there. Of equal importance, joint negotiations would allow flexibility for regional needs to be accommodated in a final settlement.

The federal negotiating position was rejected by the Dene Nation leadership, and negotiations between the Dene, the Metis and the federal government have not been resumed. While the Metis and Dene leaderships have since unsuccessfully struggled with an organizational reconciliation, the ideological schism has grown regionally and among the Indian peoples in the Mackenzie Valley communities.

### Claims Negotiation

The process and representation of government interests in claims negotiations have also produced aggravations and disagreement among all the parties in the NWT. Since 1973 the process for negotiation of claims has involved, on the one side, the native claimants through their organizations established for this purpose with the help of the federal government, and on the other side, the federal government, which has been represented through the Office of Native Claims under the direction of the Minister of Indian Affairs and Northern Development. The federal Minister represents in this process the interests of federal departments and agencies, the interests of the GNWT and the NWT as a whole, as well as the "special" interests of the native peoples, as derived from the BNA Act and in federal policy. According to the terms of a memorandum of agreement, the GNWT has participated from time to time in the claims discussions. However, its participation has been limited because of the opposition of the native associations, and the concern of the federal negotiators that the introduction of a third

party would complicate and slow negotiations. Federal reluctance to include the GNWT in the negotiations is also explained by the fact that in large part the claims deal with existing federal jurisdictions, and that the GNWT has been unable to persuade native peoples of its commitment either to native claims settlements or to native interests as a whole.

To sum up the status of the claims in the NWT: there is widespread confusion as to their purpose and the basis for negotiations, and there are conflicting perspectives among the native leadership and the native peoples themselves. Nevertheless, settlement of the claims is collectively and individually viewed among the native peoples as the primary issue for government in the NWT, notwithstanding the extremes in interpretation of their content and conditions. Reform and evolution of every aspect of government throughout the NWT calls for clarification of the substance and purpose of claims, for clarification of the meaning of negotiation, and for native and non-native understanding and acceptance of the principles of the claims.

As agreements-in-principle are achieved, their implementation, involving the negotiation of land selection, privileges, economic benefits, and public and private management structures, will be long and protracted. They will require a responsible land selection process that balances the longer-term interests of public government in the NWT, including community government, and the private interests of the native collectivities. The interests of individual native peoples resident in mixed communities and subject to separate claims agreements will require reconciliation. The claims advanced by the native leadership in the NWT will require the education of, and understanding and acceptance by, non-native northerners and by the native peoples themselves if the settlements are to prove workable and enduring. Informal and formal linkages between the public and private land and resource management structures, locally, regionally and territorially, will be required for effective government in the NWT. A continuing direct role of the federal government throughout the claims negotiations and its representation in the resulting claims agencies will need review if the federal government means to increase governmental responsibilities in the NWT.

The goal of native claims should be the protection and promotion of native economic and cultural interests. With regard to native political concerns, the objectives and terms of the agreements with the native peoples, while negotiated collectively, should not be incompatible with the individual interests of both native and non-native peoples in the evolution of public government. The implementation of claims agreements and the development of more responsible government in the NWT can be expected to require time and difficult negotiation. Given their inter-relationship, and the shared interest among the native and non-native peoples in governmental reform, a course of action is necessary that permits progress, simultaneously, on the claims and in constitutional change.



## Conclusions

A three-part approach to meeting the special needs of native peoples in the NWT is suggested in this Report. These are: native claims; devolution of authority to the base territorial political units or community governments; and extended representation and responsibility in the processes of territorial government and constitutional renewal. The second and third parts are discussed at greater length in chapters 4 and 7 respectively.

- 3.1. As the concept of collectivities and, therefore, of collective rights is extremely important to native peoples, native claims should be understood to detail entitlements that self-selected groups of people can collectively claim from the federal and territorial governments. Because the benefits and privileges constituting collective rights will impose obligations on the federal and territorial governments, they should be clearly defined by the federal government and clarified publicly in the NWT.

The objective of the settlements should be to compensate native collectivities for the loss of their traditional ways of life, land and land use, and to provide them with the economic and cultural strength necessary to participate in territorial and Canadian public life, to maintain the traditional ways of life, or to select a mix of both alternatives.

- 3.2. Two distinct phases and bases for negotiation of the claims are suggested for the NWT: agreements-in-principle, and implementation agreements. Agreements-in-principle should be negotiated first between the claimant groups and the federal government, represented by the proposed federal Minister for Native Peoples, a position described in chapter 7. The NWT Council should, as representing territorial interests, be an active participant in the claims negotiations, but its role at this stage would not be that of negotiator. Agreements-in-principle should be reached as soon as possible, both to safeguard native peoples' interests and to permit progressive constitutional change in the NWT to proceed without prejudicing the rights, benefits or privileges of native collectivities either in appearance or in fact. At the agreement-in-principle stage, mutual intent and accord should be declared and the resulting agreement, signed by the responsible Minister and each claimant group, should form the basis for the implementation agreements. Agreements-in-principle should be consummated with all the claimant groups in the NWT and should be reflected in the NWT Act.

Native claims agreements will require a degree of legal and political protection that reflects the importance and the collective nature of those settlements. This requirement suggests a degree of entrenchment, in that the terms of the agreements would be beyond the ordinary reach of the elected legislature. The collective nature of the claims agreements should be reflected in an amendment formula requiring the consent of the respective native collectivities before any of the terms in the agreements could be altered, in this case, by the federal Parliament. The James Bay and Northern Quebec Agreement is an example of a claims settlement that was entrenched section by section, by means of amendment criteria that



stipulated that changes to provisions within each section could only be made with the consent of the Cree Regional Authority, or the Northern Quebec Inuit Association, or some "interested native party."

- 3.3. Implementation agreements consistent with the spirit and provisions of the agreements-in-principle should be negotiated between the native claimants and the elected member of the NWT Executive Committee responsible for native claims, and accountable to the NWT Council. The proposed federal Minister for Native Peoples should be represented in an ex-officio capacity as guarantor of native interests so as to ensure that the intent of the agreements-in-principle is adhered to. During the implementation negotiations, federal funding of the native groups should continue.

The implementation phase of claims negotiation and settlement will undoubtedly be lengthy if workable and enduring settlements with the native collectivities are to be achieved. Public and private management structures, linkages between public and private institutions and their respective functions, rationalized infrastructure, and public support measures for the native investment and development corporations and cultural programs will be required, to be developed jointly by the GNWT and the native groups. The success of this stage of the claims process will in large part depend on the maintenance by native claimants of confidence in the GNWT and on the extent to which public government can support, rather than compete with, the native collectivities.

Responsibility of the Executive for progress on claims negotiations, and its accountability to the Council and to the public of the NWT, should ensure that the public is more widely informed on and committed to native interests and the claims provisions.

The resulting implementation agreements should be incorporated in NWT legislation, either as implementation agreement ordinances, or as sections to existing ordinances. As in the case of the NWT Act and the agreements-in-principle, the implementation agreements should be entrenched by means of an amendment formula, which requires the agreement of the negotiating parties before any sections can be changed.

- 3.4. For the purpose of the agreements-in-principle, negotiators should basically follow the precedent of the COPE Agreement. Categories of land should be identified with respect to which the degree of native ownership and control may vary.

The agreements would identify amounts and value of Category I land for which native collectivities would obtain fee simple title. Actual title to Category I land would be confirmed by the NWT Council, during the implementation negotiations. Were the initial identification and location of the Category I land to be vetoed by the Territorial Council, the GNWT would have to negotiate land and/or resources of equivalent value, subject to the native peoples' concurrence. On Category II lands, native peoples would acquire the authority to negotiate "participation agreements" with government and private developers of subsurface resources and have full

title to the surface land in every other respect. As in the case of Category I lands, if the Territorial Council, in consultation with community governments and other interest groups, preferred to negotiate for Category II lands other than those identified in the agreements-in-principle, compensation of equal value in the form of cash, alternative land areas, and/or extended title to a reduced area of land would be required. On Category III lands, native peoples would obtain and be guaranteed usufructuary privileges.

The private investment and development corporations established by the native collectivities for the purpose of management of the claims awards should be exempt from income taxation in the first instance on the land, resources or cash constituting the initial claims award. Chapter 6 argues the rationale for subsequent taxation in accordance with the taxing policies of the senior governments.

The agreements-in-principle and subsequent implementation agreements should not restrict these corporations in their investment or development programs. Private cultural, educational or social programs may be developed independently or on a cost-shared basis with government or other private agencies to enrich or supplement public programs and services.

- 3.5. Negotiations between the community governments and the GNWT regional directors, acting on behalf of the proposed Executive member responsible for community government and regional operations described in chapter 4, should proceed at the same time as those on agreements-in-principle. Also discussed in chapter 4 are: the jurisdictions proposed for community government in education, land and renewable resource management, social programming, and local language; the territorial legislative provisions; and authority of communities to delegate their powers to regional structures. These powers are those that the native leaders have sought as collective rights in the claims agreements. They are addressed in this Report through the public institutions of government at the community and regional levels, with respect to which substantial local autonomy will be proposed for those communities where the majority of the native peoples reside.

Because political structures are an important concomitant to the protection provided for native peoples in their claims settlements, a revised NWT Act should recognize the municipal order of government in the Territories. It should also list the minimum authorities that community governments may exercise if they wish. The NWT Council should subsequently define specific authorities in territorial ordinances, but should not be permitted to remove community powers except through recourse to amendment by the federal Parliament.

In the Canadian provinces, municipal governments are created by provincial legislatures, which often combine a general law with specific acts directed at specific communities. The provincial legislatures retain the authority to amend, restrict or cancel local government jurisdictions. In the NWT it is proposed here that an established community order of government, not subject to amendment or removal by the normal NWT legislative

process, be incorporated in the constitution. The Swiss Commission of Experts, which reported upon constitutional revision in 1977, recommended that communes be provided for in the federal constitution of Switzerland in a similar manner. Additionally, though the powers of communes were to be decided upon by cantonal governments, the Commission of Experts recommended that communes have direct access to federal courts should their cantonal autonomy be transgressed.

A revised NWT Act might also include a clause to protect the languages used by indigenous groups in the NWT, and might read as follows:

No law made by any institution of government in the Northwest Territories shall apply or have effect so as to affect adversely the use of the principal indigenous language spoken or otherwise enjoyed by a community government.

- 3.6. Finally, to encourage conventions, policies and ordinances in the NWT that support and confirm the native element, the indigenous nature of the NWT might be established in the preamble of a revised NWT Act. The wording of the preamble should be decided upon by the territorial residents themselves. However, its wording would essentially acknowledge that the NWT was the first and will always be the only real home of the descendants of territorial aboriginal peoples, and might read:

By this enactment it is declared and affirmed that the Northwest Territories shall be constituted so as to make possible a future in common for all the people who live there; who can each and everyone in a spirit of equality, mutual respect and freedom, take just pride in the achievements of the Inuit and the Dene since aboriginal times, of the Metis, of the early settlers who adapted to harsh conditions with the help of indigenous peoples, and of all other Canadian citizens who have helped prepare the Northwest Territories for self-government.

A preamble of this kind would affect the spirit of the act and reflect the distinctly indigenous character of the NWT.

## **4** GOVERNMENT IN THE NORTHWEST TERRITORIES

While opinions differ widely on the form which government should take in the NWT, most residents in the Territories consider the current state of government to be unsatisfactory. For some residents in the communities and the members of the native associations, government in the NWT has expanded too quickly and in the wrong direction; to others, such as members of the last Territorial Council, it has not developed quickly enough; but in either case there is little comfort taken in the status quo.

The fundamental criticism levelled against government in the NWT is that it is neither "by the people" nor "of the people" and, therefore, is unlikely to be "for the people." Both the authority and responsibility for government, it is argued, still rest almost entirely in the hands of the federal government. Despite certain trappings of self-government that have been won by the residents of the North, most northerners feel that they still are being administered from afar as a contemporary colony of Canada.

The sense of frustration, which arises from this inability to control their own affairs, is felt as strongly in the 50 communities spread throughout the 1.3 million square miles as it is in Yellowknife. This frustration underlies the many proposals put forward for constitutional change.

While some northerners may have exaggerated their powerlessness, it is true that government in the NWT at the end of the seventies is a complex amalgam of administrative and political institutions, which tend to hide "real" authority and to diffuse accountability. On the one hand, there is almost a full complement of representative institutions at all levels of government in the NWT. For example, the Territorial Council and the various types of community councils resemble comparable southern political institutions in their composition and some of their authorities. On the other hand, the critical decision-making authority is vested in appointed officials in Yellowknife, such as the Commissioner and Deputy Commissioner, and in the remote offices of the Minister of Indian Affairs and Northern Development in Ottawa.

This disparity between the appearance of responsible government and the reality of administration from afar produces a great deal of confusion in the NWT as to the actual scope of authority and accountability of territorial institutions. The result is that while there is widespread frustration at the inability to control the affairs of the NWT and of the individual communities, elected officials at both levels frequently do not even exercise the authorities they do possess, because they are unaware that they have them. Moreover, since the appearance of authority does not necessarily mean that the institution is a locus of real power, it is difficult for the people to know whom to hold to account for policies and actions. The current state of government in the NWT is thus as confusing as it is

complex. Whether one attributes this to a normal "transitional stage" of government or to a hasty development of territorial institutions, it presents difficult problems for the effective and responsible functioning of government in the North.

### Growth of Government in the NWT

Between 1905 and the mid-1960s the "government" of the Northwest Territories was an arm of the federal government. Although a Territorial Council had been provided for by an amendment in 1905 to the federal NWT Act, it was not until 1951 that provision was made for three elected councillors to join the appointed Council and for at least one session of Council to be held annually in the Northwest Territories.

Despite these and other changes, at the beginning of the 1960s the Territorial Council was, in effect, little more than a departmental committee and the territorial government was merely an administrative branch of the federal government. The position of Commissioner traditionally went with the post of Deputy Minister of Northern Affairs and National Resources; that of Deputy Commissioner with the position of Chief of the Territorial Department of Northern Affairs, and that of one of the appointed councillors with a relevant "northern position" in the public service of Canada.

During the 1960s, the focus of government for the NWT shifted away from straightforward and simple administration by the federal government: first the Commissioner's position and then that of the Deputy Commissioner became full-time; individuals from the private sector were appointed to the Council; the elected membership of Territorial Council was increased in 1966 to include three members from north of the treeline, which put elected members in the majority on the Council. However, it was the Carrothers Report of 1966 that sparked the most dramatic change: in 1967 the Commissioner and the territorial administration moved from Ottawa to Yellowknife and government in the NWT began in earnest.

The Government of the Northwest Territories (GNWT) in 1979 looks very different today from when Dean Carrothers examined it 14 years ago: in 1965-66 the operating and capital budgets of the GNWT were \$9,640,000 and \$4,746,383 respectively; in 1978 the corresponding expenditures were \$189,475,177 and \$56,657,924; in 1965-66 there were 50 territorial public servants, whereas in June 1979 the estimates, including teachers, reached 2,851. Even more impressive is the plethora of government structures. For example, Carrothers recommended that the territorial government establish seven departments. However, there are now 13 departments, seven of which are service departments and six of which are program departments. The GNWT, faced with the task of governing such a large territory, has divided the NWT into four regional administrative districts. It has recently embarked on an extensive program to decentralize some of the authority away from the headquarters in Yellowknife out to the administrative centres in the regional districts. In fact, the government now has 1,068 employees in the regions, fully 48 percent of its total number of employees, not including teachers.

There is now a fully elected 22-member Territorial Council, which is elected by universal suffrage and which is broadly representative of the diverse interests in the Territories. The Council members choose their own Speaker and control their own rules and procedures. Moreover, during the last Council they nominated three of their members to sit on an Executive Committee with the Commissioner, Deputy Commissioner and Assistant Commissioner. Each member of this embryonic "cabinet" is assigned one or more of the 13 departments of the territorial government. The elected members of the Executive Committee appear in Council to introduce and defend "government" legislation and to answer for their departments.

The Northwest Territories Act, and in particular Section 13, defines the legislative jurisdiction of the Territorial Council which, with a few important exceptions, resembles the authorities given to the provinces under Section 92 of the British North America Act. By 1970, the major provincial-type, federally administered programs, such as education, welfare, economic development and municipal affairs, had been to a certain extent transferred to the GNWT. It would appear that the GNWT has acquired a range of legislative and administrative authorities that closely approximates that of a province.

This greatly strengthened and enlarged authority at the territorial level has been matched by a dramatic growth in municipal institutions. In 1964 there were only three incorporated communities in the NWT, the towns of Yellowknife and Hay River and the village of Fort Smith. The remaining 50 or so communities had either advisory councils or lacked any sort of formal organization. At present, there are 25 incorporated municipalities ranging from hamlets to a city, as well as 26 settlement councils. In addition, there are innumerable special-purpose advisory committees, band councils and, most recently, regional councils.

This proliferation of governmental structures at the territorial and community levels over the past decade would appear to refute the criticism that progress towards responsible government in the NWT is occurring at a snail's pace. There seems to be substance to the complaint of many native peoples and groups that alien institutions based on a southern provincial model are being imposed on them too rapidly, and that no time has been allowed for them to be understood, approved, or adapted to the values and needs of the people. As these institutions continue to evolve and assume new responsibilities, the constitutional framework becomes more firmly entrenched, and thus, as they see it, makes less likely the creation of a radically different model of government in the future. There is a fear that every new development narrows the range of future options for the Territories.

This perspective on the institutional changes of the past decade stems from fears about the direction and pace of change and a consequent pessimism about the future growth of the territorial government. The solution, in the view of the native claims groups, is not to extend more authority to the already burgeoning GNWT, but to give authority to the people through the native claims process and/or through a division of the Territories.

From another perspective, the developments of the past decade are seen as essential, but hardly major steps toward the granting of self-government to the NWT. While the structures necessary for responsible government are already

largely in place, as indicated above, the authority to make them function rests with the federal government. A brief summary of the organization and authorities of government in the NWT will illustrate this point.

## GOVERNMENT AND COUNCIL OF THE NWT

The position of the Commissioner of the NWT is a complex mixture of at least four roles: he is the Chief Executive Officer of the NWT, responsible for the management of government; a "deputy minister" of the Department of Indian Affairs and Northern Development (DIAND); an "agent" of the federal government; and a representative of the Crown in the NWT. As a result, his lines of accountability are equally complicated: he is appointed by the Governor-in-Council under the authority of the NWT Act; he reports to the Minister of Indian Affairs and Northern Development and is instructed by him; he even receives informal instructions, on occasion, from officials in DIAND; and finally, he has a moral, if not a political accountability to the Territorial Council and to the people of the NWT.

As Chief Executive Officer of the Territories, the Commissioner, under Section 4 of the NWT Act, is required to "administer the government of the Territories under instructions from time to time given by the Governor in Council or the Minister [of Indian Affairs and Northern Development]." It is this section of the act that fundamentally shapes the character of government in the NWT. Buttressed by this broadly permissive provision, the Commissioner, under instruction from the Minister, has retained a vast array of legislative and executive authorities.

As government in the North has grown, so has the Commissioner's range of responsibilities. Moreover, the Minister of Indian Affairs and Northern Development has increasingly felt the need to coordinate his own activities under his other acts, such as the Indian Act, the DIAND Act and the Territorial Lands Act, with his ultimate responsibility under the NWT Act. The result has been that the Department of Indian Affairs and Northern Development has exercised a pervasive influence over territorial affairs by means of informal instructions to the Commissioner, the vetting of territorial ordinances, and other mechanisms.

The occasions for possible involvement by the federal government are numerous since their "agent," the Commissioner, has a wide range of specific statutory and conventional powers: he convenes the sessions of Council, and gives instructions for the issuing of election writs; he signs or refuses assent to all territorial ordinances; he recommends in his message to Council appropriations and taxes, and he must lay the territorial accounts before Council annually. As Chief Executive Officer, he chairs the Executive Committee and assigns responsibilities to other members of the Committee. During the last Council he retained the majority of portfolios, and in particular, the internal service departments, such as information, planning and program evaluation, personnel, public works and finance, which he shared with the Deputy and Assistant Commissioners. Likewise, the numerous boards and government agencies, including the NWT Housing Corporation, report directly to the Commissioner.

The Commissioner is ultimately responsible to the federal government for the organization and structure of the administration of the GNWT and thus is empowered to create, reorganize and disband departments and other agencies of government as needed, without legislative approval by Council. Under the territorial Public Services Ordinance, he has the sole responsibility for the "management and direction of the public service," including classification, pay and allowances, appointments, suspensions, demotions and dismissals. In addition, he can exercise, on his own, without the approval of the Executive Committee, extensive powers to make regulations pursuant to many territorial ordinances. Although this is by no means a complete catalogue of the Commissioner's powers, it gives some indication of the breadth and significance of his authority, and by extension, that of the federal government over the GNWT.

In contrast, the authority of the Territorial Council is seriously circumscribed. As is explained more fully in chapter 5, certain key provincial-type authorities are retained by the federal government—in particular, the ownership, management and development of the land, non-renewable and most renewable resources and labour relations. Unlike the provinces, where the responsibility for the institution of criminal proceedings under the Criminal Code is vested in a provincial Attorney General or Solicitor General, this authority is exercised in the Territories by the Attorney General of Canada.

Even those legislative functions that are given to the Council under the NWT Act are limited by the nature of the grant. With the exception of the authority to choose their own Speaker, the exercise of all powers given to Council is subject to approval by the Commissioner and, ultimately, by the Governor-in-Council, either through express approval—for example, agreements entered into with the provinces (NWT Act, s. 15) and borrowing, lending or investing monies (s. 24)—or through a failure to use the power of disallowance. In addition, the NWT Act provides for the paramouncy of federal legislation even in those areas in which the Council has jurisdiction. Thus, although Section 13 of the act appears to give the Council legislative jurisdiction similar to that of a provincial legislature, the requirement that the "Commissioner in Council" make ordinances can, in practice, reduce the role of the Council to that of an advisory body to the Commissioner. Since the Council can neither appoint nor remove the Commissioner, nor amend the NWT Act, it is unable to exert significant authority over him, or in effect, to hold him accountable for his actions.

The third component of the territorial political institutions is the Executive Committee. In 1974 the Minister of Indian Affairs and Northern Development instructed the Commissioner to appoint two elected members to the Executive Committee to sit with the Assistant and Deputy Commissioners and the Commissioner himself. While the Executive Committee is as much an advisory body as the Council, its position may be considered even weaker since it has no federal statutory recognition, and thus, any obligation on the Commissioner to consult with the other members of the Committee or to obtain their approval of policies or actions rests solely on appropriate instructions from the Minister. The dominant role played by the Commissioner in the Executive Committee effectively limits the participation of the elected members to those areas which the Commissioner defines for them.



There is a strong sentiment in the NWT that the above analysis is an accurate description of the role of the federal government, the Commissioner and the operation of the territorial government, and that, as such, it is unsatisfactory. Government is seen to be remote, unaccountable and unresponsive.

## COMMUNITY GOVERNMENT

While there is widespread criticism that the territorial government is merely an extension of the federal government, there are similar complaints that local governments in the NWT are, in effect, administrative extensions of the GNWT, and used for the sole purpose of delivering its programs. Local councils and committees are perceived by the communities as possessing no real authority over those issues that are of vital importance to the lives of residents of the communities. The territorial and federal governments consider the local councils and committees to be their agents, or merely advisory bodies, and not part of a separate and distinct level of government. Thus, the same phenomenon occurs at the community level as at the territorial level: despite the existence of fully elected representative bodies, there is a sense of powerlessness and a feeling that government is being "administered" from afar. The principles of accountable and responsive government are not being fulfilled.

Local government in the NWT follows the model of municipal institutions as it exists in southern Canada, with some adaptations for unique northern conditions. In the South, municipal political processes and institutions evolved over many years to meet the needs of the citizens. In the North, on the other hand, a comprehensive system of local government was centrally planned and has been largely implemented in the brief 12-year period since the Carrothers Report. This system has in some cases overlain the indigenous cultures and their forms of traditional leadership and local decision-making, and to some extent still remains foreign to many native peoples. The relative newness of the structures and unfamiliarity of the native peoples with the processes of community government present serious obstacles to their participation.

The current system of local government is hierarchical. Communities progress through the system, assuming increased authority and responsibility as their populations increase, as they become more capable of managing their own affairs and as their revenue base increases. The five levels or stages of government are settlement, hamlet, village, town and city. All levels, except unorganized communities and settlements, are classed as municipal and are established pursuant to the Municipal Ordinance. The following table presents a summary of local government structure by type, number, population and proportion of total NWT population:

**Table I**  
**Population Summary: December 31, 1978**

Type of Community	Number of Communities	Total Population	Percent of NWT Total Population (46,386)
Unorganized .....	—	1,487	3.2
Settlements .....	26	9,451	20.4
Hamlets .....	18	11,260	24.3
Villages .....	2	3,773	8.1
Towns .....	4	10,446	22.5
City .....	1	9,981	21.5
<b>Total .....</b>	<b>51</b>	<b>46,398</b>	<b>100.0</b>

*Source:* Government of the Northwest Territories

Of the total NWT population, over half live in the smaller communities, namely the 46 settlements, hamlets and villages, most of which have populations under 1,000. Furthermore, the majority of the residents of these communities, a full 80 percent, are native peoples. It should be noted that base population and demographic projections for the NWT indicate a continuation of this population distribution—that is, a rural, isolated society largely organized on a small community basis.

Settlements, the first level of organized community government in the NWT, are not incorporated but do elect an advisory council from the community at large. Municipal services are financed by the GNWT, although in some cases operated by the settlement council. Settlement employees are GNWT public servants who may or may not be seconded to the council.

Hamlets, villages, towns and the city of Yellowknife, are incorporated and established pursuant to the NWT Municipal Ordinance. Hamlet councils are able to enact by-laws and resolutions, hire their own staff and enter into contracts for the provision of essential services. Hamlets, in fact, represent the main adaptation of the southern model to the northern situation in that, although they function as incorporated municipalities, they are not required to raise their own operating revenue through taxation. Operating budgets and priorities for capital expenditures are determined primarily by the GNWT. Villages, towns and Yellowknife, besides having the same legislative powers as hamlets to enact by-laws and resolutions, can buy and sell property, levy property taxes and borrow money for local improvements through raising debentures. In practice, villages must consult and get approval from the GNWT, particularly in the area of setting their budgets, while the towns and Yellowknife set their own budgets and do not require GNWT approval on most of their decisions. The four towns and the city of Yellowknife have, in consequence, the most autonomous forms of municipal government in the NWT.

The current jurisdictional areas of municipal councils relate primarily to the physical operation of hard services and include services such as water, sewerage, garbage collection, road maintenance, zoning and community planning. The soft services, namely social and cultural matters, education and land management, are largely excluded from the local process of decision-making. Many residents

of the smaller communities regard the soft services as being critical to their lives, but ones over which they have little influence. In particular, there is concern that land-based cultural values and the local focus on hunting, trapping and fishing are in jeopardy because of externally-imposed decisions on land use in the vicinity of these communities. This concern is reflected in the extent of local interest in decisions that affect the economic base of the area, particularly as they relate to employment or environmental conditions; in decisions on municipal jurisdictions, for example, with respect to gravel supply or the watershed and in decisions that affect local access to surface land, water and renewable resources for traditional native pursuits.

A number of related issues with regard to the jurisdictions and responsibilities of local councils thus emerge. By linking the level of decision-making authority to population size and revenue potential, the Municipal Ordinance makes it difficult for the smaller communities to assume more local responsibility. At the settlement and hamlet levels, it is unlikely their population base and revenue potential will ever be such as to permit them to qualify for more autonomy. Furthermore, as a community achieves a certain municipal status it must assume a set package of responsibilities for the hard services. There is no provision for gradual assumption or a re-ordering of priorities in terms of responsibilities a council may wish to assume over time. Even more critical is the fact that local councils have little if any formal authority over services and programs of a cultural, social, recreational or educational nature. Furthermore, they have no instrument by which they can exert their influence over land use in the area beyond the municipal boundary.

In addition to the elected councils in the communities, there is a vast array of special-purpose committees, which have been established by the program departments of the GNWT, and directly or indirectly by the federal government, private industry or even the communities themselves. These committees are advisory in nature, liaise directly with the senior institutions and deal with a wide variety of local services, ranging from housing and social services to education and protection and use of wildlife. The existence of special-purpose committees has resulted in a lack of coordination between the various activities, a reduction in the authority of the local elected representatives and in public accountability and caused the decision-making process to become complex and fragmented.

Another major issue relating to the special-purpose committees is that, as vehicles for local management, they have very limited authority over program areas and are, in consequence, unable to resolve local problems. Such GNWT-sponsored committees as the Education Advisory committees, the Hunters and Trappers associations and the many preventive oriented social service committees advise the GNWT or administer GNWT programs. The programs, thus, tend to reflect the priorities and structures of the senior government rather than the needs of the communities. While native northerners have been vocal about the weaknesses of the existing system—the minimal reflection of native culture and language in the school curriculum and resource materials, for example, which leads to the loss of native identity among their youth and the consequent high drop out rate—they are unable to institute changes at the community level.

Such a situation also exists in the fields of social programming and housing. In its broadest sense, social programming in the communities of the NWT encom-

passes the determination of the total social needs and priorities of the family unit and its members, and the organization of social programs and their budgetary allocation to meet these needs. Social programming presently includes the policy development, program delivery and financial management of a wide range of programs, including preventive social service programs, income support programs, correctional services, and special-purpose support programs. The problems experienced by the communities result from the exclusive role of the federal and territorial governments in social jurisdictions, and from the fact that the design and delivery of social programs are perceived and defined external to the community, thus precluding local discretion in the determination, not only of priorities, but also of comprehensive social planning.

Authority has been further diffused in communities by the establishment of a multitude of committees designed to take advantage of federal funding programs, particularly those sponsored by DIAND and the Canadian Employment and Immigration Commission (CEIC). Confusion is also increased by the presence of regional advisory committees, GNWT-appointed boards, and joint federal-territorial government committees.

In addition to all of the above structures, there are 16 Indian band councils in the Mackenzie Valley communities, functioning side by side with the municipal councils and community committee structures. No parallel exists for the Inuit in the NWT because they were not brought within the framework of the Indian Act and treaties were not signed with them. The chief and band council model of Indian government in the Mackenzie Valley dates back to 1899 and 1921 with the signing of Treaties 8 and 11. The introduction of the municipal system in 1967 thus resulted in the creation of parallel political bodies in the Indian communities. In consequence, there is conflict and competition between the two structures.

Added to this structural diffusion is the fact that the Municipal Ordinance, as well as the other relevant ordinances, such as the Education Ordinance, demands a uniformity of approach that inhibits response to the different needs, cultural characteristics and traditions of the communities. The composition and meetings of councils, electoral procedures, timing of elections and exact authorities of each type of municipal council and of a number of the special-purpose committees are prescribed in legislation. The inflexible nature of the present system is a defect that precludes local institutions from developing procedures and processes that reflect the distinctive culture of those they are designed to serve.

The existing legislation and procedures are also unnecessarily complex: they are elaborate, cumbersome and time-consuming and often seem to be designed to meet the requirements of the senior government rather than to facilitate local activities or accommodate traditional practices.

The organization and functioning of community governments in the NWT presents a confused array of bureaucratic structures, causing frustration and a sense of powerlessness. The fragmentation of issues among the various structures and the complexity of the system not only overburdens and confuses the small population, but makes extremely difficult an integrated approach to dealing with community problems.

## REGIONALISM AND REGIONAL STRUCTURES

Since 1967 both formal and informal expressions of regionalism have emerged in the NWT. This phenomenon has been prompted by the development of regional transportation and communication links within the NWT and between the NWT and southern Canada, the establishment of GNWT regional offices, regionally identified federal administrative districts, and regionally-based special-purpose committees established by senior governments, industry, and non-governmental agencies. Regionalism has also been prompted by the emergence of communities of interest, based on language and cultural affinities, and by geographic and economic similarities. Regional identification has thus encouraged largely rural communities to seek objectives collectively that are unattainable individually because of their small population bases and remote locations. This community of interest has contributed to the rise of the NWT native associations—in particular, the regionally organized Inuit associations of COPE in the western Arctic, the Kitikmeot Inuit Association in the central Arctic, the Baffin Inuit Association and the Keewatin Inuit Association.

Formalized public regional structures are in the initial stages of development, and to date have taken the form of the Baffin Regional Council, Central Arctic Area Council, and the recently planned South Mackenzie Area Council. These regional councils have been formed by the communities to take advantage of the potential political benefits resulting from collective action. None of the councils has yet been delegated territorial or community financial or program authorities. As councils, they have both advised and lobbied senior levels of government. The direction of their future development is still uncertain, as is the extent to which they may ultimately vary in structure, function and process within the different regions of the NWT.

The Western Arctic Region Municipality, whose formation is recommended by COPE, envisages a full regional government. The Baffin Regional Council has thus far proposed a less comprehensive administrative function and has selected the areas of education, health and social services for regionally-based regulation and administration. The territorial government and last NWT Council, while supporting regional councils in principle and providing funds for the organization of regional meetings, at the same time argued the disadvantages of regional councils becoming full regional governments.

The proponents of regionalism reason that the constituent communities are too small and isolated to undertake and maintain individually the full authorities of autonomous municipalities. Regional aggregation of the planning, programming and allocative functions is sought as an alternative. While acknowledging the socio-economic pluralism in the NWT, the territorial government objects to the extreme decentralization that regional government would generate. It has argued the disadvantages of increased administration, the consequential diminution of power at both the local and territorial levels, and the general weakening of the territorial political system *vis-à-vis* the provinces and the federal government.

The current questions associated with the development of formalized regionalism in the NWT may be summarized as follows: are regional governments viable alternatives to political division of the NWT; what linkages between the public and private regional structures might best avoid government competition with the

private sector, and the native claims structures in particular; and how might the relations between the federal, territorial, regional and community levels of government be rationalized in order to develop and maintain effective government; what are to be the authorities and structures of community government within the regions and of regional governments, if they emerge?

### The Principles

There is a widespread sentiment in the NWT that, while there is no shortage of government in the territories, the existing authorities of the political structures at both the territorial and community levels are inadequate to meet the needs and concerns of the people. The unhappiness with the present system stimulates demands, on the one hand, that responsible government and provincial status be given to a united territory, and on the other hand, that the territory be split into two or more units.

While the question of division must be addressed and a process for doing so is suggested in chapter 7, the challenge facing government in the NWT today is not, in the first instance, the creation of one or more provinces in the Territories, but the achievement of accountable, responsive and effective government. Yet whatever shape government in the NWT is eventually to assume, the political institutions at all levels should embody three fundamental principles, as follow.

The first principle is that government must be made accountable to the people of the NWT. The principle of accountability is both one of the most fundamental and one of the most difficult to achieve because of the complexity and scope of governmental activity in any modern society. But it presents a particular challenge to a new government in a developing political system.

Government in the NWT has not emerged from the grassroots. It is the product of a progressive transfer of administrative and then political structures and authorities from Ottawa to Yellowknife and thence to the communities. Community authority is not seen to be the prime focus of the system of government, even though some decentralization may be considered as a desirable long-term objective. The result is that government in the NWT tends to be centralized. The process of the transfer from Ottawa also means that administrative structures are more prevalent in the NWT than is the political power to control them. Government is considered to be the delivery of services and goods and not the process of making policy decisions and planning for future needs. The fiscal dependency of the NWT upon the federal government also implies a limited degree of political control for territorial institutions.

Thus, although the origins and development of government in the NWT make the principle of accountability very hard to achieve, it is essential that appropriate measures be taken so that government is made accountable. This process would involve at least five elements: the people must be able to choose and remove those who govern them through an equitable electoral process; there must be clear lines of authority so that it is easy for the people to assign responsibility where it justly lies; there should be some separation between the various parts of the political system, the legislature, executive, and judiciary and there should be an appropriate balance of authority among them, so that no single part can

dominate the others; there should be ample access for the people and their representatives to information about government policies and actions; and the government must make an effort to be responsive to the needs and desires of the people. As revealed in the above discussion, these elements are currently largely absent at both the territorial and community levels.

The Commissioner's position is perhaps the most obvious example of the inability of the people to choose and remove their governors, but it is not the only one. At both levels the lines of authority and responsibility are confused, but this is especially evident at the community level where there are numerous special-purpose bodies, and frequently, the parallel existence of band and municipal councils.

Such basic structural problems make it very hard for governments in the NWT to fulfil the fifth criterion, namely responsiveness. A government that is dominated by administration and is remote, with a weak legislative body, has little incentive and few means for consulting with the people and responding to their needs.

While it is evident that certain changes are necessary in the institutions of government in order to make them accountable to northerners, structural changes alone are insufficient to achieve this end. Ultimately, accountability must rest on the recognition by the people and their representatives that the exercise of power should be closely scrutinized. There is a danger that in a developing political system, such as exists in the NWT, too much emphasis will be placed on attaining power and too little on checking power. It is essential that the various parts of the evolving political system be kept in balance and that community government be sufficiently strong to hold the centralizing tendencies of government in check.

The second principle is that governmental institutions should reflect the values and concerns of all northerners, both native and non-native if they are to gain the acceptance and support of the people they are expected to govern. There are three essential elements to this principle, two of which are absent in the NWT and the third of which is only partially fulfilled: the people must be, and know themselves to be, represented in the political and administrative structures; the deliberative process of the institutions must reflect the values of the people; and the most important issues and concerns facing the society must be within the legislative competence of the political institutions. For example, while the Territorial Council is now a fully elected body of 22 members, the majority of whom are native peoples, this does not necessarily mean that government is, or is seen to be, completely representative of the people.

At the moment, the key institutions of government are the non-elected executive and the administration, in neither of which is there much representation from the native peoples. Representation on an apparently powerless body has little meaning if there is not equivalent participation in the bodies that do have the authority.

While the participation of native peoples in the legislative and administrative structures at the territorial and community levels could and does help to shape these institutions to reflect their ideas and values, structures transposed wholesale from another culture frequently have a rigidity that resists such changes. For example, the parliamentary tradition upon which both the territorial legislative



institutions and the municipal councils are based, rests on the value of the legal process, the desirability of an adversarial form of debate, and the necessity for a recorded majority vote after a limited period of time. The native peoples, in contrast, prefer a decision-making process based on the seeking of a consensus through broad-ranging discussions over as much time as is necessary to achieve near unanimity. If the style of politics and the deliberative process of the institutions do not adapt to the values of the society in which they are operating, it is unlikely that government will be seen as representative or that it will function effectively. Real participation by the people would, by definition, be limited.

Finally, but even more important: if all the issues fundamental to the lives and lifestyles of the people remain separate from the institutions which they control, it is improbable that these institutions will become meaningful forums. In the NWT this is a particularly serious problem at both the territorial and community levels. As a result of the federal government's jurisdiction and chosen role with regard to the native peoples, 60 percent of the population of the NWT are and will effectively remain outside the responsibility of the GNWT. Moreover, the critical control over public finances and other such vital issues as land and resources, still rests with the federal government. Nor do the political institutions in the NWT have any authority over the constitutional future of the Territories. In large measure, therefore, the territorial institutions in the NWT are seen to be irrelevant to those issues that really matter to northerners. This same problem exists at the community level, where the soft services are largely excluded from the jurisdiction of the community councils. At both levels, therefore, the credibility of institutions suffers and the people tend to avoid them and go directly to the "sources" of power—either the Commissioner in Yellowknife or the federal government in Ottawa.

The third principle is that any changes in governmental institutions should reflect the acceptance of a majority of northerners, both native and non-native. Too frequently in the past, the federal government has introduced changes that it considered desirable and assumed would be acceptable to the people in the North, only to find that they were neither of these. For government to function well and to be acceptable to the people, it must evolve through a continuous process of consultation and negotiation. While chapter 7 treats the process of constitutional change in detail, it is important to note here that this process of reaching agreement on proposed changes is as crucial to the development of responsibility and responsiveness in government, as are the changes themselves.

These three principles are all essential to the achievement of effective government in the Northwest Territories, both for the present and in the future. Of course, not all principles can be followed equally at all times. On occasion, conflicts between them will arise. For example, a high value may be placed on consensus decision-making in the North; however, this process may, in turn, defeat the effort to keep a necessarily complex and sophisticated administration accountable for its actions. Trade-offs will be required, but they should be made only after careful and serious consideration of the alternatives and an attempt to reconcile traditional native values with the requirements of modern government. With a flexible attitude towards change and a will to create institutions which can respond to the unique needs of the North, it should be possible to find solutions that will be acceptable to the majority of residents in the NWT.



## **Conclusions**

### **COMMUNITY GOVERNMENT**

- Community government is an important and vital level of government; it is not simply an instrument by which local services are delivered, but is also a vehicle for meeting and reconciling conflicts within the community. Strong, autonomous government at the local level is critical to achieving citizen participation in government, responsive administrative and legislative bodies, and the accountability of government to the citizens. In the NWT the importance of the local level of government is of particular magnitude because of the cultural diversity and the vast distances between communities.

The suggestions made here are designed to strengthen community government in the NWT by increasing political authority and responsibility at the local level. For a number of reasons, movement in this direction is necessary and, indeed, crucial to political development in the NWT.

First, the home of the majority of the native peoples is the community and its environs, and the level of government of most immediate concern is the local community council. Despite some mobility in the NWT and a move towards the larger urban centres in search of wage employment, the projected limitations on employment opportunities, together with the cultural values of native peoples with respect to land and land-based activities, indicate that the community will continue to be the base unit for social and political organization.

Second, in a sparsely populated territory, where the distances between communities, and between the communities and the seat of government in Yellowknife are large, and where transportation and communications are not easy, decision-making should be transferred to the local level to the greatest extent possible. Solutions to issues of public concern are more likely to reflect community values if resolved locally.

Third, the acquisition of political and administrative experience at the local level provides the greatest potential for influencing the process and structures of government at the territorial level.

Finally, the strengthening of government at the local level is an essential part of the balance proposed elsewhere in this Report in the redistribution of authority from the federal to the territorial government. Any proposal to increase authorities and broaden jurisdictions of the territorial government should be balanced by the conferring of authority to the community level of government. Without such an offset, there will be a continuing trend towards the centralization of governmental activities in the NWT.

With a view to strengthening the local level of government, a number of suggestions are made here relative to local jurisdictions, structures and processes of community government, intergovernmental relations, the role of the GNWT, and the pace of change. The suggestions apply to all the incorporated communities, but are focused on the current lowest level of incorporated government, the hamlet. They would also apply to incorporated settlements, following passage of the proposed NWT Incorporated Communities Ordinance. The measures pro-

posed in this Report are in response to the recommendations made by people living in these communities. The municipal councils of the four towns and the city of Yellowknife seem generally satisfied with the municipal model of government as it currently applies in the NWT.

- 4.1. The territorial and federal governments should recognize a real and distinct first tier of government at the local level. At such time as the NWT Act is revised, an article should be added that would explicitly recognize the municipal order of government in the NWT and specify those jurisdictions in which the communities would have paramount authority. Communities should, however, be permitted to choose to exercise such responsibilities as they feel ready to accept. The NWT Act should also permit communities to delegate any of their responsibilities to regional structures.

### Jurisdictions

- 4.2. The present distribution of responsibilities between the senior and local levels of government should be reoriented so that community councils have more responsibility for land and resource management, education, social programming and housing.

Jurisdiction over land and resource management, including inland waters and waterbeds, forests and fisheries, rests now with the federal government. For the most part, jurisdiction over surface lands remains with the federal government, although some lands have been transferred to the Commissioner for purposes of community development, agriculture, parks and works. Jurisdiction over wildlife is divided between the two levels of government. As discussed in chapter 5 of this Report, appropriate responsibilities for land and resources should be transferred to the NWT in the form of concurrent legislative jurisdiction with the federal government. An integral part of this conclusion is that appropriate responsibilities must in turn be transferred to the local level.

- 4.3. Authority for land and resources at the community level should distinguish between land within the municipal or community boundary and land beyond the community boundary, which would be a "community sphere of influence."

The boundaries of municipalities are at present informally established in relation to the services they provide, their legal responsibilities and jurisdictions, and their anticipated growth. To date, land for use by 15 of the 51 communities has been transferred from the federal government through the Block Land Transfer program.

Municipal or community boundaries should be established formally for all communities. Ownership and control of the lands within the boundaries should be transferred to the community councils. The amount of land transferred should be related to community size, services provided and anticipated growth. The legal description of each community boundary should be appended as a schedule to the proposed municipal and incorporated communities ordinances.

Incorporated community councils should have the exclusive administrative and by-law authority and jurisdiction over conditions for land use and zoning within the community boundary. In general, the necessity for an approval process by the GNWT should be eliminated. In the case of competing interests, the process for resolution should be through direct appeal to the NWT Executive Committee member responsible for community government.

- 4.4. Because of the unique circumstances in the NWT, where a majority of residents whose cultures are rooted in native values and the native economy, live in small, scattered communities, it seems appropriate for these communities to have a greater role in decisions on matters directly affecting the land outside the community boundary, but traditionally used by members of the community.

If requested by a community council, senior levels of government should commence discussions with the council with the object of delineating an area outside the community boundary to be designated as that community's sphere of influence. The area set aside as the sphere of influence should be defined according to the community's need to protect its interests. Matters or activities that are to be the subject of joint discussions should be identified. Such items as surface land use within the area, regional planning and renewable resource management would appear to be appropriate elements for joint regulation and management.

The boundaries of the spheres of influence, the activities of joint interest and the decision-making processes should be formalized in participation agreements between the appropriate levels of government. In the agreements, the community council should be accorded formal status in any hearings or commissions established to determine the economic, social and environmental conditions for resource exploration and development within its sphere of influence. A process of appeal for resolving conflicting interests should be part of the agreement and should be, in the first instance, directed to the appropriate Executive Committee member. The final arbiter should be the Commissioner-in-Executive Committee. The participation agreements should eventually be appended as schedules to the Area Development Ordinance. New legislation or amendments to this ordinance may be required once implementation agreements on native claims have been concluded.

- 4.5. Education should become a shared jurisdiction between the territorial and local orders of government, with the local level given paramouncy in the elementary field, and the territorial level paramouncy in the secondary and post-secondary fields. This arrangement invites cooperation between both orders of government in all aspects of education and provides an opportunity to make educational policy and administration more responsive to community needs.

Because the field would be a shared one, the GNWT could continue to legislate for elementary education to the extent that the communities choose not to do so. As long as the GNWT respects the wishes of the community governments in the field of elementary education, it is unlikely,

in the immediate future, that smaller communities would choose to exercise their authority to legislate in this area. However, they might elect to assume some or all regulatory and administrative authority in elementary education now, and, at some future date, as the communities grow in size and capability, they might choose to assume greater responsibility. As soon as the community council is able and willing to do so, it should acquire responsibility for the definition, development and delivery of the entire school program, including the selection, evaluation and dismissal of teachers and special assistants, administration of the school facilities and development of curriculum.

New, enabling legislation is required to describe the shared jurisdictions and the paramount role of the community level in the field of elementary education. Any new administrative arrangements between the communities and the GNWT, which would include a description of the responsibilities of both governments as well as of the financial arrangements to support the new distribution of responsibilities, should be the subject of an agreement between the two parties. In keeping with the move to a government-to-government relationship, the agreements should be signed by the chairman of the community council and a designated Executive member.

Community governments should have the option to choose and purchase resource materials required for their curricula. During the period in which the GNWT remains the prime body in the elementary field, councils should be apprised of the spectrum of resources and programs available, and the opportunities presented for developing new material by non-governmental agencies such as the Inuit Cultural Institute. New materials produced either by the GNWT or other agencies should be approved by the community council before becoming part of the local curriculum. Existing native associations and any organizations and corporations resulting from native claims settlements might be particularly well placed to provide the materials in question.

- 4.6. In secondary and post-secondary education, the territorial government should retain prime or ultimate responsibility for the definition, development and delivery of all programs.

The GNWT could transact suitable arrangements with those community councils wishing to manage their local secondary schools. In cases where the GNWT retains full responsibility for the delivery of secondary education, regional community education committees might be formed to advise the GNWT on policy matters. If a number of communities join together and collectively express an interest in taking on selected responsibilities for the secondary school program and facilities, appropriate arrangements should be established. The Baffin Regional Council is an example of a regional body that might wish to assume these functions.

Student residences attached to educational facilities, for example in Frobisher Bay and Inuvik, might become the responsibility of regional community education committees, whose membership might include representatives from each of the communities with students living in the residence, and a representative from the community council of the community in which the

residence is located. These committees would determine the policies governing the management of the residences in light of the concerns expressed by parents of students living in the residences.

- 4.7. Community governments should be able to respond more effectively and responsibly to the social needs of their communities within a context that acknowledges the continuing federal and territorial responsibilities. Social measures that are part of national programs should remain within the jurisdiction of the federal or territorial governments. These would include payments such as family allowances, unemployment benefits and old age pensions. The GNWT should retain paramountcy in the fields of social assistance, child welfare and correctional services where territorial standards are required or where there is an interface with the judicial system. However, the GNWT should adopt an active role in developing a process for the decentralization of the management of these programs to community governments at an appropriate time.

In all other areas of social programming and planning, the community order of government should have the option to assume full responsibility for community social programs or to request the GNWT to continue providing the services. In the latter case, the GNWT could provide the services to the community on a contractual basis. By way of example, the community council should, if it so chooses, assume ultimate responsibility for the provision of services to the aged and handicapped, day care, drug and alcohol programs, community social service projects, employment creation projects, including those now the responsibility of the Department of Economic Development, adult education programs and any others falling within the broad parameters of social programming.

Financial arrangements for social services for which the community is responsible should permit local allocation of funds among various priorities. The overall level of funds available to the community for these purposes should eventually be determined by formula financing. This is further discussed under the financing of community governments in chapter 6.

In the areas where the GNWT retains ultimate responsibility, such as social assistance or child welfare, but the community opts to take on responsibility for program delivery, funds should be provided by the GNWT to the community through specific purpose grants. The associated administrative and financial arrangements should be formalized in agreements setting out the responsibilities and commitments of each government, and should be signed by the chairman of the community council and the designated Executive Committee member.

- 4.8. More responsive housing policies and the promotion of greater responsibility for housing at the local level is required. Responsibility for housing in the NWT rests with the Northwest Territories Housing Corporation, a corporation of the GNWT. Public housing in the communities is administered for the Corporation by local housing associations. The associations assess and collect rents and handle local administration and maintenance. Rental revenues are retained by the associations as supplements to their annual

operating grants. Under the current system, a number of problems are evident: rents are tied to income but are not uniformly collected; there are no real incentives for the housing associations to collect rents; southern-style home ownership programs are often inappropriate; the concept of tenant responsibility for utility usage is not widespread; and few instruments exist whereby policy changes can be effected at the local or regional levels.

Given the importance of housing in the NWT, responsibility for housing should remain with the NWT Housing Corporation, but the institution should change from a corporation responsible to an appointed board to a government department headed by a member of the Executive Committee.

Financial arrangements for local housing associations should include an incentive mechanism for rental collections. If, for example, in a given year, 20 percent of the local housing budget is estimated to be met by local rents collected but a higher proportion is collected, all or a portion of the additional monies might be retained by the association, and used at local discretion for housing improvements instead of being deducted from the next year's operating contribution.

A base utility provision for each house in the community might be calculated as part of the rent. Above this base utility subsidy, costs would be borne by the occupant. This user-pay concept could be applied to electricity, fuel, water and sanitation collection.

#### **Structures and Procedures of Community Government**

The following changes to the structures and procedures of community government are suggested as a means of strengthening community councils and making them more responsive to and representative of local needs.

- 4.9. The current hierarchy of local government, as defined in the Municipal Ordinance—namely, hamlet, village, town and city—should be eliminated. This system is one in which the nature and type of responsibilities delegated to community councils are directly dependent upon population size and the revenue base of the communities. Furthermore, local councils must take on certain financial and administrative responsibilities, particularly for hard services, as a precondition for gaining authority over other matters, such as social and cultural jurisdictions. This classification, which presents a major obstacle for the smaller communities to assume more responsibilities for jurisdictions considered of high priority locally, should also be eliminated. In terms of assuming responsibilities, the criteria applied should be local willingness and local competence. The proposed municipal ordinance or ordinances, and the Incorporated Communities Ordinance should reflect these criteria.
- 4.10. New municipal and incorporated communities ordinances should be enacted that permit maximum flexibility and variation in council arrangements and procedures. Community council size, election dates, nominations, council procedures, and the use of petitions and referenda should become local options, to be determined by the community council.

The local franchise, or age of eligibility and length of residence for voting, should also become a local option within a range established by the NWT Council. For example, territorial residency requirements might be set by the NWT Council as ranging from six months to three years. The residency requirements of a particular community would then be established by the community, within that range.

The method of electing the mayor or council chairman within the council should be a local option, as might also be the further extension of the mayor's role, for example, as a member on a regional council. Such adaptations would permit a more traditional or local definition of leadership responsibilities.

In the larger municipalities of the NWT, in towns or villages with populations of 1,500 or more, the ward system might be established to ensure the representation of distinct community interests on council. This too should be a local option.

- 4.11. To provide a focal point for community decision-making, all special-purpose committees and local advisory bodies should come under the umbrella of the community council, which should be the locus of responsibility for all authorities transferred to the community. In place of externally-established, publicly-financed special-purpose committees, committees of council should be identified, each to include at least one council member, either as chairman or member. Such committees should report and be accountable to council. Details of committee structure in each community, such as number, size and composition, should be a local option, although it is recommended that the total number of committees at any time be limited to the minimum required by the council to serve its needs.
- 4.12. In the 16 Mackenzie Valley communities, where both band and community councils exist, the choice to incorporate band councils with community councils should be a local option and any arrangements for proportional representation of band members on a community council should be determined jointly by the band and community councils, allowing for variation in such arrangements from community to community.
- 4.13. To facilitate communication within the community, and to permit the development of native languages, the choice of the working language used officially by the community council should be a local option. The senior levels of government should neither legislate nor adopt policies adversely affecting or prejudicing the use of the local working language.
- 4.14. In the smaller NWT communities, local or territorial government is often the principal employer. In these communities, with small population bases, there exist competitive demands and limitations on a correspondingly small pool of leadership talent. Incentives might be considered in order to make elective office as attractive as the bureaucracy through the provision of increased remuneration for the mayor and for the elective positions on the principal committees of the community council.

## **Intergovernmental Relations**

Both the territorial and federal governments view the institutions of local government as administrative extensions of the senior levels. The local councils and committees are treated, by and large, as agents for the delivery of a number of territorially or federally prescribed programs and services. The structures created within the communities, the linkages established between the levels of government, and the type of interaction and communication flowing between the levels have been designed by the senior levels almost exclusively to meet their particular objectives and priorities. Such an approach, because it lacks a local focus, is counter-productive to the development of a strong autonomous local level of government. It is important that both senior levels of government develop the attitude and practice of considering community councils as clients to be served and supported.

- 4.15. Both the federal and the territorial governments should acknowledge the community council as the prime body in the community. All governmental relations with the community should be established first with the community council. Both senior levels should avoid linkages that bypass the council or encourage the formation of special-interest groups or committees. Furthermore, the federal government should insist, possibly through requirements attached to land use permits, that industry consult with the community council and thereby avoid the creation of industry-sponsored advisory groups outside the political process. In addition, all hearings, inquiries or task force arrangements should be carried out in such a way that the community council is recognized as the prime body in the community.
- 4.16. In their communications with a council, both senior levels of government should acknowledge to the greatest extent possible the working language used officially by that council.
- 4.17. It is important that political and administrative education be furthered in the communities in order to promote effective local government. To facilitate this goal, GNWT legislation, policy interpretation, procedures and regulations, as well as federal procedures and regulations, that affect the operation of community government should be reviewed and then rationalized, simplified and clarified where possible.

## **Role of the GNWT**

The GNWT should adapt its structures, functions and attitudes so as to foster and reflect the development of community government. As communities assume the major operations of programs now delivered by the GNWT, progressive reorganization and consolidation of territorial program departments will be required. Moreover, an extensive decentralization of community-related territorial functions will allow the GNWT effectively to advise and assist the communities to assume new responsibilities.

- 4.18. To promote a government-to-government relationship between the GNWT and the communities, the present Department of Local Government should



be replaced by a new Department of Community Government and Regional Operations. The existing activities of the Department of Local Government should either be decentralized to the regional offices or, in some cases, such as community finance, transferred to other program departments. The new Department of Community Government and Regional Operations should be responsible for regional coordination and the overall management of the GNWT transfers of authority from the GNWT to the community councils.

Although the Executive Committee should have a collective responsibility for the development of community government, the Executive Committee member responsible for Community Government and Regional Operations should act in the Committee as an advocate for the community governments and as the prime force both for devolution and decentralization in the NWT. The designated member should be charged with the responsibility for all regional operations and the coordination of the transfers of authority to community councils.

- 4.19. The four regional directors and the Yellowknife director should report directly to the executive member responsible for Community Government and Regional Operations. The five directors and this member should collectively constitute the management committee.

At the moment, each territorial program department, including the Department of Local Government, has a superintendent in each regional office who is appointed by and directly accountable to the departmental headquarters in Yellowknife. Thus, although the regional director has been assigned the responsibility to coordinate program delivery in the region, he is seriously handicapped by his lack of authority over territorial officials in the region. To rectify this problem, the position of superintendent in the region should be eliminated and the regional director should appoint the requisite number of assistant directors to coordinate the various community-related functions in the regions. They would report to him, although they should maintain close contact with the appropriate departments in Yellowknife. Other territorial employees in the region should be hired by the regional office and, to the greatest extent possible, should be hired from the region.

- 4.20. The general functions of the regional office should be to coordinate delivery of programs and services in the regions, to participate actively in policy formation for the region, particularly in areas of community-related programs, and to provide advice and support to the communities on all aspects of their responsibilities, including the provision of information, personnel and administrative support.

The regional offices should assist in the training of local elected officials and their administrative staff. In areas such as social programming and elementary education where communities have the option to develop their own programs, the regional offices should offer to assist communities in defining their needs and requirements. Territorial public servants should be provided as consultants to communities on a short-term basis, to assist them in identifying problems, establishing programs, operating facilities or

delivering services. The role of territorial public servants should become less managerial and more advisory in nature.

- 4.21. The decentralization of community-related functions and programs to the regional offices can both complement and promote the transfer of legislative jurisdictions to the communities, but it should not be regarded as a substitute for devolution. Until such time as the communities are willing and able to take on additional responsibilities, the GNWT should continue to provide services in such areas as elementary education, social programming and municipal services. However, in the interests of responsive government and to allow for flexibility within and between regions, these territorial responsibilities should be decentralized to the regional offices. This should make available to the community councils a range of choices for the delivery of services, including direct delivery by the regional office, delivery by the GNWT under contract to the community council, or delivery by the community council itself.

The decentralization of responsibilities to the regional offices should also permit a greater flexibility in personnel policy within the territories and thus enable a greater number of native northerners to be employed in the territorial public service. The regional offices should re-evaluate the qualifications presently required for regional positions and reclassify them according to reasonable and realistic standards. In recognition of the working language used officially by community governments, the regional offices should give particular weight, in hiring, to the ability to speak the native languages. Moreover, consideration should be given to the use of techniques such as job-sharing, flexible hours and adjustments in the working week in order to open employment in the GNWT administration to those northerners who wish to maintain a traditional northern lifestyle.

- 4.22. The regional directors and their staffs should undertake, on behalf of the territorial government, the detailed financial and jurisdictional negotiations with the communities, including the negotiation of the spheres of influence. The financial arrangements for community councils should be developed through regional discussions, taking into account local needs and conditions. The regional offices should play the principal role in the negotiations, although elected community leaders should be entitled to appeal to the designated Executive Committee member responsible for signing the agreement.
- 4.23. During the transitional period, while community governments are developing, considerable administrative and policy authority will be vested in the regional directors and some overlap of responsibilities will occur between the regional offices and the program departments in Yellowknife. However, in the long run, their responsibilities would be rationalized. Those program departments whose major functions are the delivery of services to the communities would have small administrative units in Yellowknife whose responsibilities would be the development of long-term policy, territorial standards, and territorial-wide services. The regional offices would be responsible for regional procedures, regulations, advice and training to the communities; and the development, budgeting and delivery of actual programs would rest with the community governments.

## **Pace and Timing of Community Government Changes**

- 4.24. The transfers of authorities to the local level and the development of the relationship between the territorial and community governments on a government-to-government basis suggested in the preceding conclusions and in chapter 6 should proceed concurrent with increased legislative and executive responsibilities at the territorial level.
- 4.25. An evolutionary process of change is required to create the conditions necessary to modify the current system, according to local and regional needs and interests. The GNWT is responsible for initiating this change, and, in particular, the GNWT regional offices should be the focal point for initiating and supporting this process.
- 4.26. As a first step, the GNWT should encourage the development of stronger, more comprehensive community councils. Priority should be given to rationalizing the committee structure, implementing procedural changes and increasing the fiscal discretion of councils.
- 4.27. The testing on a community-by-community basis of the desire and willingness to accept additional responsibilities for either hard or soft services, the negotiation of transfers of authorities and the planning of a timetable for implementation should be initiated by the GNWT.
- 4.28. After the initial moves proposed above have been undertaken by the GNWT, the subsequent pace of change should be set by the communities themselves. The GNWT should not insist that the communities accept a comprehensive package of responsibilities but should provide the communities with a range of policy and program responsibilities in certain areas, from which they could choose. The legislative amendments suggested earlier would provide the legal basis for communities to exercise paramount authority in certain fields, but the pace at which authority is actually assumed by a community should be determined by that community.
- 4.29. While the Executive Committee collectively should undertake to promote a government-to-government relationship with the communities, the Executive member responsible for ensuring development of the councils, coordinating departmental changes, and reporting progress on each phase to the NWT Council.

## **REGIONALISM AND REGIONAL STRUCTURES**

Since the Carrothers Report was issued, there has been an increased expression of regionalism, based on community of interest. So far, there are few formal public structures to represent these interests and they are still in the initial stages of development. These are the Baffin Regional Council, the Central Arctic Area Council, and the recently-formed South Mackenzie Area Council.

The suggestions below result from observations regarding the formation of regional councils and the roles they exercise, and are designed to legitimize the activities of regional councils and to clarify their roles *vis-à-vis* the GNWT and community governments.

## **Formation and Role of Regional Councils**

- 4.30. Communities should have the choice of forming regional councils through voluntary delegations upward of community authorities; legislation addressing regionalism should recognize and formalize the voluntary nature of membership in regional political institutions. The decision as to whether to form regional councils should be a collective decision of the communities in each region concerned, and provision should exist for communities to opt out of membership.**
- 4.31. Communities should define the extent of authority to be exercised regionally through a regional council. A regional council may choose to select one of several roles: an advisory role to the senior governments; an advocacy role, such as a lobby group; or an administrative and regulatory role carrying out responsibilities delegated by the communities, which might range from the specific to the full panoply of governmental functions.**
- 4.32. The nature of community representation in regional councils, whether by popular election or by delegation of the local mayor or other council member, should be determined by the regional council and its constituent communities.**
- 4.33. With the transfer of responsibilities from the territorial to the local level of government, an individual community participating in a regional council should be able to choose whether it will itself perform the functions devolved, request that the GNWT continue to perform certain functions on its behalf, or delegate some of its authorities upward to the regional level.**
- 4.34. A regional council should, upon agreement between the communities and the GNWT, be able to assume authority for regional policy, regulatory and administrative functions and such matters as regional planning and the responsibility for regional institutions.**
- 4.35. Many territorial ordinances are considered to be too specific in their wording for territorial-wide application. Criticism comes frequently from native peoples in the communities who maintain that certain legislation is inappropriate to the community. There is some regional and local concern that specific territorial-wide legislation may preclude significant local and regional interpretation and application. The Territorial Council should enact legislation for the NWT in terms as broad and permissive as possible.**

**A regional council should be permitted to assume regulatory functions within the parameters of enabling territorial legislation, in those areas of responsibility mandated to it by its constituent communities. This would provide for local and regional variations in interpretation and application of legislation.**
- 4.36. Consistent with the conclusion that the incorporated community council should be the prime public body at the local level, a regional council, where it exists, should be the prime public political structure at the regional level. This should avoid overstructuring and duplication of effort. Other public bodies bearing specific functional authority should be kept to a minimum and should be committees of regional council, functioning under its author-**

ity. Program departments of the GNWT should be cautious in the formation of additional regional special-purpose bodies and committees.

- 4.37. The assumption of specific responsibilities by regional councils should be accompanied by a transfer from the local level to the community of those resources previously allocated for specific functions. In the interest of fostering an appreciation of the concept of "user-pay," funding for regional councils beyond the direct funding for specific functions delegated from the community governments should derive from a levy on participating councils.
- 4.38. Communities should choose the languages to be used officially by their regional councils. Unilingualism should not be a barrier to effective participation at the regional level. The provision of translation services into English and the indigenous languages of the NWT, may be required at regional meetings of political and special-purpose bodies.
- 4.39. With the development and settlement of native claims on a regional basis, regionalism may be reinforced through the establishment of regionally-based native corporate structures. Linkages will be required between the public institutions of government, the private corporations created to administer claims benefits, and non-governmental agencies. By way of example, the Agreement-in-Principle between COPE and the federal government is predicated on an integrated public and private approach to the management of wildlife, of land and non-renewable resources, and of programs and services provided for Inuvialuit residents in the western Arctic region. Linkages will be required between the local, territorial and public institutions of government, and between the several regions to develop coordinated programs for the management of wildlife. Similarly, links will have to be established between private Inuvialuit corporations, other native organizations and private industry for the purposes of economic development; and also between regionally-based private and public authorities performing the same functions in order to allow for consultation, joint planning and coordinated delivery of services.

#### **Role of the GNWT**

- 4.40. The Territorial Council and the GNWT should not hinder the development of regional councils, nor prohibit their use as valid forums for the expression of communities of interest.
- 4.41. To date, there is no territorial legislation or formalized policy respecting regional councils and their functions. While this may have contributed to a more flexible development of existing regional councils, it may now be posing limitations on their continuing development. Broadly-phrased and permissive territorial legislation and policies should be implemented to allow for the formation of regional structures that will meet the expressed and varied needs of participant communities and will accommodate regional preferences in methods and structures. Such policies should provide for delegation of programs, services and funds from the local to the regional level, to permit regional and local variation in application and administration.

Regional councils may initially require a minimal level of administrative staff and support from the GNWT regional offices, although this requirement should diminish over time.

## Regional Boundaries

- 4.42. Federal and territorial administrative regions and management zones throughout the NWT should be rationalized to correspond more closely with the natural and cultural regions of the NWT. The settlement of native claims will reinforce the regional character of the NWT in the regions defined by native associations.

Furthermore, there are a large number of administrative and management zones of both territorial and federal government departments and agencies in the NWT, and considerable overlap in boundaries among them. For example, the following administrative zones all overlap with the Western Arctic Region. The Western Arctic Region is defined in the Agreement-in-Principle between COPE and the Government of Canada to include the communities of Aklavik, Holman, Inuvik, Paulatuk, Sachs Harbour and Tuktoyaktuk. All of these communities are located in the Government of the Northwest Territories' Inuvik administrative region, with the exception of Holman, which is administered as part of the Fort Smith Region. DIAND's Northern Water Administration area includes all of the Western Arctic Region and Victoria Island, yet the Northwest Territories' Water Board places the Mackenzie Delta with the Mackenzie Valley in Management Area 3, Tuktoyaktuk and Paulatuk in Area 7, which extends east as far as Igloodik, and Sachs Harbour and Holman with all of the High Arctic islands in Area 4. Transport Canada maintains different administrative regions for air and marine transportation. For air transportation, Transport Canada includes the six communities proposed as part of the Western Arctic Region, plus Cambridge Bay, Coppermine and the entire Mackenzie Valley in its Western Region, which includes as well the Yukon and much of Alberta and British Columbia, reaching south to the American border. For marine transportation, the Western Region is sub-divided into three districts; the Hay River District, in which the Western Arctic Region communities are located, includes the Arctic west of Boothia Peninsula and the Mackenzie and Athabasca River systems. The federal Post Office department is organized into three districts; the Western Arctic Region is included in the Alberta District, as are the Mackenzie Valley and Arctic Coast. National Health and Welfare has an Inuvik Zone which includes Inuvik, Aklavik, Sachs Harbour, Tuktoyaktuk and Paulatuk, but Holman is part of the Mackenzie Zone administered from Yellowknife. For RCMP purposes, the same five communities comprise the Inuvik sub-division; Holman, with the Central Arctic, Keewatin and Mackenzie Valley, is in the Yellowknife sub-division. The Department of Communications' Central Region includes all of the NWT except Baffin Island and the islands in Hudson Bay.

This lack of correspondence between regional administrative districts and zones, and their incompatibility with more natural regions and community

affinities, creates confusion, duplication of effort and difficulties in administrative responsiveness. In the interest of more efficient government, and of effective interaction between all levels of government and the private native institutions, federal and territorial departments of government should endeavour to rationalize to the greatest extent possible their respective administrative and management zones.

### **Regional Government**

The prospect of regional government has been developed in the COPE proposal for the Western Arctic Regional Municipality (WARM). This proposal contemplates a comprehensive redistribution of legislative and administrative authorities and their transfer from the federal and territorial levels of government to the region. Powers would be subsequently redistributed by the region to the communities. While no existing regional council has advanced the proposal for comprehensive regional government, it is not inconceivable that such a development may occur in the future.

The creation and imposition of regional governments from the top down carries the risk that real authority will never be exercised by the residents of the communities themselves. It risks introducing to an already over-administered population still one more administrative level between the community and the GNWT and Council. Concern has been expressed, especially by the Eighth NWT Council, over the possible development of regional government as a fourth level of government in the NWT, the diminution of territorial authority which may accompany such a development, and the consequences of increased bureaucracy and more administrative structures.

The evolution of communities of interest, the delegation of powers to the regional structures by the communities, GNWT administrative decentralization and rationalization of regional boundaries may all result in the development of regional governments. These may, however, ultimately be the only alternative to political division of the NWT.

- 4.43. The territorial government should devolve authority to community governments first. Community governments should be permitted the choice of consolidating their authorities by delegations upwards to regional councils if they so desire. Should such delegated authorities constitute a comprehensive level of government, a regional government may be said to exist; its mandate should, however, derive from its constituent members only. The incrementalism of a top-down delegation to regional structures should thereby be avoided.
- 4.44. As part of the process suggested to the GNWT for locating local authorities with the community governments, the GNWT should be advised by the communities on their regional intentions, and should inform the various communities of the regional options. COPE and the GNWT should pursue their earlier discussions on WARM and community government, and jointly develop the regional and local options for the Western Arctic Region.

## GOVERNMENT AND COUNCIL OF THE NWT

In the interests of making the territorial government accountable to the people of the Northwest Territories, the power, authority and responsibility hitherto concentrated in the hands of the Commissioner of the NWT should increasingly be exercised by the elected representatives of the people. While no precise schedule for the transfer of authority is suggested here, it is desirable that elected representatives assume the authorities as soon as they are willing and able to accept the concomitant responsibilities. The transition of power from the Commissioner to the elected Executive members should proceed in an orderly fashion, through several stages. This will permit the elected members to benefit from the Commissioner's guidance while they progressively assume more authority. It will also give the Territorial Council time to adapt to its new responsibilities, so that it can effectively hold the Executive Committee accountable for its actions and policies. Finally, it will allow the Commissioner, acting as the federal agent, to play a very important role in the constitutional development of the NWT during the next few years.

Many of the changes indicated below can be accomplished through such informal means as new instructions to the Commissioner. Other changes will ultimately require amendments to the NWT Act and perhaps to other federal statutes. In any case, the changes proposed should proceed in pace with the suggestions elsewhere in this Report for the devolution of authority to the community level and from the federal government to the territorial government.

### Commissioner

- 4.45. To achieve accountable government in the NWT the Commissioner's role as chief executive officer of the GNWT should gradually be reduced over the next few years, as should his role as "deputy-minister." At the same time, his position as an "agent" of the federal government should be publicly defined. It is undesirable, at present, for the Commissioner to be immediately stripped of all those responsibilities that are deemed inappropriate to a twentieth-century lieutenant governor. Until native claims have been settled, the constitutional direction of the NWT determined, negotiations concluded on the transfer of all major provincial-type responsibilities—including land and natural resources—to the GNWT, and until the territorial government has achieved greater certainty with respect to revenues and the process of devolution to the local communities has been firmly set in train, there will be a need for an active representative of the federal government to ensure the orderly development of government in the NWT. Ultimately, the Commissioner's position should evolve to the more formal role of a contemporary lieutenant governor. However, it would be inadvisable to set a strict timetable for this final transition because it should be dependent upon the successful achievement of the above conditions.
- 4.46. As chief executive officer of the NWT, the Commissioner is responsible under the NWT Act and Council ordinances, and through ministerial instructions, for the creation and organization of all departments of the



GNWT and for the hiring, promotion and dismissal of all members of the territorial public service. To permit the Executive Committee to assume responsibility for the management and organization of the government and to keep the public service accountable to the elected representatives, the Minister should instruct the Commissioner to be bound by the will of the Council on all matters related to the organization and staffing of the territorial public service.

The Council, in this context, might consider amendments to the Public Service Ordinance that would transfer the authority from the Commissioner to either an elected member of the Executive Committee or to an independent Public Service Commission. Consideration should also be given to providing a statutory basis for the organization of the departments of the GNWT by means of a Government Organization Ordinance and a Transfer of Duties Ordinance.

- 4.47. In order for the Territorial Council to assume effective responsibility for territorial affairs, the Commissioner's role in the Executive Committee should also be progressively reduced. During the last Council, the Commissioner, along with the Deputy and Assistant Commissioners, held the central departments of government, including the Executive Secretariat and the Finance Department, and all the service portfolios, except for Public Service, which was briefly assigned to an elected Executive member. While the Commissioner assigned the six program portfolios to the three elected members, their authority was limited by the instruction in the Executive Handbook to keep the Commissioner informed at all times as to activities in all departments. All government boards and agencies reported directly to the Commissioner. Moreover, the Commissioner, in his capacity as Chairman of the Executive Committee, established the agendas, called the meetings, and decided their duration. In his absence, the Deputy Commissioner played this role.

It is increasingly hard to justify the concentration of such all-encompassing executive responsibilities in the hands of appointed officers in the NWT. To some extent, this has been recognized by the elimination of the position of Assistant Commissioner and by the increase in the number of elected members of the Executive Committee.

If this progress towards accountable government is to continue, the Commissioner should be instructed to divest himself of all his remaining departmental responsibilities and transfer them to elected members of the Executive Committee during the life of the Ninth Council. All government boards and agencies should report to the appropriate elected members. Any new responsibilities devolved to the GNWT should be assumed by an elected Executive Committee member.

There appears to be little reason for the Commissioner to continue to act as Chairman of the Executive Committee. An elected member should chair the Committee and the Executive Secretariat should report to him rather than to the Commissioner. The Commissioner, however, should remain as a member of the Executive Committee, as long as he continues to be responsible for any of the government departments. In principle, the

Executive Committee is composed exclusively of those individuals who hold portfolios and, thus, as soon as appointed members divest themselves of their departmental responsibilities, they cease to be members of the Committee.

- 4.48. During the nineteenth century, when provincial governments were developing to maturity, the provincial lieutenant governors played an important role in ensuring that constitutional and political development progressed in an orderly manner. They also acted as federal government "agents" to reserve for Governor-in-Council approval or veto any legislation that appeared to be beyond the powers of the province or that seriously contradicted federal government policy. While the political and economic maturity of the provinces and our modern interpretation of federalism have caused this aspect of the lieutenant governor's role to disappear, it did serve an important function during a difficult transitional period.

The present role of the Commissioner in the NWT differs from that of a nineteenth-century lieutenant governor. Rather than being an "agent" of federal government policy as a representative of the Governor-in-Council, he is now, in effect, an "agent" of the Minister of Indian Affairs and Northern Development. His role more closely approximates that of a deputy minister, in that he takes instructions from "his" Minister and is provided with direction from the Department of Indian Affairs and Northern Development. The Commissioner's role does not reflect a government-to-government relationship, but rather a government-to-department relationship. For example, rather than relying on the federal power of disallowance, the Minister and Department can direct the nature of policy and legislation at every stage prior to the passage of a bill. Territorial ordinances are considered carefully in the light of federal departmental policy, and informal or formal instructions may be given to the Commissioner to intervene on this basis.

It is inappropriate for the Commissioner to serve this function if the territorial Executive is to be accountable to the Council and open government is to be achieved. In this transitional period, the Commissioner should assume the traditional role of "federal agent." In normal circumstances, public pressure in the NWT and the Territorial Council, rather than a department or minister of the federal government, should provide the check on unwise legislation or policy. In exceptional circumstances, where legislation appears clearly to be beyond the jurisdiction of the Council or to result in a very serious conflict with federal government policy or in a grave injustice to the people of the NWT, the Commissioner should refuse to sign it, or the Governor-in-Council would disallow it within the statutory one year period.

The Commissioner's role should evolve from its present position through the following stages. As explained in chapter 7, the Commissioner should report, not to the Minister of Indian Affairs and Northern Development, but to the proposed federal Minister of State for Federal-Provincial-Territorial Relations. The Commissioner could and should use the traditional powers

of "encouraging, guiding and warning" the Executive Committee if they are contemplating what, in his judgment, is an unwise act, yet he should not use any veto power. If the particular legislation falls into one of the exceptional cases stated above, the Commissioner should not sign it until the Minister has first examined it. If the Minister agrees with the Commissioner, he should instruct the Commissioner not to sign the legislation, but the reasons for the veto should be conveyed publicly and with the shortest delay to Council. An alternative process would be for the Commissioner to sign the legislation and allow the Governor-in-Council to disallow it. The reasons for a disallowance should also be made public.

As soon as the fundamental issues, including the settlement of native claims and the devolution of federal responsibilities, have been settled, the Commissioner's power to refuse to sign legislation and the Governor-in-Council's power of disallowance should be reduced to the same status as the powers of reserve and disallowance as they exist with regard to the provinces. As in the rest of Canada, the courts should resolve the legal questions of distribution of powers; federal-provincial agreements should resolve the political questions; and the people should judge whether legislation is wise and just.

While it is suggested here that the Commissioner's role should be radically changed, this does not mean that he will not have very heavy and crucial responsibilities during the next several years. Just as the lieutenant governors during the nineteenth century were the agents of the federal government, watching and assisting in the development of responsible government in the provinces and territories, the Commissioner in the NWT today should be charged with the role of overseeing constitutional development in the North. As suggested earlier, the devolution of responsibilities to the local communities is a vital but difficult task, an important condition for the future political development of the North. The devolution of responsibilities from the federal government to the GNWT will also require careful planning and much negotiation. The pace of the two processes must be linked and, in turn, must correspond to the evolution of the political structures in the North. It will be the Commissioner's task to encourage, conciliate and advise in this process, to ensure that northerners are consulted, and that they understand and assent to the changes. He should also provide advice to the federal government on its policies and activities in the NWT. The prime responsibility for the negotiation of changes should rest with the Territorial Council, but the federal government will presumably want to assure itself that constitutional change is being carried out justly and acceptably. As is concluded in chapter 7, the Commissioner will also have an advisory role to the federal government during the debate on division of the NWT. The Commissioner should be used as the eyes and hands of the federal government in all these respects.

#### Deputy Commissioner

- 4.49. The NWT Act provides for the appointment of a Deputy Commissioner, who is entitled, according to the act, to exercise all the powers and functions of the Commissioner, when the latter is "absent, ill or unable to act" or when

"the office of the Commissioner is vacant." In the past couple of decades, the Deputy Commissioner's office has grown beyond this original concept of the occasional and temporary delegation of functions by the Commissioner, to a full-time position that appears to carry a considerable independence of authority.

It is in the light of this development that the last Territorial Council suggested that the Deputy Commissioner's position not be filled in the future. While it is evident that the Deputy Commissioner's position, as it is presently interpreted, hinders the development of responsibility by the elected Executive members, it is also true that the Commissioner's existing responsibilities and those that he will be required to retain in the immediate future are more extensive than any one individual could be expected to exercise effectively.

Therefore, in order to promote both accountable and effective government, it is desirable to appoint a Deputy Commissioner, but to re-define his role so that it corresponds more closely to the original concept of the position. In practice, this would mean that the Commissioner would be the only appointed official to hold portfolios and hence, to have the right to sit on the Executive Committee. While the Commissioner would retain ultimate and complete responsibility for the portfolios, he could delegate some of his executive authority to the Deputy Commissioner. If, for example, he felt his responsibilities prohibited him from participating in the Executive Committee, he could send the Deputy Commissioner in his stead, but the latter would be there only as delegate of the Commissioner, and not in his own right.

The retention of the position of Deputy Commissioner for the immediate future should not be used to inhibit the transfer of responsibilities to the elected Executive Committee members. When, as proposed, the Commissioner divests himself of his portfolios, the Deputy Commissioner will only be able to exercise that authority remaining to the Commissioner which the latter chooses to delegate to him. In the longer term his position will become that of an assistant to the Commissioner in his role as "federal agent."

#### Executive Committee

- 4.50. As implied in the conclusions above concerning the future roles of the Commissioner and Deputy Commissioner, the elected members of the Executive Committee should progressively assume the formal and actual burden of government in the NWT. Collectively, the Executive Committee should have the overall responsibility for the policies and programs of the GNWT, including financial arrangements with the federal government. Individually, each elected member of the Executive Committee would have responsibility for the policies and programs within those departments assigned to him or her.

It is important that the respective roles of the elected "ministers" and of appointed public servants be clarified so that the government can be held

accountable and so that a separation and balance between the parts of the political system can exist. The Executive Committee members should not act as administrators or managers of the departments. These responsibilities properly belong to the director of each department. Instead, Executive Committee members should set the policy directions and financial allocations for the department and defend them before the Territorial Council. The directors and their departments should provide the support, information and guidance to the Executive Committee members to allow the latter to choose the best policy directions and to keep check on the activities of their departments. The departmental directors also should have the responsibility to provide the organizational and administrative interdepartmental framework necessary for a collective administrative response to the requests of the Executive Committee. The Executive Secretariat, as suggested below, could play an important coordinating function in this regard.

- 4.51. The selection of the elected members to sit on the Executive Committee in the NWT presents some difficult and unique problems. Unlike any of the provinces or the Yukon Territory, a formal party system has not as yet developed in the NWT and seems unlikely to do so in the immediate future. Thus, an election does not produce a "ready-made" government, or an obvious "premier" whom the representative of the Crown could formally appoint.

While this poses some problems, it is not impossible for the Executive Committee still to retain the confidence of the Council or for it to be accountable to the Council. For accountable and effective government to be achieved, a system must be devised that provides the Territorial Council with the means to choose and remove the members of the Executive Committee; that allows a degree of flexibility in the internal operation of the Executive Committee; and that permits the Commissioner, acting as a representative of the Crown, formally to appoint the members of the Executive Committee. Since the members of the Committee would be, in effect, "Her Majesty's Ministers," this last condition is a constitutional requirement.

The following procedure for selecting the Executive Committee illustrates one possible approach. The Territorial Council might nominate from its members a Chairman of the Executive Committee. He would subsequently consult the Council on the number of elected members to be appointed to the Executive Committee, following which the Council would nominate this precise number from among their members. The Commissioner should play the role of a contemporary lieutenant governor in this process. He should be bound to appoint those members nominated by the Council. Only in very exceptional circumstances, where it appears that the Council is unable to select a government, should he assume other than a formal role in the formation of an Executive Committee.

At present, the maximum number of elected Executive Committee members is predetermined by the federal government and is subject to financial considerations. As government develops in the NWT, the Chairman of the Executive Committee, in consultation with the Council, should have the

discretion to determine the number of members needed on the Committee. It is advisable, however, that for the present and in the interests of maintaining the desired balance between the Council and the Committee, the number of Executive Committee members should not exceed one-third the number of seats on the Council. Since participation in the Executive Committee is a full-time position, it is important that there be a sufficient number of non-executive members who can travel extensively in the communities, educate the people as to the issues and bring the communities' grievances and suggestions back to Yellowknife.

The Eighth Territorial Council argued in their paper on constitutional reform that the Council should not only retain the right to select and remove members of the Executive Committee but that they should also determine the portfolios of each member and approve any reassignment of portfolios. This process seems unnecessarily rigid and complex. Moreover, if, in the absence of a party system, collective accountability for government actions and policies is to be developed, there must be a means for encouraging collective responsibility. Thus, it seems advisable that the Chairman of the Executive Committee, after consultation with the Council, be free to assign or reassign members to their portfolios. However, he should have no authority to select or remove members from the Committee.

The Territorial Council should, of course, always retain the right to remove members of the Executive Committee, collectively or individually, by means of want-of-confidence motions. While normally it is highly irregular for the legislature to be able to vote an individual "minister" out of the "cabinet," in the absence of a party system and with the small numbers in the Council, this seems to be the best alternative.

- 4.52. With the exception of the Public Services portfolio, which was briefly held by an elected member during the last Council, all internal service departments have been held by the appointed members of the Executive Committee. For government to become accountable in the NWT, elected executive members should not be restricted to the program portfolios. The general principle ought to apply that all program and service departments should, without exception, report to an elected member.

There has been no attempt here to define specific departmental portfolios, since these will change as the authorities of the GNWT evolve. However, as soon as possible, an elected member of the Executive should assume responsibility for the revenue and finance portfolio. It also seems advisable that an Executive Committee member be designated for the coordination of the GNWT's role in the native claims negotiations. The Executive Committee as a whole, however, should assume a collective responsibility for the GNWT's policies on claims.

- 4.53. Further priorities are the designation of an elected Executive member to be responsible for the Department of Personnel, and the creation of a collective Executive responsibility for senior appointments to the GNWT. In particular, the directors of departments and agencies should be appointed, not by the Commissioner alone, but by the Commissioner-in-Executive Committee.

The devolution of provincial-like federal responsibilities to the GNWT will require the territorial government either to retrain existing personnel or, in some cases, to engage additional personnel. However, the transfer of these responsibilities should not presuppose an automatic transfer in the number of federal man-years, administrative structures and costs. The GNWT should endeavour to rationalize its administrative infrastructure to meet the particular requirements of the NWT. These include devolution of authority to the communities, decentralization, cost effectiveness and the employment of northerners at all levels of government in the NWT.

The Department of Personnel should examine the advantages, in the short term, of using seconded federal employees or of working out purchase-of-service agreements with the federal government in fields where the GNWT does not presently have expert personnel. In the long run, however, the GNWT should aim at developing its own expertise through the training and employment of northerners and, in particular, of native northerners.

To this end, the GNWT should ensure, especially in the areas where the Territories are negotiating to assume a responsibility from the federal government, that forward planning with regard to training needs and the identification of required positions and functions be undertaken. The present cooperation between the federal and territorial governments in manpower training programs should be strengthened. Moreover, seconded federal employees should, in some cases, undertake counterpart training of northerners to assist the transition from federal authority to territorial control of the field.

While the Department of Personnel and the designated Executive member have the major responsibility of overseeing the development of personnel policy for the Territories, considerable authority for hiring and the identification of qualifications for positions should be decentralized to the regional offices.

- 4.54. As the Executive Committee progressively assumes its full executive responsibilities, it will increasingly require the services of a small central agency or secretariat to provide it and its subcommittees with essential support services and a limited policy-making capacity.

The present Executive Secretariat reports directly to the Commissioner, but it should instead report through the Secretary to the elected chairman of the Executive Committee.

At the moment, the Secretariat has a diverse set of functions, including liaison between the GNWT and DIAND, Security Advisor and Protocol Services for the Commissioner, an audit bureau and special projects branch, a constitutional development committee and land claims secretariat and a special responsibility for administration in the regions.

In future, the Commissioner's Office should be separate and distinct from the Executive Secretariat and should be concerned only with the Commissioner's specific functions. At the same time, however, the Commissioner should be kept informed by the Secretariat and be able to draw on its expertise in those areas that pertain to his "overseer" role, as for example, devolution and land claims.

The Executive Secretariat should assume the existing functions of the Department of Planning and Program Evaluation. However, it must be stressed that this should not be the only unit of the GNWT involved in developing policy options. The policy-making process should occur throughout all the departments of the GNWT and should be decentralized to the regional offices, whenever possible. At the same time, the Executive Secretariat could usefully liaise among the departments of government and assist them to develop core policy capabilities in those areas that are under negotiation for devolution from the federal government.

The Executive Secretariat should assist the Executive Committee in its preparations for Council sessions and ensure that legislation is ready for presentation. The Secretariat should also include an Intergovernmental Affairs unit to provide the necessary expertise to the elected members as they assume increasing responsibility from the Commissioner for provincial-territorial and day-to-day federal-territorial affairs. The support functions to assist the Executive Committee with regard to the native claims negotiations and the process of devolution to the communities should also be located in the Executive Secretariat. The objective should not be to create an excessively large executive department, but to provide the minimal capacity for the Executive to function effectively and to exercise control over the policy direction of the GNWT.

#### **NWT Council**

- 4.55. The Territorial Council is presently composed of 22 members elected from across the Territories. While it chooses its own Speaker and has adopted its own rules of procedure, in legal terms and in practice, it is still largely an advisory body to the Commissioner. As the Commissioner's role is increasingly limited during the next few years and the executive branch, composed of elected members, takes on greater responsibilities and a more stable, democratic form, it will be essential for the Council to strengthen its position and develop the necessary legislative checks on executive power. If it does not do so, the system may continue to be executive-dominated and accountability of government will be limited.

The Council must have the power to select and remove the members of the Executive Committee, but the power of removal should be regarded as a power of last resort and there should be many other means by which the Council could hold the Committee accountable in its day-to-day activities. The Council should play an active, vigilant role as the body representing the people. It is the task of its members to ensure that government is public and that it is responsive to the needs and wishes of the communities. It must prod the government to act in certain cases and prevent it from acting in others. This role, which is that of a southern legislature, is the minimal role the Council in the NWT should play.

There are many reasons why the NWT Council could and should have a more significant position than its counterparts in the South. Southern legislatures, faced with strong governments and unwieldy bureaucracies, have frequently been criticised for their ineffectiveness. It is possible, with



foresight and immediate action, that the Territorial Council could construct a more effective role for itself. There are several factors in its favour: there is no disciplined majority party to "control" the legislature; the size of the Council permits almost universal participation by members in all important questions; the volume of business before the Council, while growing rapidly, is still manageable; and precedents and procedures are not as yet firmly implanted. Finally, formal and informal precedents and northern values, as reflected in the Council, could contribute to meaningful participation by the members in the governing process. The Council should seek to elaborate those structures and procedures that allow it to develop, expand and control the Executive. In this way, the NWT might well be able to avoid some of the pitfalls of executive-dominated government found elsewhere.

- 4.56. In recent years, there has been some dispute between the Council and federal authorities about the appropriate nomenclature for the Council, the Executive Committee and its members, and for other parts of the political system in the NWT. There are clearly constitutional precedents in Canada respecting the use of certain terms, for example, the title "legislative assembly." Moreover, as long as the NWT Act remains a statute of the federal parliament, any changes in the nomenclature employed in the act will require parliamentary approval. Some changes, however, such as the designation of the Executive Committee and that of the Chairman, can be affirmed by territorial legislation or simply by conventional usage.

Although this Report has used the federal statutory terminology, the Council should be permitted to determine its own designation and, where required, recommend such changes in the federal statute. In its consideration of appropriate nomenclature, the Council should be guided by the intended role for the office or body in the NWT. For example, the Council may not wish the political head of the Executive Committee to be premier, or "primus inter pares," but rather to perform the genuine functions of a chairman. As such, the title "chairman" would be more appropriate than that of "premier."

- 4.57. While the potential for avoiding some of the ills of an executive-dominated political system exists in the NWT, the creation of a strong, effective Council will require considerable work and imagination. The rules and procedure of the Council are largely based on the traditional parliamentary procedures of the "Westminster model," and more specifically, on the Standing Orders of the House of Commons in Ottawa. These rules are the product of a long historical development in a particular social and constitutional environment. They were developed to ensure a balance between the need for the government of the day to have its legislation passed and for the opposition to make its grievances heard. They are the product of a large assembly, separated into government and opposition, and into political parties, one of which usually has a majority. In such a context, the rules, no doubt, make sense.

The Council of the NWT, however, is an entirely different entity: it is much smaller, less formal, less steeped in the British legal and parliamentary traditions, and not officially divided into groups or parties. Moreover, the

style of decision-making, which is more typically northern and native, is that of trying to reach a consensus through lengthy discussion, rather than adversarial debate. The complicated procedure of the Council, which is by nature alien to many of its members, may act as a barrier to effective participation in its proceedings. Moreover, the problems of translation into and from Inuktitut have, in the past, made participation by some of the Inuit Council members difficult.

Given the above problems, it seems essential that the Council members understand the rules of the Council, in order that they may contribute actively to adapting these rules and thus facilitate their own participation. The rules in themselves are not sacrosanct. They should be retained only so long as they meet the needs of the Council and allow it to hold the government accountable. However, the Council members should be careful that in changing the procedures, they do not weaken their control over the Executive. The consideration of the procedures of the Council should be a matter of vital interest to all members, not merely to a single specialized committee.

The recent decision made by the Executive Committee to move the Clerk's Office from the Executive Secretariat to the Speaker's authority, will contribute to the independence of the Council. Another change that might be desirable would be to formalize the role of the chairman of the caucus. In order to give him some independence of authority, he should not be a member of the Executive Committee and thus be constrained by executive solidarity. He should play an important role in encouraging the vigilance of the Council over the Executive and also assist in giving coherence to the direction of caucus.

- 4.58. The Council should consider making much more extensive use of committees, both standing and special. They should be used not only to consider bills after second reading, but also to initiate studies, to investigate problems, to set priorities for government, to approve draft legislation, to examine government spending, and to keep a watch over executive acts. The use of committees in a small legislature may put an onerous burden on the members — but the only alternative may be government by an "elected few," which is not a prescription for good or responsive government in the NWT.

The Standing Committee on Finance already has a potentially influential role in the budgetary process in the NWT, but more efforts should be made to realize its possibilities. In particular, the Committee should focus on NWT revenue matters, including federal-territorial fiscal arrangements, the territorial tax structure and legislation.

Until October 1979 there was no provision for the gazetting of ordinances. While this situation has now been rectified, there is still no legal requirement for the Commissioner to consult the Executive Committee when he makes regulations. Nor is there a regular process by which Council examines regulations. In future, regulations should be made by the Commissioner-in-Executive Committee, and the Council Committee on Legislation should have the opportunity to examine these regulations.

The use of standing, or ad hoc regional committees, should be considered. The vetting of legislation by such committees either prior to or immediately following the formal first reading would permit the Council members to examine the regional interests and implications and return to their communities for consultation. In terms of the goal of a more decentralized NWT and greater power for the local communities, it seems desirable to sacrifice some speed in the legislative process for a greater level of understanding and acceptability of legislation by the people.

Committees should be used, as well, to examine the annual reports of government agencies and boards and to call as witnesses departmental officials. Generally, the Council should allow committees the scope to initiate, as well as to respond to, legislation and should provide them with the necessary means, in terms of staff, facilities, and authorities to do so, for example, through provision to travel, call witnesses, and hold regional meetings. The committees should be independent of the Executive, both in composition and means.

- 4.59. Finally, the Council should seriously consider ways to promote access of citizens to the decision-making process. Committees can be used effectively to hear citizens in various parts of the Territories. Yet, it might be advisable in the NWT, where the native peoples have shown some reluctance to accept fully the concept of "representation," to allow residents a more direct access to the process. While such tools of direct democracy as the referendum, initiative and recall have not normally been used in connection with the Westminster model of parliamentary government, they may better reflect the native peoples' concern with a direct involvement in the political process. Moreover, a more extensive use of such traditional parliamentary tools as the petition could provide residents of the NWT with an additional channel of access to the territorial government. As suggested above, the Council should re-examine its rules and procedures and the legislative process not merely in the light of historical parliamentary procedures but first with a view to their relevance to the values and needs of the residents of the NWT.

## **5 FEDERAL JURISDICTIONS IN THE NORTHWEST TERRITORIES**

The presence of the federal government in the NWT is considerably greater than it is in the provinces. This is, of course, partly attributable to the territorial status of the NWT. The federal government is responsible for all aspects of government in the NWT, including those functions that in the current balance of federal-provincial relations are the exclusive or partial responsibility of provincial governments. However, certain Canada-wide federal responsibilities take on a different importance in the Territories, because of the native majority in the population, the vast land-mass and coastline, the relatively early stage of economic development, and the limited tax base.

Two areas of federal responsibility causing special concern in the NWT pertain to native peoples and to the ownership and regulation of land and natural resources, both of which have a significant impact on government in the NWT and all NWT residents. Both issues are reviewed more fully below.

The jurisdictions discussed here have been identified for two principal reasons: first, they are those recommended in three major NWT proposals—the ITC's Nunavut proposal, the Dene Nation's proposal on government and the position paper of the Eighth NWT Council—for transfer or delegation to the NWT; second, they are the legislative and administrative areas presently occupied by the federal government that most directly affect the residents and the exercise of government in the NWT. Although comparisons are made with provincial jurisdictions throughout this section, as they were in the three proposals, the jurisdictions analyzed here are not, nor are they intended to be, a comprehensive range of provincial-type authorities. Each of the three proposals recommends a degree of autonomy, with provincial status as the long-term goal. This Report considers the more pressing and immediate issue to be greater authority and more accountability of government in the NWT. The objective repeated here, as throughout this Report, is not provincial status but the achievement of better government in, for and by the NWT. The particular aspects of the federal jurisdictions selected here should, therefore, be read in light of this objective. Each jurisdiction will be examined to consider whether a different balance in the current federal-territorial distribution of responsibilities is desirable.

Since the relocation of the GNWT to Yellowknife in 1967, the drift in federal-GNWT relations has been towards the conventional federal-provincial model in terms of the balance of constitutionally established authorities between the two levels of government. Although the federal government retains ultimate responsibility for the governance of the NWT, over the past decade it has devolved to the GNWT, through the NWT Act, various, limited responsibilities, all of which correspond to categories assigned to the provinces by the BNA Act. Specifically, subject to any other constraining provisions under federal law, Section 13 of the NWT Act gives the Commissioner-in-Council legislative jurisdiction over direct

taxation and spending for territorial purposes, municipal institutions, property and civil rights, business incorporation, the administration of justice and enforcement of territorial laws, preservation of game, agriculture, education, corrections, hospitals, intoxicants, and other matters of a local or private nature or matters subsequently designated by the Governor-in-Council. Section 14 provides that Section 13 cannot give the NWT greater authority than is provided the provinces under the BNA Act in respect of similar classes of subjects.

To a large extent, the GNWT has exercised its responsibilities without federal restraint and has been well-consulted by the federal government on matters of conflict. However, in certain key areas of these "transferred" responsibilities, overriding federal authority has been exercised extensively on the grounds of protecting a territorial or federal interest. This authority has been exercised through instructions to the Commissioner; through the development in the Department of Indian Affairs and Northern Development (DIAND) of a policy competence on a range of territorial matters; through the assumption of responsibility by the federal government of all or part of a field considered to be under territorial legislative jurisdiction; and through the exercise of federal powers that indirectly prevent territorial initiative.

Such unilateral federal action in the first instance is prejudicial to the development of responsible government in the NWT. It is confusing to territorial residents, and makes it difficult for them to assign responsibility for decisions, or to know when to hold the GNWT accountable; it is demoralizing to the NWT Council and elected members of the Executive to be prevented from acting in an area under their legislative jurisdiction; it undermines the ability of, and the need for the GNWT to develop competence in a field; and in areas of conflict, it denies the GNWT the opportunity to persuade the federal government that a cooperative arrangement may better balance federal and territorial interests.

These interventions are partly explained by the federal government's responsibility for the governance of the NWT and its wish to carry out that responsibility as expeditiously as possible. Nevertheless, it is doubtful whether due weight is being given to the long-term federal obligation to facilitate the evolution of responsible government in the NWT. This situation is exacerbated by the current organization of the federal government, whereby the Minister responsible for the governance of the NWT—the Minister of Indian Affairs and Northern Development—is also the Minister primarily responsible for protecting the many federal interests in the NWT. Given the need to reconcile conflicting pressures, it is understandable that, over time, the GNWT has come to be treated by the Minister as an extension of his department. However, if further transfer of responsibilities or the full transfer of those already partly devolved continues to be made without changes in this organization, these countervailing pressures may well undermine the objective of achieving more responsible government.

As the GNWT is the responsibility of the federal Parliament and therefore subject to its authority, a different distribution of administrative and legislative jurisdictions from that in the provinces is possible, particularly in respect of matters exclusive to federal jurisdiction under the BNA Act. For example, the federal government could delegate its authority for certain purposes to the GNWT, while retaining ultimate responsibility in an area. However, given that the goal sought is the achievement of greater autonomy for the territorial government, any depart-

ture from the federal-provincial model must be treated cautiously. Different treatment for the NWT compared to the provinces could, for instance, make it difficult for the GNWT to represent territorial interests effectively in intergovernmental discussions. In the past, however, different arrangements among the provinces have not been an insurmountable factor in relations between governments in Canada. For example, the federal government retained ownership, control and administration of public lands in Manitoba, Saskatchewan and Alberta for many years after provincial status was granted them, despite the fact that the other provinces had these responsibilities. Newfoundland also joined Canada subject to special conditions. And, even though federal jurisdiction is now more or less uniform in all provinces, it is accepted that the federal government may follow policies with different applications or benefits to various provinces.

Further, decentralization of federal activities is frequently considered as a transitional step towards the eventual devolution of federal responsibilities to the NWT. Decentralization has its advantages and disadvantages. On the one hand, it may permit the federal government to become more sensitive and therefore more responsive to territorial needs, especially if decentralization occurs at the senior levels of policy-making, decision-making and operational control. On the other hand, it would undoubtedly result in a greater federal presence in the NWT, and consequently, in an increased rather than a decreased dependence on the federal government by the GNWT at a crucial point in its evolution.

Finally, the timing of, and transitional arrangements for, progressive devolution of federal responsibilities to the GNWT should not be rigid. It would be undesirable to overburden a developing administration, government and Council with tasks which the political system as a whole or its individual parts are not yet ready to absorb. Inappropriate timing would disrupt the balance required between the legislature and executive, the executive and administration, and the territorial government and community governments. Also, as discussed in chapter 4, it will be important for the GNWT to restructure and rationalize its current activities so as to absorb any new responsibilities transferred from the federal level.

Specific jurisdictions in which decision-making is still effectively federal are examined in the following sections and are grouped under three broad categories:

- jurisdictions affecting NWT peoples directly, particularly native peoples;
- ownership and regulation of territorial land and natural resources; and
- services, which in the provinces are the responsibility of the provincial or local governments.

## **THE FEDERAL GOVERNMENT AND INDIVIDUALS IN THE NWT**

### **Native Peoples**

An issue of major importance to all residents of the NWT concerns the federal jurisdiction for native peoples under Subsection 91(24) of the BNA Act and its relationship to federal responsibilities in the NWT that might be transferred to the GNWT, or to other responsibilities already held by the GNWT.

Experience in the NWT on this matter has differed greatly from that of the provinces, for some of the following reasons. Unlike the situation in the provinces, the native population has always been in the majority in the NWT. With one exception, reserves of federal land for native peoples have not been established as they have been in the provinces. Furthermore, the federal relationship with native peoples in the NWT has primarily been through what is now called the Northern Affairs Program of DIAND, which, because of its overall responsibilities for the NWT, does not distinguish the services it provides on an ethnic basis. In contrast, in the South, the federal relationship with native peoples has been primarily through what is now called the Indian and Inuit Affairs Program of DIAND under the authority of the Indian Act. In the provinces, this latter program provides or pays for provincial-type services to status Indians on reserves, and to a limited extent, to those off-reserve.

More recently, there have been indications that the federal government is bringing its policy on native matters in the NWT more in line with its policies and practices in the provinces. This has been demonstrated, for example, by the establishment of a single claims office in DIAND, and by the federal willingness to make special purpose grants available to the GNWT to pay for the provincial-type share of health costs for status Indians and Inuit.

In contrast to the NWT, the approach in the provinces has frequently been either to establish separate and parallel delivery systems for various services—a federal system to serve native peoples who qualify and a provincial system to serve all other people—or to use parallel accounting and financing arrangements based on ethnic status. Besides being impractical on grounds of economies of scale in the NWT, such arrangements are incompatible with representative government. Use of this approach would effectively remove from the GNWT the burden to respond adequately to the needs of native peoples, who form the majority of the population. This result would be even more likely to occur under tripartite arrangements similar to those presently being explored between the federal and provincial governments and the native groups for services to be provided to native groups by provincial governments. The onus remains with the federal government either to ensure the terms of the agreement are carried out, or to provide the services itself. Because of the differences in the NWT, imitation of the current federal-provincial model for such services may be counter-productive both to the establishment of effective government in the NWT and to native interests. Since matters of importance in the daily lives of native peoples in the NWT are better decided at a level of government closer to them, alternative approaches should be explored that encourage the territorial government to serve native peoples directly.

The situation in the NWT has been further complicated by the ad hoc evolution of federal programs. For example, the federal government continues to provide health services in many territorial communities through its hospitals and nursing stations. Although these services are provided regardless of ethnic status, they primarily serve a native clientele. The GNWT has assumed legislative jurisdiction for hospitals and responsibility for health care delivery, which is funded through its own budget, through shared-cost arrangements with the federal government and through specific purpose grants from DIAND for native health care. The GNWT also operates some hospitals and health services itself, and pays the

federal Department of National Health and Welfare for costs of health services provided to the NWT by that department. This has resulted in unnecessarily complex arrangements and in pressures from the GNWT for change. Negotiations are already under way to transfer these services from the federal to the territorial government. There is, however, some resistance to this transfer on the grounds that it may lower the level of health care to native peoples.

### **GNWT Employees**

A difficulty in legal interpretation makes it unclear whether the rights of GNWT employees are a matter of federal or territorial jurisdiction, whereas employees of provincial governments are under provincial jurisdiction. Despite the apparent intention of the federal government to the contrary, the Canadian Human Rights Act, rather than the NWT Fair Practices Ordinance, would seem to apply to employees of the GNWT. This has caused considerable confusion at both the federal and territorial levels. The level of government accountable for the protection of the rights of GNWT employees cannot be determined without recourse to the courts, or amendment to the federal law to ensure that it does not apply to GNWT employees.

### **Federal Employees**

The principles of responsiveness and accountability of government in the NWT apply not only to the GNWT, but also to the federal government. The recent Report of the Special Committee on the Review of Personnel Management and the Merit Principle in the Public Service, chaired by Mr. Guy D'Avignon, stressed the importance of equal opportunity, sensitivity to public requirements, and the need for personnel policies and support systems to adapt to the needs of regional locations and to foster the selection of personnel with a demonstrated sensitivity to local issues.

There is concern in the NWT that the federal government has not provided an administration sufficiently sensitive to, or representative of, northern values. This has caused much antagonism and bitterness in the NWT against the federal government. Problems range over a wide area. There is a lack of opportunity for northerners in the federal public service. Federal jobs and job descriptions in the NWT are designed by southern-trained and southern-based managers for southern-type situations without regard for special territorial requirements. The rotation of federal public servants to the NWT limits the job opportunities for northerners, even though it may increase the knowledge and awareness of the NWT among southern-based employees.

The fact that the positions involving decision- and policy-making on matters important to the residents of the NWT are in the South, primarily in Ottawa, Edmonton and Winnipeg, but also in Vancouver, Regina, Montreal, Halifax and elsewhere, inevitably compounds the problem (Map 6).

According to the *Annual Northern Expenditure Plan* (ANEP), prepared by DIAND, planned federal man-years employed on matters of direct relevance to the NWT for fiscal year 1978-79, consisted of over 2,600 man-years located in the NWT, plus some portion of approximately 1,000 man-years located in the South. These positions are for the most part filled according to standard Treasury



Board policies and practices based primarily on the "merit principle." In recognition of higher costs and isolation factors, federal employees in the NWT may be granted housing and isolation post allowances. The Canada Employment and Immigration Commission (CEIC) is responsible for hiring administrative support and operations personnel, and the Public Service Commission (PSC) is responsible for staffing all other positions. The PSC has only recently opened an office in Yellowknife for the NWT, its operations previously having been carried out in Edmonton. Although greater efforts are being made to hire locally for NWT-based positions, there are no statistics to indicate the extent to which this occurs. A review of the federal government's compensation and career development practices, however, suggests there is at least an economic bias towards the hiring of southerners for those positions of direct relevance to the NWT.

To the extent that the federal government is carrying out provincial-type functions in the NWT, an additional argument can be made for an increased emphasis on hiring territorial residents if the intention is eventually to transfer these responsibilities to the GNWT. Provinces generally hire provincial residents for their public service, and it is reasonable to expect the GNWT would hire territorial residents when it assumes responsibility for these functions.

All these problems become even more significant when the relative weight of federal employment in the NWT is considered. From an examination of data provided by ANEP, Revenue Canada and the GNWT, it is estimated that federal employees represent approximately 15 percent of the NWT labour force, almost three times as high as the all-Canada average. Despite the fact that the majority of the population is of native origin, native peoples are estimated to occupy only about 20 percent of federal positions in the Territories, with a relatively lower weighting in permanent positions.

Recently, special federal efforts have been made by DIAND and the PSC through the Northern Careers Program and the Office of Native Employment to increase the number of native peoples employed in the federal public service, particularly in middle management and advisory positions. However, despite the fact that the native peoples in the NWT are in the majority there, they represent less than 5 percent of Canada's total native population, and therefore tend to be neglected in nation-wide policies.

### Northern Native Languages

Many of the indigenous peoples of the NWT are either unilingual in or regularly speak one or other of the various native languages. While the media, and some public and private sector services have endeavoured to meet the language needs of their clients, this practice has not been widely or uniformly adopted by the federal government. Lack of formal attention to language requirements in the federal government's staffing practices in the NWT limits both responsive delivery of services and the opportunities that might otherwise exist for northern native employment in the federal public service.

### LAND AND RESOURCES

Decisions on land use in the NWT are important to territorial residents. They carry repercussions for development, resource use, tourism, agriculture, industry and

communities and, in turn, affect the creation of jobs and the establishment of a potential tax base. For native peoples, access to surface lands, water and renewable resources is essential to their traditional pursuits of hunting, fishing and trapping, frequently an important source of livelihood. For all territorial residents, access to these resources and the protection of the environment is of crucial interest, not only for recreational purposes, but also because of the possible profound impact of any change on their chosen lifestyle. However, compared to the provinces, where most decisions on land and resource use are made at the provincial level, all significant comparable decisions in the NWT on these matters are made by federal officials, through federal institutions.

The NWT Act confers legislative jurisdiction on the NWT Council in various land and resource use matters. Section 13 of the act gives the NWT legislative authority over "property and civil rights," "matters of a merely local and private nature," "direct taxation," "municipal institutions" and "agriculture." This compares with the provinces, which have similar authority under Sections 92 and 95 of the BNA Act. Two factors, however, make the NWT authority qualitatively different from that of the provinces. First, under Section 13 of the NWT Act, the NWT authority is subject to any other act of Parliament. Moreover, the NWT government is a subordinate government, a delegate of the federal government. This federal primacy means that Parliament can always directly override territorial exercise of these jurisdictions, by repealing the relevant provisions, or by legislating on the subject and thereby displacing the related territorial law. In contrast, in relation to the provinces, Parliament cannot legislate on subjects over which the provinces have exclusive jurisdiction, such as those set out under Section 92 of the BNA Act; nor can it displace provincial legislation in those areas where jurisdiction is concurrent but provincial jurisdiction is paramount.

Second, in the NWT, crown land, which represents virtually all territorial land, is owned by the federal Crown, whereas in the provinces most public lands are owned by the Crown in right of the province. Provincial ownership of these public lands is provided under Section 109 of the BNA Act for the four original provinces, Quebec, Ontario, New Brunswick and Nova Scotia, and under other constitutional documents that eventually placed the other provinces in the same position. Moreover, Subsection 92(5) of the BNA Act gives the provinces exclusive authority over "the management and sale of the public lands belonging to the province." The NWT has no corresponding legislative authority.

In the NWT, the federal government has by and large chosen to exercise its prerogatives of ownership and has legislated extensively respecting the management, control and revenue rights from the disposal and use of its property. Federal laws permit the transfer, under circumscribed conditions, of crown lands to the Commissioner's control for the beneficial use of the NWT, although fishing and subsurface rights must be reserved under federal control. Only a small portion of land has so far been transferred under these provisions, primarily for community development purposes. Recent federal initiatives would make small, additional amounts available for certain agricultural and recreational uses.

As well, the federal government has been active in regulating land and resource use in the NWT and has established an extensive administration to carry out these responsibilities. Within its fields of jurisdiction, the NWT has passed

legislation related to land and resource use and regulation, such as the Area Development Ordinance, the Environmental Protection Ordinance, the Forest Protection Ordinance and the Travel and Outdoor Recreation Ordinance. However, these laws are largely inoperative due to the overriding federal authority arising from federal occupancy of these fields. In contrast, in the provinces, although federal crown lands within provincial boundaries are not subject to provincial laws on land and resource use, the federal government frequently chooses to acquiesce in their application. Federal intervention on other matters affecting land and resource use in the provinces is also considerably more limited than it is in the NWT; first, because the federal government cannot legislate on those matters falling under exclusive provincial jurisdiction, and, second, because it has been relatively more restrained in exercising its authority in areas of shared interest, such as environmental and agricultural matters.

Within the federal government, the responsibility for decisions on land and resource use in the NWT rests almost entirely with the Minister of Indian Affairs and Northern Development, who has the dual role of ensuring that federal interests in the NWT are protected, and of responding to territorial requests for land and resource use. Federal interests in territorial land and resources can be summarized as follows: maintenance of as flexible a position as possible for claims negotiations with native peoples; maintenance of trust with native peoples, in part through federal protection of native interests in land; assurance of adequate federal access to resources to satisfy future national needs, particularly with respect to energy; protection of the environment, wildlife and fisheries commensurate with national interests; encouragement of economic development consistent with national interests; establishment of national parks; maintenance of Canadian sovereignty, through a physical presence in remote areas; and fulfilment of federal obligations regarding the NWT and crown land in the NWT, particularly where the GNWT is insufficiently strong to do so.

The Minister's authority over decisions on land and resource use in the NWT rests on a number of federal laws, the most important of which are the DIAND Act, the NWT Act and the Territorial Lands Act. Under this legislation, he is permitted extensive discretion in carrying out his responsibilities and is supported by DIAND's Northern Affairs Program and the Office of Native Claims. In addition to its responsibilities for federal-territorial relations and co-ordination of federal interests in the NWT, the Northern Affairs Program is responsible for environmental matters, including the management of land, water and forest resources and environmental protection; control and development of non-renewable resources; economic planning; and roads, airstrips and pipelines.

The effect of this arrangement is to channel each interest group into a one-to-one relationship with the Minister and his officials. This results in little opportunity for different interest groups to resolve conflicts among themselves, or to reach compromises within territorial institutions. Because the issues are complex and interrelated, officials are encouraged to be cautious and to follow precedent when giving advice. This leads to a slower decision-making process and frequent stalemates, perceived in the NWT as federal unresponsiveness to genuine needs. In turn, this places considerable pressure on the Minister and his officials, with the Minister becoming the final "court of appeal."

In contrast, the distribution of responsibility for land and resource use in the provinces is completely different. Matters of direct concern to provincial residents are allocated among various ministers at the provincial level who are identifiable and accountable for their respective decisions. Related federal interests are also the responsibility of individual ministers, such as the Minister of State for Federal-Provincial Relations, or Economic Development, or the Ministers of the Environment, Energy, Mines and Resources, or Fisheries and Oceans, with the result that significant conflicts can surface for discussion and resolution among all Cabinet ministers. Where a federal-provincial overlap or conflict arises, a well-established array of forums and mechanisms exist, such as joint consultative mechanisms, specific agreements, or shared administration; these permit a resolution to be sought and accountability to be assigned.

The prospect of allocating responsibilities between the federal and territorial governments in the same way as now occurs in the provinces raises the following concerns. First, the spectre is raised of having a population of 46,500 "holding to ransom" the rest of Canada when federal and territorial interests conflict. However, potential northern resources considered most likely to be the subject of conflict—oil and gas—appear to be primarily located offshore, and are therefore not considered here. As for land and onshore resources, a distinction should be made between a real conflict and a potential conflict between territorial and federal interests. Despite confusion engendered by current energy shortages, it does not necessarily follow that a territorial-federal conflict of interest will exist in the future: in fact, their interests may well coincide. The more likely conflict is "resource development versus environmental protection," which does not imply an inherent territorial-federal conflict. Rather, it suggests the prospect of trade-offs among territorial as well as among federal interests. The resolution of these trade-offs at either the federal or the territorial level cannot be predicted. More pertinent is the question of whether the administrative, political and judicial institutions for resolving such conflicts are in place, so as to ensure adequate and equitable representation of the various interests in reaching a satisfactory conclusion.

There is also the question of whether the GNWT can assume these responsibilities in a way that maintains the confidence of the federal government that its interests will be safeguarded. A related concern is whether the territorial population can develop and sustain the infrastructure necessary for the effective administration of land and resources, given the enormous land mass and the complexity of the trade-offs involved. The prospect is raised of a small government under pressure from interest groups, such as large, multi-national oil, gas and mining companies. It is important that government have a capability sufficiently strong to defend territorial interests. The relevant question, then, is whether to develop that capacity within the federal or the territorial government.

The continuing fiscal dependency of the NWT on the federal government is also critical in this context. The transfer of ownership and regulation of land and resources to the NWT would increase the fiscal burden on the GNWT if it were to carry out its responsibilities effectively. Resource revenues presently accruing to the federal government approximate \$10 million annually. Although these revenues would then accrue to the GNWT, they would probably be more than offset for sometime by the infrastructure costs necessary for resource development. As

an indication of the costs of this responsibility, the annual budget of the Northern Affairs Program of DIAND for fiscal year 1978-79 was \$42 million and 897 man-years.

Because land and resources are presently being discussed between the federal and provincial governments and in the context of native claims, any change in jurisdiction in this area is considered by some to be premature.

The following outlines a number of specific issues that have been raised relating to federal jurisdiction in land and resources.

### Land Use Planning

Native groups, territorial residents, industry and the GNWT have all expressed the need for better land use planning at both the territorial and regional levels. There is considerable frustration over the uncertainty that results from the present arrangements and the apparent indifference of the federal administration to territorial interests.

The GNWT is seen as ineffective by territorial residents, because the authority to control land disposal and land use lies almost exclusively with the Minister of Indian Affairs and Northern Development. The Land Titles Act provides the basic framework and conditions affecting the transfer of private title in the NWT. Although the GNWT has the limited responsibility for administering land registrations and has legislative jurisdiction over property rights, federal occupancy of this field gives the GNWT little scope to legislate. Similarly, the entire NWT has been designated as a "land management zone," under Subsection 3(1) of the Territorial Lands Act, which authorizes the Minister to regulate the use of land in the zone "for the protection of the ecological balance of physical characteristics of any area." To meet these responsibilities, DIAND has introduced a system of land-use permits.

DIAND has established two intergovernmental committees, the Federal-Territorial Lands Advisory Committee and the Northwest Territories Land Use Advisory Committee, to advise on proposed disposals and on land-use permits respectively; this gives the GNWT a limited opportunity to influence land use decisions in the NWT. However, these committees are advisory only; final decision-making authority remains with the Minister. Where he considers it necessary, the Minister can and does take unilateral action, with little or no consultation with territorial residents. For example, in recent years, in order to maintain flexibility in native claims negotiations, the Minister has withdrawn or withheld virtually all land from disposal, including land for such purposes as agriculture, recreation, or community use. For many, these uses would have been desirable. Furthermore, the GNWT is discredited when its own priorities, which have to take into account a number of competing interests, can be so easily bypassed.

Although there is a planning capability within DIAND to meet departmental responsibilities for northern development, it is based in Ottawa, and its focus is primarily economic and broadly strategic, and is not, therefore, oriented towards regional or local territorial needs. Thus, the GNWT's efforts at planning are severely constrained by the limited control it is able to exercise over the key variables of land availability and land use.

## **Inland Waters**

The federal exercise of jurisdiction in regulating inland water use in the NWT is also frequently criticized as being insensitive to territorial interests. In the provinces, the regulation of water use is carried out by provincial governments. This involves the issuance of licences for water use, including waste disposal, and requires conformity with all applicable federal legislation, such as the Canada Water Act and the Fisheries Act.

The federal responsibility rests with the Minister of Indian Affairs and Northern Development, primarily under the authority of the Northern Inland Waters Act. This act provides for the establishment of the Northwest Territories Water Board, which is required to hold a public hearing for each application for a licence, or for renewal of a licence. The Board, which includes members appointed on the recommendation of the Commissioner and the federal departments involved, makes recommendations to the Minister on the issuance of licences and related terms and conditions. The Minister must accept or reject the Board's recommendations; he cannot vary them. If the Minister accepts a recommendation, the Board is responsible for issuing the licence and DIAND is responsible for enforcing its terms and conditions. In deciding whether to accept the Board's recommendations, the Minister is advised by DIAND. The present process provides opportunity for territorial residents to participate in the deliberations and to influence their outcome. Nevertheless, because decisions are made at the federal level, territorial interest groups concentrate their efforts on influencing the Minister. The system, therefore, does not permit reconciliation of territorial differences through territorial institutions.

## **Forests**

The GNWT interest in land and resource management and ownership includes forests and forest management. The GNWT is concerned that present federal practices of forest management do not adequately protect long-term territorial interests, but it is limited in the extent to which it can exercise authority by the Territorial Lands Act. Forest fire protection is a special problem. Because forest fires are unpredictable and their control is costly, budget constraints have made it necessary to limit the degree to which fires can be fought. This has been a matter of some concern in the NWT, particularly in the Mackenzie Valley.

## **Non-Renewable Resources**

The issues in this area are similar in most respects to those regarding renewable resources: namely, federal dominance and the apparent lack of responsiveness to territorial interests. The main conflict for the NWT is the fundamental one of land use, which would arise regardless of whether control of the resource lies with the federal or territorial government. Rarely can resource exploration and exploitation be achieved without disruption of the ecological balance. Given the traditional pattern of land use by the native peoples, and the fragile eco-structure, this becomes a particularly sensitive issue.

The non-renewable resources—minerals, oil and gas—may be a significant source of revenue to the GNWT if the development of this sector becomes

commercially viable. However, if the revenues that currently accrue to the federal government from this sector were to accrue to the GNWT, they would amount to less than 5 percent to the GNWT budget. Furthermore, there are related infrastructure costs that are now borne by the federal taxpayer, and that would more than offset the current revenues.

## Environment

The GNWT is focusing more attention on protection of the environment, particularly on the establishment of a policy advisory capability. However, its present ability to take action in this area is again constrained by the substantial federal presence.

In each of the provinces, the precise allocation of environmental responsibilities between the federal and provincial governments varies considerably, because the BNA Act is not specific on this subject, because interest in this area has developed only recently and because provincial circumstances vary widely. The federal Minister of the Environment has developed bilateral agreements with the provinces that outline the precise responsibilities and obligations of the two levels. Thus, the Department of the Environment (DOE) may be responsible for handling a particular function for one province, which another province provides for itself. The agreements reflect both the extent to which an activity is considered to be serving a federal or provincial interest, and the province's financial circumstances. DOE has entered into similar agreements concerning the NWT, but with the Minister of Indian Affairs and Northern Development as signatory on behalf of the NWT.

The Territorial Lands Act gives the Minister of Indian Affairs and Northern Development wide powers for protecting the ecological balance of any area in the NWT, as well as for environmental management, which is exercised through his authority to control the use of renewable and non-renewable resources in the Territories. To support these activities, DIAND has substantial numbers of staff, both at the field level in the NWT and in its Ottawa headquarters.

The Department of the Environment also has a large number of personnel to carry out its responsibilities in the NWT. However, the major part of its activities are directly in support of its national and international obligations, such as environmental research, the provision of meteorological information, the protection of migratory birds and the maintenance of water quality. Very little of its work is of a provincial nature or related to territorial activities.

In addition, the activities of the federal Environmental Assessment and Review Process (EARP), instituted by the federal Cabinet, are also important in the NWT. EARP provides a structured process to ensure that environmental assessments are carried out in the course of planning for major projects requiring federal lands, monies or initiatives. These responsibilities are coordinated by the Federal Environmental Assessment and Review Office (FEARO), which reports to the Minister of the Environment. After an initial assessment, federal departments refer to FEARO those projects judged likely to have significant environmental effects, for review by an independent panel established specifically for purposes of the project. On the basis of public hearings, expert advice and an Environmen-

tal Impact Statement (EIS) provided by the initiating department, the panel advises the Minister. Where projects have significant implications for a province, the province is given an opportunity to participate in the process, through, for example, representation on the relevant panel. The panel's report is also made available to the provincial government for study. The Minister of the Environment is the final federal authority for determining whether the project should proceed.

Almost one-third (eight) of the projects to reach the panel stage to date have involved the NWT; seven were referred by DIAND, and the eighth by DIAND and EMR jointly. DIAND has had members on five panels and the GNWT has been represented on one. All panels are chaired by the Executive Chairman of FEARO, or a member of his staff.

The assessment processes in the provinces vary considerably. Some follow the U.S. pattern, which has a detailed legislative base, while some use the Canadian federal model, which permits substantial discretion and experimentation. Generally, the provincial processes tend to assign a greater weight to the consideration of socio-economic factors, community concerns and cumulative impact, whereas the federal process limits consideration to biophysical matters.

The federal process is causing concern on a number of fronts in the NWT. There is uncertainty because of the wide discretion permitted each panel regarding, for example, the form of public consultations. A GNWT assessment process would, to a large extent, be redundant, given the presence of the existing federal process, and yet the federal process is not designed to take into account territorial socio-economic or community interests or concerns about cumulative impact. The potential for conflict of interest is great. For example, in the case of DIAND's presence on panels, it is not clear whether its representative is intended to reflect the Department's biophysical interests or its resource development interests. Finally, participation by the GNWT in this process has been minimal.

### **Agriculture**

The NWT Act gives the Commissioner-in-Council legislative jurisdiction over agriculture. However, federal policies on land use preclude the exercise of that jurisdiction by the GNWT. Past experience and the efforts of certain territorial residents have shown that agriculture can contribute to the development of the territorial economy. Local market garden production of vegetables in the Mackenzie Valley could compensate for the high transportation costs incurred by importing these items. Further, the development of local distribution and supply systems and of financial institutions might well be stimulated if agriculture were encouraged. For example, reindeer herding and mink ranching have demonstrated in the past the potential export opportunities that exist and that could create income and job opportunities for territorial residents.

In the provinces, legislative jurisdiction with respect to agriculture is a concurrent responsibility, with provincial law applying except when it is repugnant to federal law. In practice, the provinces deal with agricultural matters of direct interest to their residents, while the federal government concerns itself with matters of a more national nature, such as research and the regulation of the quality of agricultural produce for interprovincial and international markets.



In the NWT, the federal government, through DIAND's land-use restrictions, dominates agricultural matters. No land has been made available for agricultural purposes since 1975, when a temporary suspension was imposed, pending the development of a joint agricultural policy by the territorial and federal governments. All the conditions stated at that time as necessary for the removal of the suspension have since been fulfilled. However, the federal government's desire to maintain as flexible a position as possible until the native claims have been settled has resulted in its resistance to the disposal of any land. This is a particular instance where the GNWT might have found a means for reconciling the various interests of territorial residents had it had the power to do so.

### **National Parks**

In carrying out its responsibilities for national parks in the NWT, the federal government has generally consulted both the GNWT and territorial residents directly. The particular interest of native peoples in pursuing their traditional land use activities has received special accommodation. Nevertheless, because the federal government owns and controls most land in the NWT, the GNWT does not have the same opportunities for influencing federal decisions regarding national parks as do the provinces. This exacerbates concern in the NWT that, in the future, the federal government might take unilateral action, perhaps turning large areas of the Territories into national parks. Northerners fear that external pressures, particularly from the South, will influence the federal government to preserve the North in such a way that territorial interests as they relate to development or to traditional activities will be adversely affected.

At the federal level, authority for national parks lies with the Minister of the Environment and the Parks Canada Branch of his department. The means by which land is obtained for national parks in the NWT differs from the process followed in the provinces, since, in the former case, the federal government already owns most of the land on which it may wish to establish parks. In the provinces, the federal and provincial governments jointly undertake public consultations and public relations; the provincial government assembles the land required by extinguishing third party rights, and finally, through an Order-in-Council transfers it, subject to various conditions, to the federal government. Usually the federal and provincial governments share the costs of acquiring private lands, thereby acknowledging both the national and provincial interests in the establishment of a park.

To maintain federal flexibility in the NWT for the native claims negotiations, the recent practice has been to reserve lands for parks rather than to create full-fledged parks. The status of the GNWT in the public consultations has been no more than that of any other interest group. At present a low priority is apparently given to parks by the GNWT, in that, only one man-year is devoted to parks planning and management.

### **Inland and Marine Fisheries**

The BNA Act assigns exclusive legislative jurisdiction to the federal government for "sea coast and inland fisheries," presently in the portfolio of the Minister of

Fisheries and Oceans. In some provinces the federal government has chosen to delegate to the provincial government the administration of certain of these responsibilities, namely, the enforcement and management of inland fisheries. These arrangements vary from province to province to accommodate the particular circumstances of each province. In some cases, the provinces have also taken on substantive policy functions in the areas delegated, including the development of draft regulations. In areas of responsibility not delegated to the provinces, a range of federal-provincial consultative mechanisms are in operation, particularly in respect of offshore fisheries, so as to accommodate provincial interests. Remaining fisheries responsibilities—inspection, research and the maintenance of international obligations—are handled primarily by the federal government. In the NWT, all fisheries responsibilities, with only minor exceptions, are handled by the federal government, with little consultation with the territorial government.

Both the GNWT and native groups in the NWT believe that territorial needs are not being adequately met by the Department of Fisheries and Oceans (DFO) and that the federal government devotes insufficient resources to territorial fisheries. As a result, the GNWT has pressed for further decentralization from the Winnipeg regional office to the NWT, to improve the management of all aspects of fisheries in the Territories, including inland fisheries, offshore and marine fisheries and mammals and anadromous fish. The GNWT has argued that the national, compared with the territorial interest, is minimal.

In spring 1979, an understanding was reached between the federal Minister of Fisheries and Oceans and the Commissioner of the NWT, whereby the GNWT would administer and manage the fisheries resources within the Committee for Original Peoples Entitlement (COPE) land settlement area, in accordance with a management plan to be decided jointly by both federal and territorial governments, and DFO would monitor the GNWT's activities. This arrangement was also intended to integrate the management of wildlife and fisheries, in the interests of the resource harvesters in the COPE area.

The federal government has expressed concern that the GNWT's approach to fisheries, which is geared to harvesting, places insufficient weight on the conservation measures necessary to ensure that sufficient resources are available for the future. It is also not convinced that the GNWT has the capability to maintain national and international obligations related to fisheries. Further, the federal government suggests that, on grounds of economies of scale and the need for scientific expertise, continued federal control is necessary for both resource and fish habitat management. For the moment, DFO is willing to explore further with the GNWT the possible delegation of certain responsibilities over inland fisheries, and to improve consultation in other areas.

### **Power Utilities**

The major power utility operating in the NWT is the Northern Canada Power Commission (NCPC). The Commission is a crown corporation, established under the NCPC Act to supply "electrical power and other public utilities in northern Canada." It reports to Parliament through the Minister of Indian Affairs and Northern Development. From Edmonton it serves Field, B.C., and communities in the NWT and the Yukon. The federal government initially became involved in this

activity because of the need to develop a reliable source of power at a reasonable cost, given the harsh northern climate, relatively high capital costs, and the need for economies of scale. NCPG currently operates near the break-even point, but under the existing rate structure is unable to repay overdue debt obligations to Canada.

The NWT Public Utilities Board, established by the Public Utilities Ordinance, is responsible for approving franchises and rate structures and for receiving complaints concerning utilities in the NWT. However, the Board does not have jurisdiction over the NCPG: federal agencies are not subject to the laws of another level of government unless the federal government specifically agrees to their application. The relationship between the Board and the Commission, however, has been a cooperative one: the NCPG does not apply to the Board for franchises because its mandate is already specified in law, but the practice has been for the Board to review rate structures proposed by the NCPG and to suggest desirable changes, with which the NCPG has usually complied.

In the provinces, provincial control of utilities through ownership, regulation, or both, is the usual practice. They may also exercise indirect control of utilities through their control of provincial resources, such as the water required to generate power.

Despite its cooperative relationship with the Public Utilities Board, there is concern that the NCPG does not respond adequately to territorial interests with respect to rate structures, capital expenditure programs, consumers' interests, stimulation of economic development, development of alternative energy sources and strategies, and energy conservation. It is estimated that more than 50 per cent of NCPG's operating costs are eventually borne by the federal government, either through direct purchase of services for federal offices or through utilities subsidies to householders in the NWT. Continued federal control over the Commission is defended on this basis.

In response to pressures from the Governments of the NWT and the Yukon, the federal government has recently been reviewing the possibility of relocating the NCPG headquarters to the North. It has also been considering the merits of selling this corporation to the private sector. However, there is little evidence of any federal consultation in the NWT on these possible developments and territorial residents continue to be concerned about their lack of control over the provision of power within the NWT.

### Roads and Highways

Despite the fact that the NWT Act gives legislative jurisdiction to the NWT for territorial roads and highways, responsibility is effectively exercised by the Minister of Indian Affairs and Northern Development for the construction, and until recently, the reconstruction and maintenance of all roads outside the municipalities through his financial and administrative authority. Although there is no legal impediment preventing the GNWT from allocating funds for similar purposes, in reality the federal government exercises an effective veto on all GNWT capital projects under its existing financial arrangements with the GNWT.

However, in 1978, the GNWT's involvement in roads and highways was increased by a DIAND-GNWT agreement, which allocated to the GNWT specific purpose

federal grants for each of two years for the maintenance and reconstruction of territorial roads. In 1980, these funds are to be reflected in the federal general purpose grant to the NWT, thus providing the GNWT with a limited opportunity to reallocate those funds.

In the NWT, the federal government has constructed roads for two different purposes: to serve local needs and to serve particular resource development projects. In the provinces, the former type of road is normally a provincial or local responsibility, although federal financial assistance is occasionally provided through federal regional development or transport programs.

## SERVICES

The federal government continues to play a major role in providing territorial residents with those services that, in the provinces, are essentially the responsibility of provincial governments. These include criminal prosecutions, labour relations, provision of certain health and housing services, and the construction and financial support for the operating costs of community airports.

### Justice

Following the recommendations of the Carrothers Commission, amendments to the NWT Act in 1970 transferred major responsibility for the administration of criminal and civil justice from the federal government to the GNWT. Only one difference now remains between the NWT and the provinces, namely, the institution of criminal and quasi-criminal proceedings. In the NWT, this power remains with the Attorney General of Canada. The Eighth NWT Council recommended that this responsibility be transferred in two stages, the first phase to begin immediately.

In Canada, the overriding consideration in the administration of justice is the preservation of the integrity of the system of justice. The person ultimately responsible for prosecutorial discretion—that is, the decision to initiate a prosecution—must be responsible to Parliament or to the elected legislature in the jurisdiction in which criminal justice is administered. Because the NWT has not yet achieved full responsible government, the question is: should responsibility for prosecutions be devolved to the NWT, particularly as the administration of justice seems satisfactory. It is argued in the NWT that, in the Canadian tradition, a mature political system includes not only the legislature and the executive, but also the judiciary, and as there is a measure of public support for constitutional change, initial steps, in the form of partial devolution, should be taken now to build the necessary capability.

There are a number of administrative issues that would be affected by the devolution of the prosecutorial function. At present, the responsibilities of the Attorney General of Canada in the NWT are carried out by a small regional office of the federal Department of Justice in Yellowknife. A small portion of the office's activities are devoted to providing legal services to federal departments in the NWT. If the prosecution function is transferred, the federal Department of Justice could probably no longer justify a separate office in the NWT. Instead, it would probably rely on its Edmonton office, or on locally-appointed agents. The GNWT

suggests that transfer of this function would improve efficiency throughout the system of justice in the NWT.

### **Labour Relations**

The GNWT's responsibilities for labour are comparable to those of provincial governments, except with respect to industrial relations—mediation, conciliation and arbitration—for organized labour in the private sector. In the NWT this jurisdiction is exercised by the federal government under Part V of the Canada Labour Code, and administered by the federal Department of Labour, primarily from its Vancouver regional office and its Ottawa headquarters.

The GNWT has recommended that the federal government withdraw from the area of industrial relations, and permit the GNWT to assume responsibility for the approximately 3,500 employees involved. This excludes employees working in those areas that would remain under federal responsibility, as in the provinces, such as banking and trans-boundary transportation.

The GNWT believes it will be able to provide a more responsive policy and increased public access to information. It acknowledges, however, that the present workload—fewer than ten cases annually, spread unevenly through the year—may not be sufficient to justify its taking on all the operational functions at this time, a point with which the Department of Labour concurs. It is also considered important that the function of inspection, which is already a responsibility of the GNWT, be handled separately from mediation and arbitration. The GNWT believes that, in order to respond to the pressures of a growing population and increased economic activity, it should prepare now to assume more responsibility for labour relations.

The problems of industrial relations in the NWT frequently differ from those found elsewhere in Canada: the working season is short, the climate is harsh and the location of work is frequently remote. The Department of Labour has adapted its practices to respond to these differences; in doing so, changes to the federal law have not been necessary. The Department of Labour recognizes that it may be appropriate to increase its services in the NWT, and is therefore considering opening an office in Yellowknife. It has also offered to brief the NWT Council on its activities. However, the Department is concerned that the transfer of jurisdiction for industrial relations to the NWT may not be appropriate at present, primarily on the grounds of economies of scale. It also notes that such a transfer might result in a further fragmentation of policies and practices relating to industrial relations; however, many of the provinces have implemented legislation that differs in some respects from the federal law.

### **Health Care**

In the NWT, health care delivery has evolved in response to the specific needs of remote and isolated settlements and the largely native population. This has produced a system with features unique to the North, such as the use of paramedics, air ambulances and diagnosis via satellite. At the same time, this evolution has resulted in an exceedingly complex arrangement, under which accountability is difficult to assign.

The NWT Act assigns legislative jurisdiction over hospitals and local matters to the GNWT, thereby giving the GNWT responsibility for health care. The territorial Department of Health's principal function has been the provision of hospital insurance and medicare under shared-cost arrangements with the federal government, on the same basis as federal-provincial arrangements. It also provides some hospital services and supplementary programs, such as subsidized medical travel.

At the same time, the federal Department of National Health and Welfare provides an extensive network of nursing stations, some hospitals and other health facilities in communities throughout the NWT. These services are provided regardless of ethnic status; however, most of the facilities are located in the smaller communities, and consequently serve primarily a native clientele. In line with the federal obligations for native peoples, DIAND pays special purpose grants to the GNWT for the territorial share of costs incurred in delivering hospital and medical services to status Indians and Inuit. To improve communications between the federal and territorial health departments, and between the federal department and territorial clientele, the Department of National Health and Welfare has recently taken steps to move its NWT regional headquarters from Edmonton to Yellowknife.

In 1954, when federal health services were first established in the NWT, Cabinet approved in principle the transfer of federal responsibility for these services once the GNWT was capable of effectively delivering them. In 1975, the Minister of National Health and Welfare met with representatives of the GNWT to initiate negotiations for this transfer. Although agreement-in-principle to the transfer has been reached between the two governments, there has so far been little progress on its implementation. Native groups have emphasized the need for consultation with them on any changes to health care delivery. In some cases, they have proposed that the federal government enter into tripartite agreements with themselves and the GNWT regarding the nature of the conditions and services to be provided.

### Housing

Housing policy and delivery falls essentially into two classes: housing for government employees, and housing for all other residents of the NWT. The former group is further subdivided into housing for federal and for territorial employees. Although the GNWT has been active in exercising its jurisdiction on housing matters, the field continues to be dominated by the federal government to a far greater extent than occurs in the provinces, where housing and housing policies are basically provincial responsibilities. The Department of Public Works provides rental housing to most federal government employees, estimated at approximately 15 percent of all employees in the NWT. Central Mortgage and Housing Corporation (CMHC) participates substantially in the shaping and funding of territorial housing programs. In some communities DIAND continues to be responsible for housing it made available to native peoples prior to the establishment of CMHC programs. At the territorial level, housing is provided through the NWT Housing Corporation (NWT HC), or through special arrangements for GNWT employees by the territorial Departments of Personnel and Public Works.

The number of federal employees in the North creates a need for housing which cannot now be met by private accommodation. The federal Department of Public Works, through its Northern Pool Housing Program, funds, constructs, operates and maintains housing, which it makes available to federal employees. In providing crown-owned living accommodation to federal employees, the department is guided by Treasury Board policy. There is also some special purpose federal housing for users such as the RCMP. The provision of subsidized housing acts as a disincentive to federal employees to purchase their own accommodation or to rent privately.

There are a number of inequities and anomalies caused by current federal practices, which are a source of frustration and complaint in the NWT among, not only federal employees, but all territorial residents. Government staff housing, particularly in the predominantly native communities, is frequently of superior quality to that of other housing. Employees hired in the NWT by the federal government do not normally qualify for northern pool housing, since this pool is thought to be a necessary inducement for employees to move North on a short-term basis. This policy discriminates against local residents in the NWT, and in particular, against resident native peoples, who rarely qualify for this benefit of federal employment.

The territorial government offers accommodation to all its employees, regardless of location of hire. Its Department of Personnel is responsible for administering policies for territorial staff housing, setting rents and allocating houses. Its Department of Public Works is responsible for the construction, property management and maintenance of these units. Subsidized rental rates are being progressively increased to bring them into line with local market rents. Employees living in private housing receive an allowance that is intended to encourage use of the local market. The GNWT has developed a rental-purchase plan in an effort to withdraw from providing housing to its employees and to encourage the use of private accommodation.

CMHC, as an agent of the federal government, endeavours to ensure that all Canadians have access to good housing at affordable prices. Among its present activities, it provides funds on a shared-cost basis for public housing programs. Although its overall policy has been to remove itself from cost-sharing of low-income housing programs elsewhere in Canada, CMHC has continued its programs in the NWT at the request of the NWTHC.

Housing associations have been established under the NWTHC Ordinance in 46 of the 51 communities. These associations are formed on the basis of local interest and are usually composed of tenants in public and low-cost housing units. They have both advisory and administrative responsibilities, and are responsible for the operation, maintenance and management of the units. Chapter 4 suggested ways in which local housing policies and practices might become more responsive and responsible locally.

Housing design in the NWT does not always meet northern environmental and social requirements. The prefabricated units used in many of the northern communities were originally designed for use in southern Canada. Although they have been modified to some extent to meet northern climatic conditions through improved insulation and by upgrading existing units, they are still largely unsuit-



able. Only limited efforts have been made to use indigenous materials, and northern lifestyles have not been sufficiently considered in the design features and layout of northern houses.

The many difficulties relating to housing in the NWT have been extensively studied and various solutions have been proposed, although to date there is little evidence of action having been taken on these recommendations.

### **Airports**

In the NWT, responsibilities for airports are shared by the federal and territorial governments. These responsibilities rest mainly with the federal Minister of Transport and with the Executive member responsible for Local Government. Essentially, the federal government has assumed responsibility for the capital costs and construction of airports. In recognition of the special needs of the North—the remoteness of communities, the high degree of dependence on air transportation and the need for reliable transportation—the federal Ministry of Transport (MOT) is in the process of an extensive eight-year program of airport construction and upgrading, currently scheduled for completion in 1982. MOT presently retains full control over the operations and maintenance of Class A airports, all of which have scheduled jet service. Since 1974, when a Memorandum of Understanding was signed with MOT, the GNWT has had responsibility for the operation and maintenance of Class B and C community airports. Under the terms of this memorandum, the federal government also assists in the training of personnel to operate these airports in accordance with federal regulations. MOT provides specific purpose financial contributions to the Department of Local Government (DLG) to meet these costs.

Notwithstanding the cooperation that exists between MOT and DLG, from the GNWT viewpoint, there are a number of difficulties involving duplication and overlap in the existing arrangements. The financial arrangements entail the development of budgets for Class B and C airports which are separate from the usual GNWT budget process. They involve additional audits, cross-checking and monitoring activities. The training program to enable selected community residents to operate and maintain Class B and C airports involves overlapping activities between the two levels of government in the training, supervision and monitoring of personnel. The mix of federal-territorial ownership of airport-related maintenance equipment has created additional difficulties in cost accounting and duplication in administration.

Consequently, the GNWT is proposing that the funding for operation and maintenance of Class B and C airports, which is currently received directly from MOT, be allocated instead through the annual federal financial grant for general GNWT purposes. The GNWT also proposes that the transfer of responsibility for the airport staff training program and ownership of facilities and equipment be transferred to the territorial government.

MOT is primarily concerned that safe and reliable air services are provided to the public and that its obligation to ensure its capital investment in territorial airports is protected. The controls provided under the present arrangements have enabled it to meet these responsibilities effectively.



Nevertheless, MOT activities and bases, particularly those located near the communities, are of significant local interest. Local air strip bases offer potential for increased technical training and employment opportunities for residents of the communities, opportunities that have thus far not been fully explored. MOT is presently considering the transfer of similar responsibilities for community airports to the provinces and is currently reviewing the situation in the NWT, in consultation with the GNWT.

## **Conclusions**

There has been a general drift towards the conventional model of federal-provincial relations as a basis for rationalizing the transfer of responsibilities from the federal Parliament to the Council of the NWT, and, with two important exceptions, this seems to provide a satisfactory guide.

The exceptions relate to native matters and to the ownership and regulation of land and resources in the NWT. In these cases, replication of the federal-provincial arrangements will not provide the best balance among various interests. A more appropriate distribution of administrative and legislative jurisdictions is suggested below. Although adoption of these conclusions would not prejudice provincial status of the NWT or of any of its parts, its continued status as a federal territory permits a different allocation of these responsibilities than might be possible if the NWT were a province.

The federal government should promote greater exercise of responsible government at the territorial level. Wherever possible, it should look first to NWT-based forums and institutions for resolving conflicting territorial interests, and facilitate the assumption of increased responsibility by the Council and the GNWT on matters of territorial interest. Relations between the federal government and the GNWT should become increasingly more government-to-government in nature. The pace of transfer of federal jurisdictions to the NWT should be commensurate with the willingness and ability of the Council and the GNWT to assume these responsibilities.

Fundamental changes will be required to the present federal-territorial relations, if more responsible government is to be achieved in the NWT.

- 5.1. The conclusion postulated in chapter 4 to transfer the federal responsibility for territorial affairs to the Minister of State responsible for Federal-Provincial Relations should facilitate the change in the federal approach to an inter-governmental relationship with the GNWT. This change would be reinforced by having the federal-territorial links follow more closely the federal-provincial pattern. The GNWT should be invited to attend federal-provincial conferences as an observer in areas of related interest, and as a full participant in those areas where it exercises legislative jurisdiction similar to the provinces.

Some interests in the NWT are served by the federal minister responsible for all of Canada, as in the case of health services, airports, housing, industrial relations, and criminal prosecutions. But the majority of territorial interests are the responsibility of the Minister of Indian Affairs and Northern

Development, for example, for economic development, resource exploration and development, environmental management and protection, roads and highways construction, and indeed all federal interdepartmental coordination. Furthermore this Minister is also responsible for native affairs, although this responsibility is delegated to various divisions of his department: for the NWT, it rests with the Northern Affairs Program and for southern Canada it rests with the Indian and Inuit Affairs Program. Thus, the NWT continues to be administered on a geographic as opposed to a functional basis.

Given the emphasis on increasing the intergovernmental nature of the federal-territorial relationship, an appropriate starting point would be the reassigning of these responsibilities currently held by the Minister of Indian Affairs and Northern Development to the federal ministers and departments with those responsibilities for the rest of Canada. The GNWT's negotiations for transfer of responsibilities would in all cases then be directly with the responsible minister. Reassignment would also strengthen the ability of the proposed Minister for Native Peoples to represent more adequately the interests of native peoples both in the NWT and in the rest of Canada.

- 5.2. The initiative for transfer of a responsibility should be taken by the GNWT, through the designated Executive Committee member for that portfolio. After exploratory discussions, the Executive member should develop with his federal counterpart an agreement-in-principle on the outlines of the proposed transfer, including the federal conditions to be satisfied by the GNWT, the principles to underlie any federal financial support necessary to the transfer and a timetable for implementation. The detailed implementation plan would be worked out between federal and territorial officials, and subsequently approved at the ministerial level. More detailed financial arrangements are suggested in chapter 6.

Decentralization of federal activities to the NWT, either as an alternative to devolution or as a transitional tool should be avoided. A better alternative would be either the temporary secondment or the transfer of federal employees to the GNWT. These personnel should assist the GNWT in developing the policy capabilities necessary to the effective exercise of legislative and administrative jurisdiction.

The following sections make specific suggestions on selected jurisdictions. Nevertheless, the conclusions reached should have broad application to other jurisdictions not examined.

## THE FEDERAL GOVERNMENT AND INDIVIDUALS IN THE NWT

### Native Peoples

- 5.3. The current federal-provincial model for providing provincial-type services to native peoples does not provide a suitable precedent for the NWT. Separate, parallel systems distinguished on an ethnic basis and provided by different levels of government, or tripartite agreements between the

federal and territorial governments and native groups are incompatible with responsible, accountable government.

The federal government should encourage the GNWT to serve the needs of native peoples in a way that secures and maintains their confidence. The GNWT needs the full participation of native peoples in all aspects of government: in the Council, the Executive and the administration. This will require consultation by the GNWT with native peoples to establish policies and programs that have their support. To encourage this cooperation, the federal government should make such consultation a condition of federal transfer or delegation of responsibility. Although the federal government retains ultimate responsibility for native interests, it should make clear its view that native peoples in the NWT can best serve their own interests and needs by participating fully in a territorial government that has responsibility for development and delivery of policies, programs and services.

The federal government should withdraw its special purpose grants to the GNWT for any services the GNWT provides to native peoples. Rather, general federal financial support to the GNWT should take into account the fiscal need of the GNWT to meet its obligations to all residents, including the native peoples. This is discussed more fully in chapter 6.

#### **GNWT Employees**

- 5.4. To ensure that the NWT Council is fully accountable for the protection of the rights of employees of the GNWT, the Canadian Human Rights Act should be amended so as to clarify territorial responsibilities. Territorial jurisdiction in this area would be consistent with the extension of accountable government in the NWT, and would be in accord with the apparent original intention of the act.

#### **Federal Employees**

- 5.5. The federal government should make special efforts to ensure that the values of northerners are better represented in the federal public service in the NWT. The following measures are suggested by way of example. A northern coordinator might be appointed to integrate the work of the PSC and the CEIC and to coordinate the implementation of the proposals below. Federal public servants in the NWT should preferably have a long-term commitment to residency in the NWT. Policies for personnel management, staffing, training and development that more closely reflect northern requirements should be adopted, including an effective policy of local hire. Instead of classifying positions upwards or offering other incentives to entice southern personnel to the NWT, positions and job descriptions should be designed or restructured to accommodate northern requirements. This may include an increased weighting on knowledge of environmental and geographic conditions, of community structure and native peoples, and of native languages and cultures.

Where traditional employment practices fail to attract or retain northerners in federal employ, consideration should be given to the use of special

techniques more compatible with northern life-style, such as part-time staffing, flexible hours, and labour pool and job-sharing techniques. Where there are no northerners with adequate qualifications to fill positions, consideration should be given first to upgrading northerners before seeking suitable candidates in the South. This will require forward planning in the area of training, and the identification of suitable positions and potential candidates, but should be more cost-effective in the long term than inducing southerners to relocate to the NWT. Departmental training and development should be tailored more closely to northern requirements, with more emphasis on job replacement and counterpart training than on conventional classroom training in southern Canada. The federal and territorial governments should, when possible, coordinate their training and development activities.

Attention should be given to increasing the proportion of native employees in the federal public service in the NWT. Cultural awareness programs could be used to instill in northern managers an increased appreciation and understanding of the unique territorial situation. The Northern Careers Program (NCP) should place greater emphasis on attracting participation that is representative of all geographic regions and native groups in the NWT by extending its communications networks; it might, for example, use existing channels in communities, such as adult educators, to make its services more widely known, particularly in the eastern Arctic. All federal departments that have a high proportion of senior staff in the NWT but do not now participate in NCP—particularly the departments of the Environment, Public Works, National Health and Welfare and the Ministry of Transport—should be encouraged to do so. Evaluation procedures should be established to measure the results of their participation and its consequences in the NWT.

The current policies of the Office of Native Employment in the PSC regarding native employment throughout the federal government are consistent with the principles underlying this Report: they were developed through consultation with, and require continuing input from, native groups; their objective is a public service more representative of the entire Canadian population. These policies should continue to be a high priority, and should be evaluated on a regular basis and, when necessary, adapted to ensure that they are being carried out effectively, particularly in the NWT. Every effort should be made to ensure that the more visible and influential departments in the NWT, particularly DIAND, comply with the policies. Evaluation will require the compilation of baseline statistics and their updating on a regular basis. Such statistics should include: number of employees; location of work; occupational and salary levels; vacancy and turnover rates; and self-identified native designation.

The federal government should adopt special policies and mechanisms to assist the GNWT in assuming responsibility for personnel connected with the transfer of federal jurisdictions.

Federal spending programs in the NWT should reinforce the objective of local hire. For example, within existing provisions, additional efforts could

be made under federal contract regulations. All federal departments contracting work in the NWT should be encouraged to comply with the standard federal contracting condition (General Condition "C."), which supports local hire. The government should monitor contracts and apply penalties for failure to comply. In federal government agreements with the private sector, efforts should be made to ensure that signatories to the agreements honour the employment clauses regarding local, northern and native hire, in spirit as well as according to the letter of the agreement.

### **Northern Native Languages**

- 5.6. To increase the responsiveness of government in the NWT, it is important that the federal government acknowledge and be more sensitive to language-related needs, and provide its services in the indigenous languages, wherever possible. Federal departments and employees in their written and oral communications with community governments should not prejudice the use of the working language chosen by the local council. Knowledge of native languages should therefore assume importance in federal staffing practices.

## **LAND AND RESOURCES**

### **Ownership and Control**

- 5.7. The territorial government and Council should assume increased responsibility for decisions on territorial land and resource use. The present federal-provincial allocation of responsibilities in this area is not a good model for the NWT. The economic and resource potential of the NWT, its land area relative to population, and its continued fiscal dependence, create a situation in which, for at least the medium term, federal interests are necessarily greater in the NWT than they are in the provinces.

Under these circumstances, the federal government should retain its prerogative to legislate on the use of land and resources in the NWT in the national interest. For the time being, the federal government should continue to have access to extraordinary resource revenues in the NWT so as to ensure that all Canadians benefit equitably. However, it should not be essential for the federal government to retain ownership of territorial land and resources, nor to regulate their use under normal circumstances.

Crown land and natural resources should therefore be transferred to the NWT, the ultimate objective being full ownership of these public lands by the NWT analogous to provincial ownership of public lands. This will require appropriate amendments to the NWT Act and the Territorial Lands Act. Until such legislation is passed, a first step can be taken under existing law: by Order-in-Council, the federal government can transfer crown lands to the Commissioner for the beneficial use of the NWT, although fishing and subsurface rights must be reserved under federal control.

When fully implemented, the transfer of ownership would apply to public lands and inland waters, including subsurface rights, and rights to timber.

Generally, the rights of ownership would include the right to dispose through sale or lease, and the right to royalties, fees and other resource-related revenues, subject to the conditions proposed below and to any laws regulating the use of land and resources.

The transfer of ownership of public land to the NWT should be accompanied by the provision for territorial legislative jurisdiction analogous to that provided the provinces under Subsection 92(5) of the BNA Act for "the management and sale of the public lands belonging to the province and the timber and wood thereon." Until the amendments necessary to the full transfer of ownership are passed, an additional measure of control should be made available to the NWT by the provision of territorial legislative jurisdiction for "the management and disposition of public lands, the beneficial use of which is for the NWT." Legislative jurisdiction for either of these actions can be provided by Order-in-Council under Subsection 13(2) of the NWT Act.

Although the federal government should retain its prerogative to legislate on land and resource use in the NWT, the Council should also be permitted to legislate on these matters, except when the BNA Act assigns exclusive jurisdiction to the federal government. The intention would be for shared federal-territorial jurisdiction to be ultimately established comparable to the concurrent federal and provincial jurisdiction for agriculture under Section 95 of the BNA Act. Thus, territorial legislation would occupy the field unless repugnant to federal law. The intention would also be to encourage the territorial government to legislate actively in this jurisdiction, with federal intervention only as a last resort. This approach should advance the constitutional status of the NWT and permit a more effective management of land and resources, in the interests of both the territorial and federal governments.

The proposed provision of territorial legislative jurisdiction for the management and disposition of land and resources owned or controlled by the NWT, together with other areas for which territorial jurisdiction already exists, such as property rights and agriculture, effectively provide the NWT with legislative jurisdiction over land and resource use. As long as the GNWT remains a federal responsibility, federal primacy effectively ensures territorial jurisdiction may be overridden by federal legislation. Although federal intent to minimize intervention in the regulation of land and resources cannot be made legally binding as long as federal primacy exists, consideration might be given to reflecting this federal intention in an appropriate preamble to the NWT Act.

The proposed transfer of ownership of land and resources to the NWT would be subject to four conditions:

*Subsurface and Water Rights:* The GNWT should be prohibited from selling the subsurface and water rights of public lands to any purchaser other than the federal Crown, although it should be permitted to lease out these rights. This constraint is consistent with the growing practice in the provinces and provides an indirect insurance against pressures on the GNWT to provide exclusive, permanent control of these resources.

**Resource Revenue "Capping":** Territorial revenues from royalties and other resource revenues should be subject to a "cap" beyond which they would be shared with the federal government. The sharing formula should be designed so as to be neither a disincentive to responsible resource development by the GNWT, nor a deterrent to the imposition by the GNWT of royalties, fees and other levies on resource use. It should, moreover, permit recovery by the GNWT of special purpose infrastructure costs associated with the resource development. The sharing formula should be set out in the NWT Act and should be based on an agreement between the federal Minister of Finance and the member of the Executive responsible for revenue and finance. To meet these requirements in an equitable way, the formula might read as follows: "To the extent that annual resource revenues, in excess of agreed infrastructure costs, exceed 10 percent of the annual federal general purpose grant to the NWT, the excess resource revenues shall be shared, respectively, between the federal and territorial governments on a 75:25 percentage basis."

**Reserved Land:** The federal government might wish to reserve from the land transferred to the NWT, the following: land for national parks purposes; land necessary for national defence purposes; and, until the implementation agreements are concluded, up to ten square miles for each potential beneficiary of the native claims negotiations. Land to be reserved for native claims beneficiaries would be identified by the proposed Minister for Native Peoples, and held in trust until transferred according to the terms of settlements. The Minister would be empowered to authorize the use of this land under terms that would not prejudice eventual allocation under claims settlements. He would also be authorized to dispose of such lands should it be in the public interest to do so, on condition that land of equivalent value be substituted. The administration of any public lands not allocated under claims settlements would be transferred by the Governor-in-Council to the NWT for the beneficial use of the Territories.

**NWT Boundaries:** The precise boundaries of the NWT, in particular, the status of the arctic seas and ice masses off the NWT coast are currently the subject of debate. For present purposes, these conclusions apply to lands and inland waters only, as described in present federal law. Because the treatment of offshore areas is currently under active consideration between the federal and provincial governments, further comment is not made here. However, any future offshore rights accorded the GNWT should be no more generous than those accorded the provincial governments or the rights accorded the GNWT over land and onshore resources, whichever is the lesser. A boundaries commission should be established to enquire into and resolve any disputes respecting boundaries for the NWT, although the transfer of ownership rights for land generally need not await the findings of the commission.

If it is to maintain the confidence of the federal government and minimize the need for federal intervention, the territorial government must exercise its authorities in a responsible manner. As the GNWT increases its occupancy of the field of land and resource use regulation, special arrangements will be needed to permit a corresponding withdrawal of federal

legislation. Federal omnibus legislation should be introduced that provides for the necessary amendment and repeal of existing federal law. Such legislation would make provision for progressive introduction of specific NWT authorities. However, any such introduction would first require a resolution by the Territorial Council stating its willingness to accept the relevant responsibility.

### **Land Use Planning and Disposition**

- 5.8. Planning and related activities should ordinarily be the responsibility of the GNWT. The conclusions of chapter 4 suggest that the GNWT should assign some of these responsibilities to community governments. Mechanisms necessary to reconcile federal and territorial differences should be similar to existing federal-provincial mechanisms. The federal lands to be reserved should be identified as soon as possible in order to establish the certainty required for effective planning by the GNWT and to permit decisions on outstanding requests for land.

The GNWT should rationalize existing administrative arrangements for land use planning. Attention should be given to establishing a process for consulting with interest groups, in particular, native peoples.

A strengthened policy and planning capability for economic development will be required within the GNWT for it to assume responsibility for land and resources and for claims implementation agreements. The planning for economic development should be coordinated with other GNWT planning activities and with activities aimed at stimulating commercial development. The designated member of the Executive responsible for Economic Development should assume a greater role in representing territorial economic development interests at the federal and provincial levels. The federal government, through its industrial assistance programs, should introduce measures requiring companies operating in the NWT to give priority to hiring local labour and using local materials.

With respect to the disposition of land, the responsibility for the transfer of title to land and resources and for otherwise regulating land and resource use should rest with the GNWT. This will require the development of appropriate territorial legislation and the subsequent repeal of corresponding federal legislation, such as the Land Titles Act.

### **Inland Waters**

- 5.9. The proposed territorial ownership of inland water resources and occupancy of the legislative and administrative fields associated with the regulation of water use would enable residents to assign accountability for decisions on water use. The structure and consultative process of the NWT Water Board should be retained. The Board should, instead, report to a member of the Executive Committee, rather than to the Minister of Indian Affairs and Northern Development. Based on the report received from the Board,



the designated Executive member should reach a decision on water use proposals. The Board should publish its findings and report annually to the Territorial Council.

### Forests

- 5.10. In acquiring ownership of timber rights, the GNWT should also assume greater responsibility for forests, including, to the extent possible, fire-fighting activities. As the level of fire-fighting varies substantially from year to year, the GNWT might enter into cooperative agreements with neighbouring provinces for sharing services. In assuming fire-fighting responsibilities, the GNWT must become accountable to the territorial residents for its own performance and expenditure in this field.

### Non-Renewable Resources

- 5.11. Ownership of onshore, subsurface resources should be transferred to the GNWT, subject to the conditions mentioned earlier. The GNWT should assume the concomitant legislative and administrative responsibilities as soon as it is able to safeguard federal interests and the requisite infrastructure is in place.

Improved land use planning and environmental assessment should help to reduce the conflict to which non-renewable resource development is currently subject in the NWT. The GNWT should finance the infrastructure costs necessary to develop resources of territorial interest. However, if the private sector or the federal government wishes to proceed at a pace faster than that planned by the territorial government, they would be expected to pay the related additional costs. Any federal assistance should be through specific purpose grants to the GNWT, or by direct action, after consultation with the GNWT. However, the GNWT should endeavour to see that such resource development is of optimal benefit to the Territories.

### Environment

- 5.12. Given the importance of the environment to the native peoples and its pre-eminence as a factor in land-use decisions, the GNWT must develop a policy and administrative competence on matters of environmental management and protection. Initially, arrangements should be made for DIAND to withdraw from this field and to transfer its personnel to DOE until the GNWT is willing and able to assume environmental responsibilities. Those pollution control functions of DIAND under the Arctic Waters Pollution Prevention Act, which are essentially a federal jurisdiction, should be reassigned to the appropriate federal minister.

In developing its environmental strategy, the GNWT should recognize the continuing national obligations, for which ultimate, if not program, responsibility will remain with DOE. The GNWT should explore bilateral environmental arrangements with DOE, and the possibility of contracting with the federal government for provision of expert and specialized services. Where

DOE continues to have jurisdiction in the NWT, it should make efforts to hire locally, particularly for its Atmospheric Environment Service, which has a staff of over 200 in the Territories.

It is likely that for the time being, environmental assessment of most projects in the NWT will continue under the aegis of the Environmental Assessment and Review Process. Measures to overcome the uncertainty inherent in that process should be sought, including clearer definitions, ground rules not subject to unilateral change, and the adoption of standardized, well-publicized procedures to ensure that all parties are aware of their rights, privileges and obligations. To allay uncertainty, some of the provinces have considered a legislative base, which may also be advisable for the federal process.

The GNWT should be accorded the same treatment as the provinces in this assessment process. It should be consulted on all projects involving the NWT, although its participation may vary from advisory to full membership on or chairmanship of a panel. To ensure a comprehensive review of environmental factors, the federal government and the GNWT should consider broadening the interpretation of "environment" in the NWT to include socio-economic factors, community concerns and cumulative impact.

The approach the GNWT takes towards its responsibilities in environmental assessment will be an indication of the seriousness with which it regards its responsibilities for land and renewable resources. The Council and GNWT should consider developing a territorial environmental assessment process, the technical and administrative expertise for which might initially be contracted from the federal government. In establishing such a process, the GNWT should focus on policy capability; administrative capability for implementation, enforcement and monitoring; and the capacity to accommodate inter-jurisdictional as well as local needs. The process and procedures chosen should reflect first the needs and circumstances of the NWT. In the development, refining and streamlining of the process, the GNWT should be guided by other processes already in place across Canada. The NWT Council should examine the functions of the NWT Water Board in relation to the assessment process, with a view to avoiding duplication in function. The respective reporting arrangements to Council should also be examined, as should the question of whether there is a need for a legislative base.

## Agriculture

- 5.13. The current federal land-use policies in the NWT, and the consequent failure of the GNWT to develop policies in support of agriculture, have penalized those territorial residents genuinely interested in agricultural pursuits. The proposed transfer of land and resources to the NWT will render the Council and GNWT accountable for future decisions on agricultural land use, and for developing support policies for territorial farmers and northern ranchers. In consultation with interested groups, the GNWT should develop agricultural policies that identify the conditions under which

land should be made available for agriculture, and the level and nature of support to be made available. A northern concept of agriculture, which might include reindeer herding, mink ranching and community pastures, should be developed.

### National Parks

- 5.14. The proposed transfer of land and resources should alleviate present concerns regarding national parks in the NWT. Following transfer, the federal government should negotiate arrangements with the GNWT for the transfer of lands required for future national parks, as it does with the provinces.

A more coordinated complementary system of national and territorial parks is essential if both the federal and territorial governments are to be more responsive to the concerns of territorial residents. The development of complementary policies and programs will require continued federal-territorial consultation, as well as the development of a policy and consultative capability within the territorial government.

The federal government should seek the agreement of community councils where proposed national parks fall within the community spheres of influence. Parks Canada already gives special attention in the NWT to the traditional interests of native people, granting privileges, for example to continue hunting, trapping and fishing within federal park boundaries. These arrangements are commendable and, as a measure of further assurance to native peoples, might be stated in the National Parks Act or be included in the schedules and regulations governing individual parks.

To minimize confusion and to achieve administrative rationalization between the two levels of government, Parks Canada might seek to contract with the GNWT for personnel to enforce wildlife regulations in federal park areas in the NWT, insofar as this is juridically possible. Where Parks Canada employs its own staff in the Territories, it should endeavour to hire northerners, and in particular, native northerners.

### Inland and Marine Fisheries

- 5.15. Wherever possible, enforcement and management responsibilities for inland and marine fisheries should be delegated to the GNWT. Improved coordination between the GNWT and DFO is required and adequate representation of the native peoples' interests must be assured, given their continued dependence upon fish resources. For example, the GNWT should emphasize the importance of increasing fish stocks and yields.
- 5.16. DFO should delegate to the GNWT enforcement and management responsibilities for both the resource and habitat aspects of inland fisheries. To this end, the GNWT should develop a policy capability and show evidence of intent to comply with federal policies of conservation. The necessary technical staff might be hired directly or contracted from the federal government. The DFO and the GNWT should jointly review any difficulties arising from the present arrangements, under which GNWT wildlife officers

are authorized to serve as federal fisheries officers. Given that federal interests can be adequately safeguarded, delegation should take place at a pace determined by the GNWT. In this case, DFO should examine, with the GNWT, the possibility of decentralizing further its enforcement and management functions for inland fisheries, as an interim measure.

- 5.17. Responsibility for the enforcement and management of offshore and marine fisheries and habitat should for the time being remain with the federal government. However, effective consultative mechanisms between the two levels of government should be established to ensure that territorial interests are addressed at the federal level, and reflected in federal decisions and policies.
- 5.18. Notwithstanding the importance of anadromous fish to the native peoples, the federal government should retain its enforcement and management responsibilities for anadromous fish during the period of their lifecycle spent in coastal and marine waters. However, DFO and the GNWT should negotiate joint management of the inland habitat and of the fish during those periods of their lifecycle spent inland, consistent with the GNWT's increasing role in the management of inland fisheries.
- 5.19. With respect to other fisheries functions in the NWT, the responsibility for inspection and the national components of fisheries research should remain with the federal government. However, the more local aspects of research directly affecting territorial residents should be coordinated with the GNWT, community governments and native groups. As emphasized by the NWT Science Advisory Board, the dissemination of research results and information should be distributed in a form and language understandable to the communities. The DFO and the GNWT should jointly be responsible for this task.

#### **Power Utilities**

- 5.20. A designated member of the Executive Committee should assume responsibility for the development of a GNWT energy policy. In consultation with the NWT Science Advisory Board, a review might be established to determine the best energy mix, technologies and strategies, including the possibility of an energy grid, to meet the unique requirements of the NWT.

Policies on utility rate structures that will apply equitably to consumers, and that will stimulate economic development and encourage energy conservation should be developed. The government should determine whether the interests of the NWT are best served through regulation or public ownership of the power utilities. Consideration should be given to strengthening the existing powers of the Public Utilities Board as a regulatory agency, if regulation as opposed to public ownership is envisaged. Given that the federal government bears a substantial portion of utility costs in the NWT, such policies should also reflect federal interests.

Federal examination of the future status and role of the NCPG should be carried out in consultation with the GNWT. These discussions should also consider the most appropriate future role for and status of the NCPG in the

NWT, including the possibility that it become a territorial "crown corporation." If the federal government decides to divest itself of the NCPC, the territorial government should have the option of first refusal, under reasonable terms. If the NCPC is to remain a federal crown corporation, it should be obliged to comply with territorial ordinances and regulations.

Regardless of the corporate arrangements decided upon, NCPC headquarters should be relocated from Edmonton to the North.

### Roads and Highways

- 5.21. The GNWT should assume responsibility for roads related to territorial requirements. If GNWT revenue sources prove insufficient to meet the costs of such roads, the onus would be on the GNWT to persuade the federal government, through the Department of Regional Economic Expansion or the Ministry of Transport, to provide financial assistance. Federal authority in this sector would be determined according to national interest, as in the rest of Canada, and should be coordinated with GNWT programs. To the extent that the federal government chooses to use the GNWT as its agent for federal purposes, specific purpose grants to the GNWT would also be appropriate.

## SERVICES

### Justice

- 5.22. Even though the GNWT has, since 1970, gained in administrative and political experiences, it would be premature to transfer the entire prosecutorial function until full responsible government has been achieved. However, the progressive transfer of the responsibility for criminal prosecutions should continue. The GNWT should work towards an agreement with the federal government on a phased transfer of this responsibility, to be completed when an elected member of the Executive Committee can assume responsibility for justice and when the Attorney General of Canada is confident that the GNWT is willing and able to maintain the integrity of the system of justice in the Territories.

Two approaches have been suggested as interim measures. One involves an administrative agreement between the GNWT and the federal government, whereby GNWT officials would act as agents of the Deputy Attorney General for purposes of instituting prosecutions. The second approach would require amendments to the NWT Act and to the Criminal Code, and would designate an appropriate GNWT official to serve at the pleasure of the Attorney General of Canada, both as Director of Public Prosecutions for the NWT and as the lawful deputy of the Attorney General for purposes of the Criminal Code.

Federal-territorial administrative coordination would facilitate the development of the necessary capability at the territorial level. Initially, federal prosecution staff might be loaned to the GNWT. When the first stage of

transfer is completed and the capability of the territorial legal services is augmented, the GNWT might provide the federal government with the legal services that it will continue to require in the NWT. This would provide valuable experience to the GNWT, particularly in those jurisdictions for which it expects to assume responsibility.

Once the GNWT has assumed the interim responsibilities and the conditions outlined above have been met, the full transfer of the prosecutorial function, including prosecutorial discretion, could take place. An amendment to the Criminal Code would identify the Executive Committee member responsible for Justice as the Attorney General of the NWT.

### **Labour Relations**

5.23. It is reasonable for the GNWT to assume responsibility for industrial relations in respect of organized labour in the private sector, to the same degree as in the provinces. Cost-effectiveness could be achieved through appropriate rationalization with other territorial activities, and through a phased transfer. Once a GNWT policy capability is developed—perhaps with the assistance of the Department of Labour—and an ordinance is in place, the Canada Labour Code should be amended accordingly. Until the GNWT caseload increases, the federal Department of Labour might administer the ordinance under an agreement with the GNWT or, as in some provinces, specialized expertise from the Department of Labour might be made available under purchase of service arrangements.

The Department's plan to establish an office in the NWT might better be set aside and, instead, funds for this purpose be allocated to the GNWT to assist it in developing a territorial capability. In the meantime, the Department of Labour should, as intended, make information on labour relations more available to territorial residents, for example, through briefings of the NWT Council and other interested groups.

The importance of maintaining consistent legislation and uniform practices across Canada in the field of industrial relations should not be ignored by the GNWT in developing its legislation, notwithstanding particular territorial interests.

### **Health Care**

5.24. The responsibility for health care in the NWT should be rationalized, with the GNWT delivering health services to all residents so as to meet the needs of all groups, native or non-native, rural or urban. As a first step, to clarify its responsibilities, the GNWT should enter into a memorandum of understanding with the federal government, whereby the GNWT would deliver health care services to native residents. The GNWT and the federal government should also reach agreement as soon as possible on the implementation of the transfer to the GNWT of the health services presently carried out by the Department of National Health and Welfare. The GNWT should consult with all interested groups, particularly with the native peo-

ples, on all phases of the proposed transfer, to ensure that it is carried out in a way that secures and maintains the confidence of all territorial residents.

DIAND should discontinue its special purpose grants to the GNWT for hospital and medical services delivered to status Indians and Inuit. Instead, the cost of these services should be met from GNWT general revenues. As discussed in chapter 6, the federal arrangements for financial support of the GNWT should take into account the fiscal need of the Territories in providing a basic level of health services.

## Housing

- 5.25. Housing-related matters in the NWT should be rationalized to rectify present shortcomings and to clarify GNWT accountability. As a first step, responsibility for housing policy should be assigned to a member of the Executive to whom the NWT HC should also report. The Executive Committee member responsible for housing should give priority to policies that take into account the following: equitable housing for all territorial residents; encouragement of the private sector in construction, sales and rentals; use of general subsidies for utility costs; interaction with, and support of, local housing associations and other housing interest groups; and improved housing designs to meet northern social and environmental needs.

While attention to the development of a long-term housing policy is important, immediate issues ought not to be ignored. Existing problems are well-documented, and pilot projects and studies that have already been carried out point to remedies that might significantly alleviate the present serious situation. The onus is on the GNWT to take the initiative in implementing these remedies albeit with the assistance of the federal government. There should be close consultation between the designated Executive member and the various federal authorities to ensure that policies and actions are coordinated.

While the federal government's housing policies have made important contributions to the development of housing standards, continuation in their present form would be detrimental to the resolution of the housing problems that persist in the NWT. The question of financial support for housing to federal employees should be addressed both in the context of the federal government's policies on employment in the NWT and its increased efforts to hire locally. As suggested in the section on federal employees, funds currently spent on government staff housing might be better diverted to training programs to develop the requisite skills among territorial residents.

The federal government should reduce its own stock of housing through private sale, and should withdraw from the direct provision of accommodation to its employees in selected communities, especially those with a potential private housing market. It will likely be necessary, however, for the federal government to continue to provide special purpose housing for some personnel such as the RCMP.

The GNWT is already gradually withdrawing from the provision of accommodation for its employees. It should continue to do so and should adopt more equitable housing policies. These policies should take into account the fact that, as federal responsibilities are transferred to the NWT, the number of GNWT employees will increase. Specific attention should be given to policies to stimulate private residential construction, including cooperative activities at the local level. The need for financial incentives to potential builders or purchasers of privately built housing should be explored; the gradual withdrawal of the NWT from residential construction as increasing capability in the private sector develops should be encouraged; and measures to stimulate the development of construction-related skills in the NWT and the use of local construction materials in construction should be adopted.

The GNWT, in cooperation with the CMHC or the National Research Council, might further develop housing designs and a technology more appropriate to community lifestyles and to energy conservation. As was discussed in chapter 4, the role of community governments in the design and provision of housing and related policy development should be enhanced.

Subsidies related, for example, to utilities and property taxes should be reviewed to ensure they do not discriminate against home-ownership. Housing policies should be more responsive to territorial needs and should be directed towards long-term cost reductions at both the federal and territorial levels. The CMHC should assist the GNWT in developing its responsibility for housing. The role of the CMHC should be reviewed jointly by the two levels of government to determine whether the present means of providing financial support is appropriate now and will continue to be in the future.

Until such time as the federal government is able to withdraw completely from the provision of staff housing, there are several modifications that should be made to the present system. Present rents for government units are based on southern rates and are much lower than those charged on the basis of local market rates in the NWT. In order to develop a viable housing market in northern communities, it would be more appropriate to charge rents in line with local market rates. Alternatively, a housing allowance in lieu of renting crown-owned housing would offer the employee the option of buying or renting in the private market. The introduction of limited tenure of crown-owned houses would permit a federal employee to rent from the government for a period of two to three years, after which he would be expected to move into the local private market. This would enable the private sector to plan for and respond more effectively to foreseeable needs for private housing.

Existing crown-owned units could be made available for purchase to employee-occupants under arrangements similar to the rental-purchase plan that has already been developed by the GNWT. Combined with a system of housing allowances, this plan would make it possible for federal employees to buy their own houses, an option presently out of reach for



most of them. A guaranteed buy-back scheme, in which the government would purchase the house back from the employee at the local market price if he were unable to sell privately, might further encourage homeownership. The possibility of developing such arrangements is currently under consideration by the Treasury Board Secretariat.

### **Airports**

- 5.26 To the extent that the GNWT can carry out the responsibilities for Class B and C community airports and at the same time safeguard federal interests, the transfer proposed by the GNWT seems appropriate. Arrangements for general purpose or specific purpose funding would depend on whether resources allocated to general GNWT revenues provides sufficient assurance that federal interests will be protected. If specific purpose arrangements are to continue, they should follow the less complex model of funding agreements used by the Department of Regional Economic Expansion. Regardless of which level of government is responsible for airports, employment and training opportunities for community residents should be expanded.

## **6 PUBLIC FINANCE IN THE NORTHWEST TERRITORIES**

Financial arrangements for local and territorial governments in the NWT reflect both the existing and anticipated limited territorial tax base. A substantial portion of net public funding requirements for these governments, more than 80 percent at present, is met by the federal government under policies and practices which have evolved over the past thirty years, based on federal responsibilities for the NWT, and taking into account other federal fiscal priorities. This substantial fiscal dependence on senior governments colours virtually every aspect of government in the NWT.

Despite the good-will of those involved and the flexibility in the process for determining financial contributions by the senior governments, there are serious deficiencies with the present approach to public finance in the NWT. It does not work well in a period of fiscal constraint and is not conducive to the development of fiscal responsibility in the Territories. Changes to the budgetary process are therefore considered essential to the evolution of both local and territorial government in the NWT.

### **GOVERNMENT OF THE NWT**

#### **History**

As a territory, the governance of the NWT is a federal responsibility in all respects, including financial arrangements. The evolution of the GNWT's present financial arrangements can be grouped into three broad periods: 1951 to 1965, 1966 to 1976, and 1977 to the present.

In 1951, the territorial administration, at that time based in Ottawa, began a review with the federal government of the financial relations and allocation of functions between the two governments, including the terms for a possible annual subsidy similar to the 1948 arrangements for the Yukon. GNWT revenues, primarily from liquor profits, were no longer sufficient to cover expenditures for even the limited range of functions for which the GNWT had financial responsibility. In 1952, a five-year financial agreement, modelled on the federal-provincial tax rental agreements, was concluded between the NWT Commissioner and the federal Minister of Finance, under which the territorial government was guaranteed an annual federal subsidy and was responsible for planning the use of both local revenues and federal grants. Similar agreements were concluded in 1957 and 1962.

From 1966 to 1976, following publication of the Carrothers Report and the relocation of the GNWT in Yellowknife, there was a gradual transfer of greater responsibilities from the federal government to the GNWT. Annual federal-territorial agreements replaced the earlier five-year arrangements and provided

annual federal grants towards general operating and capital costs of the GNWT. The NWT Consolidated Revenue Fund was established and a Financial Administration Ordinance was adopted by the NWT Council. Direct federal financial support for specific responsibilities of a provincial nature—for example, in health care, housing, post-secondary education and social assistance—was generally provided under the same terms and conditions as in the provinces. Additional special-purpose grants were provided for some programs, such as roads and highways, community airports, and health care services to native peoples.

Annual provision for the general operating and capital grants to the GNWT was made in the Main Estimates of the Minister for the department now called Indian Affairs and Northern Development (DIAND), and the budgetary process followed was in many respects similar to that for a federal department. DIAND prepared the forecast, GNWT budgets were subject to detailed scrutiny on an item-by-item basis by officials of DIAND and the Treasury Board Secretariat, and the GNWT's requirements were then assessed by the Treasury Board in relation to competing federal priorities.

During the period 1966-76, the number of elected members of the NWT Council was increased and in 1974, the Executive Committee, which included membership from among the elected Council, was established. The Council Standing Committee on Finance and the Executive Subcommittee on Finance were also established. However, the Executive Committee member responsible for financial matters was then, and is currently, a federal appointee. Nevertheless, the elected representatives in the Executive Subcommittee on Finance participate actively in the financial decision-making and now handle the presentation of financial matters to Council. Over this period the GNWT administration developed a well-respected capability in budgeting and financial management to support its increasing responsibilities. This expertise was, however, not matched by a commensurate strengthening of financial expertise in the Territorial Council, nor by the development of budgetary political "checks" by a well-informed Council.

By 1978, the GNWT had successfully negotiated its own occupancy of the income tax field, under terms similar to those for the provinces. Only two major tax bases in the provinces were not tapped by the GNWT: retail sales and resource revenues. Otherwise, GNWT income derived from recoveries from, for example, debts, rentals and sales, federal loans for municipal purposes and various federal transfers, such as Established Program Financing Arrangements, Canada Assistance Plan and highway funding. Although the GNWT was given authority to borrow on financial markets for its own purposes, subject to approval by the Governor-in-Council, this authority has not been exercised.

Since 1977, changes have occurred in the process and arrangements for the general federal operating and capital grants to the GNWT. First, the Interdepartmental Committee on Federal-Territorial Financial Relations, earlier established at the official level to provide advice to the federal Ministers of Finance and Indian Affairs and Northern Development on territorial budget requirements, changed its orientation, was renamed the Intergovernmental Committee (IGC) and territorial officials became full members. The process for determining the capital grant remains unchanged; namely, an item-by-item approval by the Treasury Board

Treasury Board on capital projects, and additional Treasury Board approval on capital project contracts in excess of specified levels. However, the approach to determining the operating grant—known as the "deficit grant"—has changed. The operating budget is now reviewed by the Treasury Board through a detailed examination of the "factors for change" in expenditure levels, other elements of the proposed GNWT fiscal framework, and federal fiscal priorities. Agreement is sought on a GNWT fiscal framework that reflects the expenditure priorities of both the GNWT and the federal government and is the first step in determining the level of the federal operating grant. Although the IGC does not have a formal decision-making role in the federal-GNWT budgetary process, from the GNWT viewpoint, it has become the main forum for reaching budgetary compromises.

The changes recently introduced by the federal government, which provide for Cabinet Committee budgetary envelopes classified by policy sector, in a four-year planning framework, will have an impact on GNWT budgetary arrangements.

As the GNWT operating and capital grants are in the DIAND Estimates, the allocation of resources by the federal government to the GNWT will therefore be assessed, along with other DIAND budget items, within the envelope for Social and Native Affairs. The question arises as to whether these grants, which supplement general GNWT revenues, have been assigned to the most appropriate budgetary envelope. In the interests of treating the federal-GNWT financial arrangements on a government-to-government basis rather than as those of a federal department, these items would be more appropriately considered within the Inner Cabinet envelope, which includes fiscal transfers to the provinces, such as equalization grants. This would seem more appropriate since these grants are used for general purposes by the GNWT, as are the provincial transfers considered within this envelope.

The budgetary effect of increased responsibilities since relocation of the GNWT in Yellowknife is shown in the following table.

**Table II**  
**Growth in GNWT**  
**Annual Expenditures and Man-Years**

Fiscal Year	Total GNWT Expenditures	Number of GNWT Man-Years (Incl. Teachers)
	\$ millions	
1968-69 .....	19.4	137
1973-74 .....	115.4	2,428
1978-79 .....	269.8	2,859

Source: Department of Finance, GNWT.

Continuing changes in the level of GNWT responsibilities have made it difficult to use historical GNWT budget data as a basis for determining future trends, although the pattern of the past three years has been reasonably stable, and with caution and some adjustments, can be used.

## Fiscal Dependence of the GNWT and Its Consequences

Based on existing information, the fiscal dependency of the GNWT on the federal government seems likely to continue for some years unless there are unforeseen developments. Fiscal dependency in the current context can be demonstrated by an examination of the following table:

**Table III**  
Federal Fiscal Dependency  
of GNWT: Fiscal Year 1979-80

	GNWT Budget		
	\$ millions	Percentage Share	\$ Per Capita
<b>Expenditures</b>			
a) Operating and Maintenance .....	236.7	81	5,090
b) Capital .....	53.1	18	1,142
c) Loans to Municipalities .....	4.0	1	86
Total .....	293.8	100	6,318
<b>Sources of Income</b>			
a) Revenues from Taxes and Fees .....	36.4	13	783
b) Recoveries .....	13.4	4	288
c) Federal Specific Purpose Transfers .....	34.5	12	742
d) Federal Loans for Municipalities .....	4.0	1	86
e) Federal Operating Grant .....	147.9	51	3,181
f) Federal Capital Grant .....	54.8	19	1,178
Total .....	291.0	100	6,258

Source: GNWT Main Estimates.

Note: A late reduction in federal grants to the GNWT is not reflected by offsetting changes in the expenditure items.

The sources of income shown under items (c) to (f) in Table III, that is, 83 percent of total GNWT revenues, all derive from the federal government. The federal operating and capital grants alone represent 70 percent of GNWT income. To replace the federal operating and capital grants, it would be necessary for the GNWT to increase its present revenues from taxes, fees and recoveries fivefold, or from approximately \$50 million to \$250 million to provide the additional \$200 million now derived from federal grants.

By way of perspective, the per capita tax revenues and expenditures, and an indication of per capita fiscal need for the NWT are compared with corresponding provincial data in Table IV, for fiscal year 1978-79, the most recent data available.

Per capita revenues generated by the GNWT from taxes and fees are comparable to those generated by similar levies in the Atlantic provinces—for example, \$759 in the NWT compared with \$764 in PEI, \$777 in Nova Scotia, \$840 in New Brunswick, and \$842 in Newfoundland—and are about 60 percent of the per capita level generated in Ontario. Although the per capita tax burden on residents in the NWT may be comparable to corresponding levels in the Atlantic

provinces, the GNWT has not as yet assumed the full range of responsibilities borne by provincial governments. However, the GNWT probably bears a greater share of the fiscal burden for local government than do most provinces.

**Table IV**  
**Comparison of Estimated Provincial and Territorial**  
**Total Expenditures and Specific Revenues on a Per Capita Basis:**  
**Fiscal Year 1978-79**

Province or Territory	Revenues Per Capita			Total Expenditures Per Capita
	From Taxes and Fees Also Available to NWT	From Taxes and Fees Not Available to NWT: Mainly Resource Revenues	Equalization Receipts or Combined Capital and Operating Grant	
NFLD.....	\$ 842	\$ 54	\$ 532	\$ 2,161
PEI.....	764	38	599	2,184
NS.....	777	43	452	1,824
NB.....	840	33	448	1,969
QUE.....	1,367	27	208	2,342
ONT.....	1,280	42	—	1,764
MAN.....	1,028	11	220	1,808
SASK.....	1,091	471	27	2,101
ALTA.....	864	1,753	—	2,548
BC.....	1,308	250	—	1,980
YUKON.....	1,171	—	2,037	4,742
NWT.....	759	—	4,135	5,933
All-Canada				
Average .....	1,207	222	121	2,054

*Source:* Revenue and Expenditure data: DIAND and Department of Finance, Government of Canada. Per capita calculations are based on Statistics Canada population estimates as at July 1, 1979, except for the NWT, where the GNWT population estimate has been used.

*Note:* Revenues from Specific Purpose Federal Transfers are not shown.

More striking is the relatively high level of per capita expenditures in the GNWT. It is almost three times as high as the average for all Canada, or \$5,933 as against \$2,054. Factors contributing to this difference include: the relatively greater NWT infrastructure and capital requirements because of the vast distances, the hostile climate, and the comparatively early stage of economic development; the greater fiscal dependency of local government in the NWT; and the higher NWT prices.

As an indication of relative fiscal need, the combined federal operating and capital grants can be compared with the level of provincial equalization receipts under the federal Equalization Program. On a per capita basis, this comparison suggests that the NWT's fiscal need (\$4,135) is almost seven times that of PEI (\$599), the province with the highest per capita level of equalization. However, application of the current equalization formula to the NWT results in no entitlement for the GNWT because, as measured by the formula, the GNWT has a per capita capacity to derive revenues which is slightly above the national average. Still, this does not mean that the GNWT is a "have" jurisdiction in fiscal terms. The equalization formula was never intended to be used as a basis for making comparisons between jurisdictions that have widely differing costs of providing

public services. Given the relatively high cost of these services in the NWT, the failure of the GNWT to qualify for equalization is not very meaningful, nor does it prove a lack of fiscal need.

Examination of the potential for narrowing the gap between the GNWT's expenditure requirements and its own revenue sources is not immediately promising, although the overall lack of data limits the ability to assess fully the economic base in a comprehensive way or to determine areas of likely future growth in the tax base.

Available evidence confirms the perception that the NWT economy is relatively undeveloped. The infrastructure is limited and there are few linkages existing among NWT economic activities; instead, channels are southern-oriented. For example, supply links are mainly southern-directed rather than through NWT distributors. Production, mainly natural resources, is exported in unprocessed form, with little NWT value added. Most employment is found in the public sector. Apart from traditional pursuits such as hunting, fishing and trapping, which are not fully reflected in the cash economy, the private sector comprises mainly the mining and drilling industries. Otherwise, these activities offer only limited potential as a direct business tax base because they are either tax exempt or tend to be subject to relatively low taxes—although their employees, of course, pay income taxes. However, untapped natural resources, if developed, could have substantial indirect effects on the development of the territorial tax base.

Although the overall unemployment rate in the NWT does not appear to be out of line with the national average, this statistic does not give the whole picture. Available evidence suggests, for example, that in some localities the unemployment and under-employment rates vary between two and eight times the national average. This is offset by the relatively high rate of employment in the public sector, as well as in positions filled by transient employees.

The present situation is unlikely to change without increased and successful attention directed to economic and resource development and to the lessening of regional disparities. If such development is encouraged in small- and medium-scale secondary industry or in the service sector—including the assumption by the private sector of functions currently carried out by the public sector, such as construction and supply activities—there is some prospect for a greater tax yield through business taxes, taxes generated from increased job opportunities and other economic spin-offs. However, there may also be initial public costs required to stimulate such developments.

Chapter 5 concluded that federal ownership of public land and resources should be conditionally transferred to the NWT. Since such lands comprise virtually all lands in the NWT, and the GNWT cannot tax federal crown land or resources, an important revenue source available to the provinces has not been available to the GNWT, although it does receive federal grants in lieu of property taxes on certain crown properties. Proposed access to this revenue source may eventually be an important element in diminishing the fiscal dependency of the GNWT. But even with this transfer and significant resource discoveries, there would be a production lag and subsequent delay in realizing any resource-related revenues.

Settlement of native claims should result in a significant transfer of capital and income from the federal government to native collectivities, and should, there-

fore, contribute substantially to the NWT economic base. However, whether these settlements will result in increased tax revenues depends on the resolution of the current debate on the tax status of these settlements and of income derived from them. This debate originates with the tax exemption presently permitted status Indians for reserve property and for income earned on the reserve.

The limited NWT cost of living indicators available suggest that there are real limits to augmenting NWT revenues equitably through increased personal income taxes or by the application of a retail sales tax. Indicators used to determine cost of living allowances for federal employees in the NWT show that, depending on the location, costs range from 25 to 90 percent higher than in Edmonton, and are typically about 50 percent higher. Based on a 50 percent differential, the operation of the progressive federal income tax schedule means that an NWT resident with an income of \$10,000 must already pay a greater share of his income in federal income tax than his counterpart in Edmonton, who, for the same standard of living, would require an income of only \$6,700. Imposition of a retail sales tax in the NWT would only exacerbate the cost of living differences between the NWT and the rest of Canada. More appropriate would seem to be policies aimed at reducing the higher costs of economic activity, both public and private, in the NWT. This would stimulate the NWT private sector and eventually increase the likelihood of a better balance between territorial public revenues and expenditures.

Thus, without scope for considerable cost reductions by the GNWT, it is likely that for at least the medium term, the GNWT will continue to be dependent on the federal government for a major share of its financial requirements. Furthermore, it is unlikely that the federal government could save itself the cost of financial support to the GNWT by reducing federal grants to the GNWT. Given its constitutional obligations for the Territories and for native peoples, the federal government would in any case be pressed to pay directly for services similar to any the GNWT might withdraw in order to achieve reduced expenditures.

However, fiscally dependent governments in the Canadian federal context are not unprecedented. At present, over 50 percent of PEI expenditures depend on federal funding, of which more than one-half is provided through equalization payments. In recent years, the federal contribution to provincial revenues has been as high as 71 percent, as was the case for PEI in fiscal year 1976-77. This situation is entirely consistent with the expressed aim of Canada's present equalization policy, which is to enable all provinces to provide at least a national minimum standard of basic services to their residents without having to impose an undue tax burden on them.

By virtue of paying for such a large share of GNWT costs, it is understandable that the federal government has influenced and would want to continue influencing the conditions under which federal funds are spent, and to exercise sufficient control in order to be accountable for expenditure decisions. However, in so doing, accountability for expenditure decisions is removed from the NWT Executive and Council, thereby encouraging allocative and budgetary irresponsibility. It is not accidental that the federal-provincial arrangements for equalization payments, used for general revenue purposes by the provinces, have a statutory basis, thereby providing longer-term fiscal certainty and specified limits on



federal conditions to be included. Such arrangements acknowledge the burden on the provinces for internal revenue and expenditure decisions.

At both the territorial and federal levels, there is widespread concern that the present federal-territorial financial arrangements diminish the ability of the GNWT to act, and to be seen to be acting, in a responsible manner.

In contrast to the case in the provinces and with one exception, there has been no increase in the levels of NWT taxes in recent years. Reluctance to increase taxes may be attributed to the widespread perception in the NWT that any such action will simply be offset by a reduction in the level of federal financial support, and therefore of no benefit to the NWT. Although this may not be the case, territorial residents point out that there is no assurance that such an offset might not occur. There are consequently disincentives in the NWT Council to supporting reasonable tax increases or other measures for raising public funds to pay for an equitable share of territorial costs.

As federal responsibilities are transferred to the GNWT, efforts should be made to carry out these functions in a more rationalized, efficient and responsive manner. However, in some instances transfers may necessitate initial costs, primarily due to adjustment and start-up. The intent should nevertheless be to effect an overall long-term cost reduction. Given the fiscal realities of the NWT, the GNWT is unlikely to be able to provide all the funds necessary to meet the costs of these additional responsibilities within its existing budget level. Since some transfers to the GNWT would mean a reduced financial claim on the federal government because of reduced direct program expenditures, a reallocation of funds to provide an increase in the federal government's general purpose grants to the GNWT might be appropriate. However, these would be balanced off against new revenues accruing to the GNWT from other transfers. DIAND estimates that the net financial impact of transferring all provincial-type responsibilities to the GNWT would be to increase overall financial requirements by approximately 10 percent, or \$30 million, which is almost as high as the level of revenues currently generated by the GNWT taxes and fees.

### **GNWT Budget Process and Its Consequences**

The GNWT annual budget cycle begins with the outline of priorities by the Council's Standing Committee on Finance. The Executive Committee then establishes governmental priorities and overall strategies and issues internal guidelines to departments for the preparation of estimates and identification of "specific factors of change." Following initial consideration of the GNWT's proposed fiscal framework by the IGC, there is provision for the Standing Committee on Finance to be briefed on developments. The proposed level of federal financial support is usually confirmed in a second meeting of the IGC. The agreed level of funding is then reflected in the GNWT Main Estimates, and voted by Council. If exceptional circumstances develop, the federal government may provide an additional amount through the federal Supplementary Estimates. Finally, the federal Auditor General audits the GNWT accounts and tables his report in the Territorial Council.

This process provides for no formal arrangements for the GNWT, through the Executive Committee, to negotiate with the federal government at the "ministerial" level. This diminishes the opportunity for elected members of the Executive to participate in and be seen to be responsible for the raising of territorial revenues.

Moreover, the Standing Committee of the Eighth Council played an even less active role in the budget process than did earlier committees. Council members expressed confidence that the elected members of the Executive Committee would look after Council's interests during the budget process, a process in which they did not feel essential, nor sufficiently expert. This response is to be regretted since the "eternal vigilance" of the legislature is an essential element of responsible government.

### Consequences for Responsible Government in the NWT

Fundamental to the transfer of power is the assumption of responsibility. Responsibility in the case of fiscal management in the NWT should mean, on the one hand, responsibility for revenue raising through taxation and through revenue negotiations with the federal government. On the other hand, responsibility should mean accountability, collectively and individually, of the Executive to the legislature for the expenditure decisions made, including "do nothing" decisions that may permit taxes to be foregone.

In the NWT, revenues depend on the beneficence of the federal government. It is therefore difficult to give meaning to the principle of responsibility or to foster a sense of responsibility in the GNWT for its spending decisions, as the criteria used by the federal government for determining GNWT budget levels are usually linked first to federal rather than to territorial objectives. Although the federal government has endeavoured to be sensitive to GNWT needs, other federal priorities may be given precedence over what may be viewed and defined in the NWT as essential needs. This has resulted in a growing tendency for the GNWT, and particularly the NWT Council, to adopt the role of "advocate for territorial interests" rather than that of "resolver of conflicting territorial interests" in determining its budget strategies.

The process at the federal level for determining the federal operating and capital grants to the GNWT has the effect of treating the GNWT not as another level of government, but rather as an extension of a federal department, and in some respects as a private organization seeking financial assistance. Further, direct federal budgetary control in some fields, such as airports, roads and highways, is also affected through special purpose grants and contributions. The Minister of Indian Affairs and Northern Development is placed in a difficult position. Through DIAND, federal northern objectives are identified and form the basis of the Minister's Cabinet Committee submission for financial assistance for the GNWT. Where territorial aims do not coincide with those of DIAND or with other federal aims, the GNWT must recast its budget proposals into federal terms. Moreover, the nature of federal-territorial fiscal relations is bureaucratic and administrative, in contrast to fiscal relations on an intergovernmental basis and approached through an essentially political process.

From the GNWT viewpoint, the process is rife with uncertainty as to the probable annual revenue outcome, causing serious difficulties in planning and resource allocation, as evidenced particularly in the budget cycle for fiscal year 1979-80. Unlike the provinces, which routinely receive annual statutory grants from the Department of Finance under an established authority that permits a longer planning cycle, the federal-GNWT fiscal arrangements can theoretically begin *de novo* each year, with the process adapting to changing circumstances as they occur. As well, within the NWT, the federal operating and capital grants to the GNWT are perceived as federal supplements to the territorial budget, calculated as the residual item required to balance the budget. In contrast, equalization payments are regarded in the provinces as "givens," that is, as assured revenue items of a specific level. If additional revenues are required by a province to balance its budget, the province is responsible for identifying the revenue source or expenditure reduction required. In the NWT, under similar circumstances, the federal government is looked to as the provider. These difficulties are presently exacerbated by the normal tendency towards centralization in periods of fiscal constraint, when the central government exercises stricter control over proposed budget increases.

In its March 1979 *Position Paper on the Constitutional Development of the NWT*, the Eighth NWT Council urged, as a fundamental issue, that:

...financial arrangements between the GNWT and the Government of Canada be based on a multiyear commitment, in order to allow for greater fiscal autonomy in the NWT. The commitment would be negotiated on an agreed growth basis and would take into account the contribution of the NWT to the wealth of Canada through taxes, gross resource revenue and other means.

A major characteristic of responsible government is the role of the executive and the legislature in the budget process. The onus must be on the executive to develop a fiscal framework and revenue and expenditure proposals that retain the confidence of a knowledgeable and watchful legislature. The function of the administration should be to assist the executive in the development of a budget acceptable to the legislature. Without the legislature's control or check on the executive, and without the executive's direction to the administration, the important role of the political arm in the exercise of responsible government may be lost, leaving the administration to determine the government's budgetary priorities, processes and decisions.

The current role of the Commissioner in the NWT serves to strengthen and centralize the GNWT administration's function in the budget process. As he is principally accountable to the federal government, the Commissioner has been motivated to retain control throughout the budget process and to resist any proposals from the Council which he judges to be incompatible with federal interests. Within the GNWT, the appointed members of the Executive Committee and the administration dominate the budget process with limited political check on their decisions. Accountability is mainly directed to the federal government, largely through bureaucratic rather than political channels, along the main axis of GNWT budget negotiations through the IGC. This lack of control over and responsibility for the budget process by the NWT Council, and the limited collective and individual responsibility of the elected members of the Executive Committee, create a situation where there is little attention paid to the exercise of

fiscal responsibility at the political level. As a consequence, the elected Executive and Council members are disassociated from the budget process and become active, if not irresponsible, advocates of territorial interests, which may conflict with budget realities.

## COMMUNITY GOVERNMENT

Financial arrangements for local government in the NWT parallel those of the territorial government. Most of the funding required for local services is provided by the GNWT under a system of grants and contributions to community councils. As well, some services in the communities are directly administered by the senior government. This system has largely come into place since 1968, with the incorporation of territorial communities.

Communities are divided into those that are and those that are not tax-based. The seven tax-based municipalities are the villages of Fort Simpson and Frobisher Bay, the towns of Fort Smith, Hay River, Inuvik and Pine Point and the city of Yellowknife. The chief sources of revenue for these seven are the residential, commercial and industrial property taxes. In addition, these municipalities raise revenues from the sale of business licences, community service charges, fines, and other licences and fees. None of the tax-based municipalities has found these revenue sources adequate for providing a level of municipal services comparable to those in southern Canada.

Table V indicates that in 1978 property taxes accounted for only 27 percent of the total revenues of the tax-based municipalities, a reflection of the relatively significant role of public and government staff housing in the NWT and the limited occurrence of property ownership. If sales of services, revenue from other local sources and grants in lieu of taxes are included, the total percentage of revenue raised locally by these municipalities amounts to 64 percent.

**Table V**  
**Consolidated Statement of Revenues**  
**of the**  
**Seven Tax-Based Municipalities, NWT:**  
**December 31, 1978**

	\$	Percent
Taxes .....	3,841,669	27.1
Sales of Services .....	1,975,648	13.9
Revenue from Other Local Sources .....	1,609,936	11.4
Grants in Lieu of Taxes .....	1,640,727	11.6
Unconditional Transfers .....	1,301,200	9.2
Conditional Transfers .....	1,700,746	12.0
Other Transfers .....	2,094,048	14.8
<b>Total .....</b>	<b>14,163,947</b>	<b>100.0</b>

Source: Department of Local Government, GNWT

The balance of revenue comprised transfers from the GNWT in the form of unconditional grants of \$50 per capita, road maintenance grants of 40 percent of the previous year's costs, water/sewer subsidies for truck services, town planning grants of \$2,500 annually, recreation grants of \$5 per capita, and capital grants from the GNWT to cover 100 percent of the cost of approved water/sewer main trunkline construction and 50 percent of the cost of approved road construction projects, with the municipalities' share financed through GNWT debentures, funded by federal loans.

In the tax-based communities, a portion of the revenue raised locally is contributed towards the costs of education. There are two school boards in the NWT, both in Yellowknife. Approximately 25 percent of their budgets is derived from the city of Yellowknife, sales of textbooks and rental of facilities. The remaining 75 percent is provided through an annual operating grant by the GNWT. The six other tax-based municipalities pay an education tax to the GNWT, which in turn finances and operates the educational facilities in the communities.

In the tax-based municipalities, the other, so-called soft services, including social services, health care, policing and economic development incentives, are largely within the jurisdiction of the territorial and federal governments and are financed directly by them.

The remaining 44 communities in the NWT, namely the settlements and hamlets, are classified as non-tax-based and do not levy property taxes. Hamlets are authorized to sell permits and licences and to levy fines and fees; settlements are not. The revenue raised locally by the hamlets accounts for only a small portion of the operating costs of the councils. The following table indicates the sources of revenue for four hamlets.

**Table VI**  
Sources of Revenue for Four Hamlets:  
Fiscal Year 1978-79

Source	Baker Lake	Eskimo Point	Rae-Edzo	Tuktoyaktuk
	\$000	\$000	\$000	\$000
Transferred from Surplus .....	37,908	20,045	—	36,083
Operating Contribution (GNWT) .....	510,067	566,815	364,180	394,278
Local Revenues .....	73,130	79,984	47,368	75,293
<b>Total Revenue .....</b>	<b>621,105</b>	<b>666,844</b>	<b>411,548</b>	<b>505,654</b>

Source: Department of Local Government, GNWT

On average, 12 percent of these council budgets derived from local revenues. The remainder derived from the surplus carried over from the previous year and the operating contribution from the GNWT. Local revenues largely derived from the sale of services, licences, rental of buildings and equipment, bank interest and small, miscellaneous grants.

Settlements do not raise revenue locally, having as their main source of income an annual GNWT per capita grant of \$20 per resident. These grants are used for

discretionary community purposes, and are thought to provide the settlement councils with the opportunity to develop experience in financial management. Municipal services are financed directly by the GNWT, which also funds 100 percent of the capital costs of municipal equipment, and building and service facilities both in settlements and hamlets.

Financing and the operation of other community services in the hamlets and settlements, such as education, health care, social services, employment creation and housing, are carried out directly by the various departments of the senior levels of government. As was discussed in chapter 4, the majority of the community-based special-purpose committees play an advisory role and have not been used as vehicles for management by the community. All community revenues derive from project grants provided by the territorial and federal governments, with the exception of local revenues derived from public housing rentals. These rentals represent 20 per cent of the total housing budgets. Clearly, most communities are able to raise only a small portion of the funds required to provide community services.

Property taxes have been the main source available to the tax-based municipalities. In October 1978 it was recommended by the NWT Council that the property tax be extended as rapidly as possible to all communities. The fact is, however, that homeownership in the NWT is limited: government staff housing and public housing accounts for the bulk of accommodation, and there are few residential ratepayers in most communities. For example, in Frobisher Bay, which has a population of 2,626, there are 80 ratepayers and in Tuktoyaktuk, there are 26 ratepayers out of a population of 746. The residential property tax as a vehicle for raising revenue locally has limited potential.

Other sources of local revenue have been fines and business licences, municipal service payments and rental fees charged for the use of municipal equipment and facilities. While these fees could be increased and the possibility of a more general policy of user fees adopted, these sources too have limited potential for increasing the revenue base.

Given the above considerations, any projections of the future economic base of communities in the NWT indicate that most will be unable to establish a productive or stable tax base in the foreseeable future from which local revenues can be derived. Even assuming that the communities will not experience rapid growth and that most facilities are already in place, thereby minimizing the need for heavy capital expenditures, there is likely to remain a long-term financial dependency of community councils on the senior levels of government.

Under the present financial arrangements between the territorial and community governments, the GNWT has a major influence on the local budgetary decisions and process. While Yellowknife and the towns operate relatively autonomously in the preparation and approval of their budgets, under the Municipal Ordinance, the budgets of the villages are reviewed and approved by the Commissioner. Nevertheless, for all tax-based communities, the portion of the budget comprising grants in lieu of taxes, and conditional and unconditional transfers is annually established by the senior levels of government. Moreover, approval by the GNWT of capital financing of road construction and sewer lines is required on an annual basis as well as on a project-by-project basis.

In hamlets, the operating contribution is determined annually by the GNWT on the basis of data supplied by the councils. Each spring, hamlet councils submit to the GNWT a detailed document, called the Hamlet Contribution, which outlines the program and service costs anticipated for the coming year and the revenues expected to be generated locally. The difference between the two—the operating contribution—is provided by the GNWT on a quarterly basis. Expenditure guidelines, provided by the Department of Local Government to the hamlets to assist them in completing their estimates of costs, indicate the GNWT level of financing for the program and service areas. The guidelines specify such details as the classification, salary levels and numbers of municipal employees permitted, minimum equipment rental rates to be charged, amounts of honoraria, numbers of conferences and conference participants authorized, and operating and maintenance costs for buildings and equipment. The Hamlet Contribution document is reviewed by the Department of Local Government both in the region and in headquarters and must be approved by the Director of Local Government in Yellowknife. After the operating contribution has been determined, hamlet councils are free to strike a budget—operating contribution and local revenues—and reallocate their total revenues among funded areas in line with hamlet priorities.

If a hamlet ends the year with a deficit, the deficit is applied against the next year's budget. The GNWT operating contribution will not be increased to cover it. If, instead, there is a surplus, 75 percent is considered part of local revenue and is applied against the next year's contribution. The remaining 25 percent, up to a maximum of \$25,000, becomes part of a special fund subject to hamlet control.

Settlements do not formally participate in the budgeting process for settlement expenditures. Each GNWT department prepares its own budget items for each settlement. In some cases, the regional office disburses the funds on behalf of the settlement; in other cases, settlements operate municipal services under contract to the GNWT, or are part of the process of local contracting.

In addition to the above arrangements, direct funding and operation of virtually all the soft services in the communities is provided by the GNWT, as well as an array of federal and territorial special purpose grants and contributions. The budgetary process, ordering of priorities and all financial decisions concerning the social, cultural and educational programs are internal to the GNWT, with the result that neither community councils nor any of the special-purpose committees are fiscally responsible for any of the major public services in the communities. This is most evident in the smaller communities, where the total of the GNWT program department community budgets considerably exceeds funds under community management, as demonstrated, for example, in the budget of the hamlet of Baker Lake. In 1978-79, the salary expenditures alone for territorial public servants in Baker Lake totalled \$749,594, as compared to the total hamlet budget of \$621,105. The former figure does not, of course, include the substantial operational and program expenditures.

Community groups are also the recipients of substantial federal and territorial discretionary grants and contributions. Federal agencies, particularly the Canada Employment and Immigration Commission (CEIC), play a dominant role, but the GNWT also makes substantial grants to community organizations such as out-post camps, co-operatives, local hunters' and trappers' associations and

individuals. Most striking is the size of the grants relative to the budget of the community councils, as reflected in the table below.

**Table VII**  
**Grants and Contributions Allocated to**  
**Selected NWT Hamlets by Agency:**  
**Fiscal Year 1977-78**

	Baker Lake	Eskimo Point	Rae-Edzo	Tuktoyaktuk
	\$	\$	\$	\$
<b>Selected Federal Agencies</b>				
CMHC .....	—	—	84,900	11,500
CEIC .....	142,863	94,944	323,547	33,742
DIAND .....	10,000	22,020	48,600	—
<b>Total</b> .....	<b>152,863</b>	<b>116,964</b>	<b>457,047</b>	<b>45,242</b>
<b>Selected Territorial Departments</b>				
Planning and Program Evaluation .....	—	—	10,000	—
Executive .....	—	—	5,830	—
Natural and Cultural Affairs .....	2,575	8,414	32,464	25,319
Health and Social Services .....	—	—	—	19,000
Economic Development and Tourism .....	28,000	5,000	59,024	31,500
<b>Total</b> .....	<b>28,575</b>	<b>13,414</b>	<b>107,118</b>	<b>75,819</b>
<b>Grand Total</b> .....	<b>181,238</b>	<b>130,378</b>	<b>564,165</b>	<b>121,061</b>
<b>Hamlet Operating Contributions</b> .....	<b>516,160</b>	<b>330,422</b>	<b>290,500</b>	<b>318,000</b>

Source: Department of Planning and Program Evaluation and Department of Local Government, GNWT.

In Rae-Edzo, for example, the grants and contributions to local organizations and individuals from the selected federal and territorial agencies totalled \$564,165, as compared to the hamlet operating contribution, which was half this amount.

The system of financing local services has evolved in an ad hoc manner since 1967 and presents a number of problems. The level and purpose of the grants are determined by the senior governments according to their own priorities. Annual variations to these grants make it difficult for communities to budget intelligently because of budgetary uncertainty and unpredictability. Furthermore, at the hamlet level, as there is no statutory basis for the operating contribution, the GNWT can, at its own discretion, change not only the amount but also the process for determining the contribution each year.

Community governments are limited in their authority and capacity to set local priorities or plan the nature and level of local service delivery coherently. Councils are precluded from participating in the decisions affecting the soft services directly managed by the GNWT. Discretionary grants to community groups lie outside the local government decision-making process, thus eroding community council authority.



The present system does not encourage the development of local competence in fiscal responsibility or management. Because most community councils are not responsible for the raising of revenues through local taxes, for initiatives in obtaining GNWT financial support, or for the allocation or expenditure of the major portion of public resources available locally, they too tend to be advocates of local interests rather than responsible reconcilers of competing local and territorial interests. As budget negotiation is mainly between local and territorial administrative officials rather than between elected representatives, local political accountability for budgetary outcomes is attenuated and irresponsibility encouraged. This is of special concern at the hamlet level where the hamlet council should be developing a better understanding of the obligations and responsibilities of accountable government.

The initiative in establishing revenue levels for hamlets and settlements is taken entirely by the GNWT, although, after the budget is struck, community governments are now authorized to reallocate resources among items. While this authority is well appreciated by Yellowknife and the towns, it is doubtful whether many of the hamlets fully understand, accept, or exercise this authority.

To sum up, as a result of the fiscal dependency of the local councils on the senior governments and the current financial arrangements for the funding of local services, serious limitations are imposed on the communities with respect to the exercise of local decision-making and accountability. The major expenditure decisions are made outside the authority of the local council, either by the GNWT or by the federal government, with the result that there exists limited, if any, local political accountability.

#### FEDERAL FINANCIAL PRESENCE IN THE NWT

In addition to financial transfers made by the federal government directly to the GNWT, other federal expenditures are considered to be principally of benefit to the NWT. Although it is difficult to identify the precise dollar value of this federal presence, an indication can be obtained from a review of the *Annual Northern Expenditure Plan* and other available data. These data indicate that for fiscal year 1978-79, federal expenditures of direct relevance to the NWT totalled more than \$200 million, as compared to the total GNWT budget of \$270 million for the same period. Of the \$200 million, less than \$15 million was in the form of direct transfers to individuals through family allowances, old age and other pensions, and unemployment insurance, and approximately \$12 million was for specific purpose grants to qualifying groups. The remaining expenditures, or about \$175 million, were for services and activities performed by federal employees or under direct contract to the federal government in such fields as transport, environment, communications and postal services.

Given the substantial financial and program responsibilities of the federal government in the NWT, and the fact that federal programs touch on many matters of territorial and local interest, special care must be taken to ensure that federal expenditures be as responsive to territorial and local interests as possible. At present, there is little evidence of significant local or territorial participation in financial or program decision-making, notwithstanding some evidence that enter-

prising communities are to some extent making use of various federal financial instruments to optimize their revenue bases.

## **FINANCIAL IMPLICATIONS OF PROPOSALS IN REPORT**

It has not been possible to develop a meaningful estimate of the likely financial impact of the proposals in this Report. This estimate will depend on the extent to which the GNWT chooses to accept the responsibility for additional authorities, and the outcome of the still-to-be-negotiated related financial arrangements.

While the federal jurisdictions examined for transfer in chapter 5 corresponded in part to the proposals of the Eighth Territorial Council, they may not constitute the objectives of the Ninth Council and Executive elected October 1, 1979. Although it is evident that the pressures for constitutional change and an increase in the authority of elected members will be pursued by the new Council during the next four years, it is not clear at present what emphasis will be placed on the transfer of federal jurisdictions. The new Executive will require from the Council confirmation of the constitutional objectives in order to obtain a mandate to proceed with negotiations on federal transfers, in the course of which realistic costs should be estimated.

## **Conclusions**

### **GOVERNMENT OF THE NWT**

There is both fiscal competence and political willingness in the NWT to assume greater responsibility for financial matters. Thus, fiscal responsibility, as an essential concomitant to increased political authority, should be encouraged. However, two features of the existing financial arrangements stand in the way. First, prime and final responsibility for determining overall GNWT budget levels and accounting for financial management now lies with the federal government through DIAND. Second, at the territorial level, the appointed members of the Executive and the administration dominate and effectively control the budget process. The opportunity for elected members to affect the setting of budget priorities and allocations is limited, which results in their tending to disassociate themselves, collectively and individually, from accepting responsibility for budgetary outcomes.

Towards the assumption of increased fiscal responsibility by the GNWT, the following initial changes are required.

- 6.1. The Executive Committee should assume collective responsibility for its decisions on budgetary priorities and resource allocations, and be collectively accountable to the Council for budgetary outcomes. The political role and responsibility of the Executive would, in this way, be strengthened and made more visible. Furthermore, collective agreement on the budget would require consensus on the budgetary trade-offs, including the level of the overall budget, and each member of the Executive Committee would be expected to defend the program trade-offs made by the Executive.

- 6.2. An elected member from the Territorial Council should be appointed as the member of the Executive Committee responsible for revenue and finance. As such, he would be accountable to the Council for territorial revenues, for those raised in the NWT as well as for the grants or transfers obtained from the federal government and for funds raised through borrowings. He would also be responsible for providing explanations for any constraints imposed on the GNWT due to revenue limits, for tabling of the Main Estimates, and for all matters related to budget operations.
- 6.3. The Commissioner should normally be bound by expenditure decisions approved by Council, although he would continue to influence budgetary decisions in line with his personal judgement and any instructions he may receive from the federal government. He should also normally be bound by legislation passed by Council to raise territorial revenues.
- 6.4. More formalized government-to-government financial negotiations should be instituted between the federal and territorial governments. The Executive member for revenue and finance should be responsible for negotiating general unconditional financial arrangements with the federal government and these negotiations should be conducted with his counterpart, the Minister of Finance. Funds negotiated for the GNWT should be voted as a grant in the estimates of the federal Department of Finance and considered by Inner Cabinet within the context of the budgetary envelope on general fiscal transfers to the provinces.
- 6.5. The Executive member responsible for revenue and finance should be invited as an observer to all federal-provincial ministerial conferences on finance or the economy. In those areas where the GNWT exercises provincial-type responsibilities, for example, in respect of income tax collection agreements and established program financial arrangements, he should be invited to participate directly. However, the territorial government should not be permitted a veto on changes proposed to financial arrangements affecting the provinces.
- 6.6. New arrangements should provide for the calculation of an annual general purpose grant at a non-discretionary level, as an alternative to the general federal subsidies for operating and capital costs. Except in extraordinary circumstances, the onus should be on the territorial government to raise any additional funds required through taxation or borrowing. These arrangements should also be effective for longer than the present one-year duration of federal-territorial financial agreements. To support any necessary borrowings or unexpected year-to-year volatility in territorial tax revenues, the Revenue Stabilization Program should be extended to the NWT, and the Governor-in-Council should initially retain the power to approve proposed GNWT borrowings. However, this latter power should rarely be exercised as a veto. Its purpose would be to increase the credit rating of the GNWT as a preferred borrower.

A more predictable level of general purpose grant would permit the Executive member to anticipate additional revenue needs more effectively and to take the steps necessary to raise those revenues in a timely and

responsible way. The level of federal financial support would become a "given" revenue item in the GNWT budget calculations rather than a residual, supplementary item to balance the budget. An important measure of autonomy would be permitted that is not now available to the Executive and the Council, since it would be their responsibility to meet residual GNWT revenue needs.

- 6.7. Future federal financial support should reflect not only federal responsibilities for an evolving territorial government but also the genuine fiscal need of the GNWT, consistent with the principles underlying the federal Equalization Program. The aim should be for equitable treatment of all Canadians, regardless of whether they are under provincial or territorial jurisdiction.
- 6.8. Federal-GNWT agreements for transfers of federal responsibilities should be negotiated that provide predictable GNWT funding levels. Funding should be in accordance with general guidelines agreed to between the two governments, taking into account the reduced claim on federal finances as a consequence of the responsibility transferred. Any federal financial saving earmarked for the GNWT should be transferred to the Inner Cabinet budgetary envelope for fiscal transfers to the provinces and be included in the Estimates of the Department of Finance.
- 6.9. The calculation of the general purpose grant should be determined within the broad terms specified in federal legislation. As occurs in the case of the general federal fiscal arrangements with the provinces, such as for equalization payments, the legislation would be based on agreement reached between the federal and territorial governments. Detailed provisions would be provided by regulations authorized by the legislation and payment would be authorized by annual appropriations. The arrangements should apply for three years, after which they would be subject to renegotiation.

The general purpose grant should initially be calculated to meet the financial needs of the GNWT, given its current scope of responsibilities. Eventually, the level of the grant would be adjusted to incorporate the fiscal transfers provided under the agreements negotiated for the transfer of a federal responsibility to the GNWT.

- 6.10. The formula for determining the amount of the annual GNWT general purpose grant would consist of two main components: the base and the escalator. The base would be the amount of the general purpose grant in the preceding year, except in the first year of application, when it would be the aggregate of the operating and capital grants authorized for the preceding year. The escalator would be composed of two factors. First, there should be an appropriate indicator for the basic growth in volume and the average cost of government services for the period, expressed on a per capita basis in current dollars. For example, the estimated percentage growth in per capita expenditures by provincial governments might be used. However, the basic growth indicator should not be tied to the growth of federal expenditures because of the very different purposes underlying federal and territorial expenditures. Second, there should be a factor for adjusting the basic growth indicator to reflect major differences between

the indicator selected and the corresponding NWT circumstances, such as the different rates of population growth, of prices, or of energy-use.

Initial payments for the general purpose grant would be based on the amount calculated from preliminary data for each factor. Adjustments would be made as actual data for each factor became available, along the lines of the arrangements for provincial equalization payments. The Annex to this chapter sets out examples of how such an approach might have worked in past years, given various alternatives to the growth indicator and the adjusting factor.

The approach proposed would give only a rough measure of actual fiscal need, particularly in respect of capital expenditures. Experience will be required before a firmer assessment of the most appropriate formula can be made. It may therefore be necessary to revamp the formula substantially at a later date when a more rigorous case can be made by either the federal or territorial government. In the meantime, in combination with borrowing authority and adequate provision for contingency reserve items, this approach should contribute to an increase in the GNWT's fiscal authority, with neither additional cost to the federal government nor undue financial risk to the GNWT. Furthermore, for the time being, it seems more appropriate in the NWT than do adaptation and extension of the Equalization Program.

- 6.11. To avoid an over-dominant Executive and to increase the legislative checks on the Executive, more responsible participation by the NWT Council in the budget process should be encouraged. For example, the present function of the Standing Committee on Finance, namely, to indicate territorial priorities at the outset of the budget process, should be strengthened in practice. The Committee might propose an advisory motion to Council, setting out in broad terms the fiscal framework and essential priorities for the coming period, against which, as an expression of the Council's view, the Executive would subsequently be held to account.
- 6.12. Federal programs carried out by the GNWT as federal agent should be subject to separate financial arrangements negotiated between the GNWT and the appropriate federal department, such as Regional Economic Expansion, Transport or Environment.
- 6.13. With respect to the native claims negotiations and settlements, chapter 3 suggested that the initial claims awards should be exempt from income taxation. During the negotiation of the agreements-in-principle and the implementation agreements, alternatives to the use of tax concessions on subsequent gains and income derived from these settlements should be sought. Likewise, awards of land should not be exempt from reasonable property taxation, primarily on three grounds. First, it would serve to isolate native groups from full participation in government in the NWT by virtue of collective exemption from contribution to government finance. Second, it would create anomalies, no matter how the exemption were defined, and would be difficult to administer equitably. The Metis and Inuit would be

either excluded from or included in the special exemption. Exclusion would parallel the reserve model but create different regimes for status Indians as compared to other native groups in the NWT. Inclusion would give the Metis and Inuit preferential treatment compared to their counterparts in the provinces. Third, exemption of native enterprises would bias the normal functioning of the private sector in terms of economic signalling, since the prices and returns calculated for other enterprises would have to reflect tax costs. While this might be of initial benefit to native enterprises, it could eventually be counterproductive to their development, by sheltering inefficiencies from pressures to improve performance.

- 6.14. In line with the conclusions set out in chapter 5 regarding the transfer of land and resource ownership to the NWT, discussions should begin between the territorial and federal governments on appropriate resource revenue-sharing arrangements.
- 6.15. As the federal taxpayer will continue to pay a substantial portion of GNWT costs, it is incumbent on the GNWT to ensure its budget credibility with the federal government. To this end, consideration should be given by the GNWT to an enquiry into the economics of government in the NWT. Apart from contributing to a better understanding in the NWT of the factors leading to higher costs, such an examination might also promote a more economic conduct of government in the NWT.
- 6.16. A strengthened economic analysis and policy capability in the GNWT is essential in order to facilitate an understanding of development needs, create supportive policies, and monitor progress towards economic goals, in respect not only of major resource development projects but also small- and medium-scale development as a basis for secondary economic development.

The effectiveness of private sector financial institutions, including their responsiveness to local entrepreneurs, should be examined with a view to the GNWT taking direct action to facilitate the establishment of cooperative financial institutions at the local level. The GNWT should also endeavour to develop the necessary infrastructure and other supportive measures to assist native groups in effective investment of claims settlements for the private benefit of the claimants and for the public good of the NWT.

- 6.17. There is a need for more comprehensive and improved reporting of territorial data. The federal government should identify the NWT separately in disaggregations of all-Canada statistics by provinces and territories. Moreover, Statistics Canada and other federal data collection agencies should place greater emphasis on collecting and making available socio-economic data on the NWT, required for policy purposes by both the federal and territorial governments.
- 6.18. Given the likelihood of continued financial restraint, the GNWT administration should develop more effective procedures for translating GNWT priorities into practice, including particularly the means for identifying low priority programs that might appropriately be reduced or eliminated.

## COMMUNITY GOVERNMENT

If settlements, hamlets and villages are to become more autonomous, community governments must exercise expenditure discretion and be held accountable for these expenditures. The problem to be resolved is the reconciliation of financial discretion within a framework of financial dependency.

While efforts are underway to identify and develop independent sources of revenue for local councils, none of the various options, such as extension of the property tax, implementation of a property users' tax, or a local income tax, will either resolve or mitigate substantially the current degree of revenue dependency. Settlement, hamlet and village councils cannot be expected to derive locally much of the revenues required to provide even a minimum level of essential community services.

However, despite these fiscal constraints, the objective for local councils should nevertheless be the assumption of authority and responsibility for resource allocation, and accountability for raising revenues and establishing the overall community budget level.

- 6.19. The objective for all incorporated municipalities in their fiscal relations with the GNWT should be to provide communities with equal access to territorial financial support, consistent with the intent to eliminate the present hierarchical structure of municipal authorities. Authority to exercise local responsibility should not be dependent on the ability to raise revenue. The new or amended ordinances suggested in chapter 4 should eliminate provisions linking revenues raised locally to GNWT transfers of responsibility.
- 6.20. The objective for community government finance should be the provision of general purpose funds through block transfers on the basis of a formula that takes into consideration all local programs and services. This formula should have an NWT legislative base.

Provision of block transfers and elimination of special purpose grants and conditional funding would permit communities to undertake expenditure planning and to set priorities according to local needs and interests. Because the onus for decision-making would shift to the local level, variations in services from community to community would be permitted and local autonomy increased. Because the monies available to communities would be transferred in a block and on a predictable basis, local accountability and responsibility would be enhanced. While GNWT transfers could be supplemented by locally-raised revenues, local councils would be forced to make spending decisions within the resources available.

To achieve the object of formula financing, a number of modifications to the current system should be implemented in the interim. The steps proposed below would move the system from one characterized by earmarked grants to a more autonomous block transfer scheme.

- 6.21. During this first phase, GNWT-community financial arrangements should become formalized on a more government-to-government basis. Community councils should participate more actively with the GNWT in directing

the budget negotiation process. Negotiations should be carried out with the regional director of the proposed GNWT Department of Community Government and Regional Operations, although community councils should have access to the political level of the GNWT and be entitled to appeal to the designated Executive Committee member. Financial agreements with individual communities should be signed by both levels of government, represented by the chairman of the community council and the designated Executive Committee member. These agreements should reflect the financial requirements for operating those programs and services for which the community governments currently have responsibility. While broad parameters for these agreements would be authorized by Executive Committee guidelines, these guidelines should be considerably less detailed than those presently used in calculating the Hamlet Contribution. The amounts determined for each community government under these agreements should be aggregated and voted annually as a grant in the Estimates of the Department of Community Government and Regional Operations.

- 6.22. Initially, the amount of each community operating grant should be calculated to meet the financial needs of the community, given its current range of responsibilities. When the current level of service has been agreed upon, the total grant should be provided on a per capita basis. The base level should be established initially for a three-year period, and escalated by annual adjustments for price increases only. Renegotiation of the base level should occur periodically, for example, every three years or within a time frame sufficient to span the life of more than one community government administration. During the period of the agreement, deficits or surpluses should be carried forward by the community.
- 6.23. The GNWT should also undertake to develop a formula as the basis for per capita operating grants to community governments. This formula should be embodied in legislation, which would eventually replace the initial agreements. The formula would be based on experience with the individual agreements.
- 6.24. Community operating revenues should be a combination of the territorial per capita grant and revenues raised locally. However, to avoid disincentives to levying taxes or introducing user charges, and to encourage local fiscal responsibility, territorial grants to the communities should not be directly tied to locally-raised revenues.

For each dollar raised locally there should not be an equivalent reduction in the territorial contribution. Instead, a minimum level of service might be established and met by the territorial government grant; services desired by the community above the minimum would then be met by local revenues. Alternatively, 50 percent of the local revenue might be applied toward the community operating budget and the remainder treated as discretionary funds to be used by the community council for improvements in community services. These arrangements should initially be negotiated in community agreements.



- 6.25. To encourage local understanding of the relationship between revenues raised and costs, the revenues from taxes levied and service charges paid locally should be retained by the community council and not be turned over to the GNWT Consolidated Revenue Fund.
- 6.26. The residential property tax, commercial and business licences and property tax on industrial and commercial properties should be maintained, notwithstanding the relatively low occurrence of private property in the communities. With the extension of the property tax to all communities, the current distinction between tax-based and non-tax-based communities would be eliminated.
- 6.27. The GNWT should permit the community councils to explore other means of raising funds. Although the property users' tax proposed by the GNWT may be difficult to implement, and does not take into account the taxpayer's ability to pay, it may be appropriate for those communities with a higher proportion of transients from southern Canada. However, the use of utility charges would seem a more effective means of raising local revenue and might, at the same time, increase local interest in energy conservation. For example, substantially increased rates might be charged for utility use in excess of a community established per capita level, without causing hardship to those least able to bear the burden of increased taxes.
- 6.28. Additional transfers of program authority should be covered in agreements which include the related fiscal components. Thus, initially, separate agreements should be negotiated that cover the block transfers and the community operating budgets for education and social programs under community authority. The funds required initially should be calculated on the basis of current operating levels and then provided on a per capita basis. These agreements should eventually be incorporated into the general community financial agreement and become part of the block transfer system.
- 6.29. Community capital budgeting as distinct from the operating budget should be negotiated with the GNWT on an annual five-year planning basis. It is anticipated that 100 percent of capital funding in the communities would continue to be met by the GNWT.
- 6.30. Under the proposed block transfer system, the community councils should be exclusively responsible for the allocation of community funds for all community programs and services except for those services for which the GNWT retains statutory responsibility. Grants for specific statutory purposes should be identified separately in territorial legislation.
- 6.31. Community councils should accept responsibility for the development of the required local financial management competence; for the determination of annual community financial requirements on the basis of identified priorities, reported publicly to the community; for negotiation through the regional director of capital requirements and of the agreements for operating contributions; for the reallocation of funds appropriated; for the authority to borrow, subject to the approval of the Executive member responsible

for revenue and finance; and for raising additional revenues locally to meet requirements beyond the level supported by financial transfers from the GNWT.

- 6.32. The GNWT regional offices should provide assistance to the community councils in personnel training to develop the necessary financial expertise and capacity, thus encouraging assumption of full financial responsibility at the local level.

The GNWT should provide community councils with its annual program priorities, total budgetary and community government capital targets, both regionally and for the whole of the NWT, and any other factors used in the determination of the block transfers to community governments.

- 6.33. Because of the significant level of federal expenditures in the communities relative to local government budgets, direct federal expenditures should be harmonized to the greatest extent possible with community council-operated programs. For example, the CEIC job creation programs might be better dovetailed with community government priorities and under arrangements that permit the community council flexibility to adapt CEIC projects to support and supplement other community programs.

## ANNEX

### Examples of Application of Formula Proposed to Calculate Proposed GNWT General Purpose Grant

This annex is intended to show what the proposed formula might have yielded the GNWT as a general purpose grant in fiscal year 1979-80, had it been in effect since fiscal year 1977-78. As a basis for comparison, Table VIII shows the present counterpart to the general purpose grant—that is, the standardized operating grant (see footnote, Table VIII) plus the actual capital grant—determined under present arrangements for each year in the period. The "base," for purposes of this exercise, is the present combined grant of \$150.9 million for fiscal year 1976-77. The present combined grant in fiscal year 1979-80 of \$202.7 million is the target for purposes of comparing the outcome of the present and proposed arrangements.

**Table VIII**  
**Present Federal General Purpose Grants to the GNWT:**  
**Standardized Operating Grant and Capital Grant:**  
**Fiscal Years 1976-77 to 1979-80**

Fiscal Year	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Actual Operating Grant	Standardized* Operating Grant	Percent Increase in (2) over Previous Year	Actual Capital Grant	Percent Increase in (4) over Previous Year	Present Combined Grant (2) + (4)	Percent Increase in (6) over Previous Year
	\$ millions	\$ millions	%	\$ millions	%	\$ millions	%
1976-77 .....	109.9	109.9	—	41.0	—	150.9	—
1977-78 .....	107.6	119.8	9.0	49.1	19.8	168.9	12.1
1978-79 .....	128.3	134.5	12.3	54.2	10.4	188.7	11.7
1979-80 .....	147.9	147.9	10.0	54.8	1.1	202.7	7.4

Source: GNWT Main Estimates; DIAND and Department of Finance, Government of Canada.

\* To standardize the amounts shown so that a year-to-year comparison is meaningful, an upward adjustment is required to the actual operating grant for fiscal years 1977-78 and 1978-79 to offset a reduction in the grant in those years, which compensated for an overpayment in the federal grant in lieu of income taxes paid to the GNWT under arrangements then in effect.

Two indicators are explored in Table IX as possible candidates for the "basic growth factor" in the "escalator" of the proposed formula.

**Table IX**  
**Comparison of Potential Indicators**  
**for Proposed "Basic Growth Factor"**

Fiscal Year	Percent Increase over Previous Year in:	
	GNP Per Capita	Total Provincial Expenditures Per Capita
1977-78 .....	8.5	10.5
1978-79 .....	9.3	10.6
1979-80 .....	9.3	10.6

*Source:* Department of Finance and Statistics Canada, Government of Canada. Since a preliminary estimate was not available for 1979-80, the figure for 1978-79 was used.

For purposes of this example, the "adjusting factor" in the "escalator" of the proposed formula is intended to reflect the extent to which average costs and population in the NWT change compared to their all-Canada counterparts. Because the necessary data were unavailable, the calculations have been made assuming two possibilities, so as to demonstrate the sensitivity of the formula:

**Assumption I:** Average costs and population in the NWT increase 10 percent faster than for all-Canada. Thus, if annual costs for all-Canada grow by 5 percent and population by 1 percent, then the annual increase in this factor in the NWT would be:

$$[(105\% \times 101\%) - 100\%] \times 1.1 = 6.6\%$$

**Assumption II:** Average costs and population in the NWT increase 25 percent faster than for all-Canada.

Based on these assumptions, Table X compares the present combined grant from Table VIII with the proposed general purpose grant calculated under the formula.

**Table X**  
**Comparison of Calculated Values of Proposed General Purpose Grant with Present Combined Grant, Using Various Assumptions**

Fiscal Year	Proposed General Purpose Grant				
	Present Combined Grant	Basic Growth Factor: GNP Per Capita		Basic Growth Factor: Total Provincial Expenditures Per Capita	
		Adjusting Factor: Assumption	Adjusting Factor: Assumption	Adjusting Factor: Assumption	Adjusting Factor: Assumption
		I	II	I	II
	\$ millions	\$ millions	\$ millions	\$ millions	\$ millions
1977-78 .....	168.9	165	167	168	171
1978-79 .....	188.7	182	186	188	193
1979-80 .....	202.7	200	208	210	219
<b>Proposed Grant Compared with Present Combined Grant:</b>					
(1) Average Annual Short-fall (-) or Gain (+):					
(\$ millions): .....					
		- 4	0	+ 2	+ 7
(2) (1) as Percentage of Fiscal Year 1979-80 GNWT Expenditures of \$294 million : (%) ....					
		- 1.4	0	+ 0.7	+ 2.4

Based on these assumptions, the formula does not yield significantly different results from the present situation under three approaches. The significant difference, found in one case—2.4 percent expressed as a percentage of total expenditures—does not seem unreasonable, if, in fact, growth in costs and population in the NWT relative to all-Canada is as high as has been assumed. Indeed, the result would appear to be more equitable than the present approach, which links the level of grants to the growth in federal expenditures.

## **7** PROCESS FOR CONSTITUTIONAL CHANGE

### **NWT CONSTITUTION**

The constitution of the NWT, if defined broadly as the rules that establish, empower and regulate the principal institutions of government, cannot be found in any single federal act or territorial ordinance. To "find" the constitution of the NWT, it is necessary to examine many federal statutes, some key territorial ordinances, the ministerial instructions to the Commissioner, and even some federal policies and territorial regulations. There are, in addition, territorial and federal conventions, customs and practices that are traditionally considered part of the constitution.

The principal document that describes the form and scope of the governing institutions in the NWT and the fundamental relationship between the governments of Canada and the NWT, is the NWT Act, an act of the federal Parliament. In addition, there are other principal federal statutes, such as the Territorial Lands Act, the Department of Indian Affairs and Northern Development Act and the Indian Act, which should be considered as part of the constitution of the NWT.

These federal statutes also provide processes whereby the constitution of the NWT can be continually redefined. The authority given by the NWT Act to the Minister of Indian Affairs and Northern Development to issue instructions to the Commissioner has permitted the Minister to establish and change those important rules that govern, for example, the relationship between the Commissioner and the Executive Committee and between both of these and the territorial Council. This authority and the provision for the paramountcy of all federal legislation, established under Section 13 of the NWT Act, have permitted the federal government, in effect, to interpret unilaterally the legislative and administrative authorities given to the NWT by statute. Thus, whereas one must look to Supreme Court decisions to interpret provincial jurisdiction under Section 92 of the BNA Act, in the case of the NWT, one must look to federal policy for an understanding of Section 13 of the NWT Act.

The federal government's influence over the basic law and institutions of the NWT occurs at all stages of their elaboration. Even those aspects that clearly fall within the jurisdiction of the territorial Council can be shaped by the federal government in many ways, for example, by ministerial instructions to the Commissioner, by financial decisions, by the Commissioner's veto of ordinances, by Governor-in-Council disallowance, and by informal pressure.

Since the authority of the federal government to affect all aspects of constitutional change in the NWT has been so broad and pervasive, it is understandable that Ottawa, not Yellowknife, has become the primary centre for debate and negotiation on the constitutional future of the NWT. Native claimants, special interest

groups, the Government and Council of the NWT, all direct their constitutional proposals to the Minister of Indian Affairs and Northern Development for resolution. The Minister, faced with his own numerous and sometimes conflicting responsibilities for Indian and Inuit affairs, native claims, northern affairs and northern economic development, has had the difficult task of evaluating and ruling on this sweep of competing interests. Because each of these areas of responsibility has constitutional implications, the Minister has been obliged to hold bilateral consultations and negotiations with various interest groups. Moreover, since the scope and burden of the Minister's responsibilities has been so great, he has had to delegate some of his decision-making authority on these matters to officials in his department, with the result that direct political accountability for these decisions is seriously restricted at both the federal and territorial levels.

### **PROCESS FOR CHANGE IN THE NWT**

The current process for constitutional development has several disadvantages for the peoples of the NWT. First, it provides little incentive for the various interest groups within the NWT to come together to resolve their differences and work out joint solutions to the problems. Second, both the general direction and the specific details of constitutional change are being determined, not by the people of the NWT, but in Ottawa, and frequently by unaccountable administrators. Third, it is difficult for the NWT Council to be, and to be seen to be, responsive and responsible when, because of its limited authority to effect change, it is bypassed by most of the interest groups. As long as the federal government continues to resolve northern conflicts for northerners, political decision-making will remain in its hands and the NWT leadership will not be motivated to accept the responsibility that goes with power. Finally, interest groups have framed their positions and concentrated their efforts in order to convince the federal government, not the people of the NWT, of the merit of their proposals. Meanwhile, the very important task of political education in the NWT, to enable the public to understand the options and to assent to the decisions taken on their constitutional future, has so far been neglected.

The shortcomings of the present process of constitutional change are compounded by the vital nature of the questions now facing the NWT. Foremost is the question of whether the Territories should remain a single unit or be divided into two or more parts, and, if so, under what conditions this might occur. But this is not the only issue. Before a reasoned decision can be made on the issue of division, several unresolved questions will have to be addressed. These include: what should be the structure of existing or resulting political institutions; how should the legislative and administrative authorities be distributed among the federal, territorial, regional and community levels of government; what should be the balance of authority between the private and public sectors in the NWT; at what pace should constitutional change occur in relation to the desired balance between levels of government; and, what should be the relationship between native claims and political structures and functions?

There is at present no forum in the NWT that is recognized both by the federal government and by the people of the NWT, and that has been specifically

authorized to examine these crucial questions. While the existing constitutional process undermines the territorial institutions on the immediate questions of constitutional evolution, it is also inadequate for dealing with the fundamental and long-term issues.

### **Conclusions**

Many of the conclusions stated elsewhere in this Report should enable the residents of the NWT to assume more authority over the determination of their political future. Among these are the suggested changes in the responsibilities of the Commissioner, the new shape and responsibilities of the Executive Committee and NWT Council, and the increase in local authority and responsibility. However, additional modifications in the structures and attitudes at both the federal and territorial levels are required that would contribute to a more orderly constitutional process and reduce the direct and continuous intervention of federal authority.

### **FEDERAL GOVERNMENT**

- 7.1. To facilitate the development of a government-to-government relationship between the federal government and the GNWT, and to minimize existing conflicts in the responsibilities of the Minister of Indian Affairs and Northern Development with respect to the NWT, the federal responsibility for territorial constitutional matters, including the NWT Act, should be transferred to the federal Minister of State for Federal-Provincial Relations.

During the developmental phase of government in the NWT, the proposed Minister of State for Federal-Provincial-Territorial Relations should promote the devolution of federal responsibilities to the NWT, and represent the territorial interests in the federal Parliament and government, so as to facilitate the constitutional evolution of the NWT. The Commissioner should report to and receive ministerial instructions from this Minister. The Federal-Provincial Secretariat, which serves the Minister, should assume secretariat functions for the NWT similar to those it now has for the provinces. This transfer of responsibilities from the Minister of Indian Affairs and Northern Development to the Minister of State for Federal-Provincial-Territorial Relations would not include the transfer of any direct program responsibilities for the NWT, nor should it connote the development of any new, direct federal program responsibilities in the NWT.

While such a reallocation of functions is important in order to assist the process of constitutional development, structural changes may prove inadequate unless they are accompanied by an appreciation that northern problems should be resolved by northerners. To encourage northern-based solutions, the proposed Minister of State for Federal-Provincial-Territorial Relations should refrain from acting as arbiter between competing territorial interests on those issues that fall within the jurisdiction of the GNWT and Council. The principals responsible for resolving such conflicts should be the NWT Council and the Executive Committee.



As concluded in chapter 5, a further delineation and separation of the various competing responsibilities of the Minister of Indian Affairs and Northern Development would not only assist the development of government in the NWT, but could also improve the representation of the native interests in Canada.

- 7.2. Chapter 3 suggested that it would be appropriate to designate a federal minister as the Minister for Native Peoples, encompassing responsibility for the Indian peoples, the Metis and the Inuit.

To ensure and improve the representation of native peoples in the federal government and Parliament, the Minister for Native Peoples should not be assigned any of the competing responsibilities of the present Minister of Indian Affairs and Northern Development. However, he should retain responsibility through the Office of Native Claims for the development and negotiation of the agreements-in-principle with the native peoples in the NWT. He should also act as the advocate for the native peoples and their interests during the negotiations on the implementation agreements, as well as with other federal ministers and their departments. In addition, he should, when appropriate, represent the interests of the native peoples in the Canadian constitutional forum.

- 7.3. In the interests of stimulating active and responsible negotiation by the government and Council of the NWT with their federal counterparts on the devolution of federal authorities, the present responsibilities for northern development of the Minister of Indian Affairs and Northern Development should be transferred *pro tem* to the relevant federal departments. This reallocation should include responsibilities under the Territorial Lands Act, and responsibilities for economic development, roads and highways, environment and renewable resources. By transferring these responsibilities to federal departments, such as Environment, Agriculture, and Energy, Mines and Resources, prior to their devolution to the NWT, and by eliminating the coordinating function of DIAND for federal activities in the NWT, a government-to-government relationship with the GNWT will be fostered. This should also encourage the GNWT to improve its policy and administrative capabilities in these areas.
- 7.4. Finally, as was discussed in detail in chapter 6, the NWT arrangements for general federal financial support should be negotiated directly between the federal Minister of Finance and the NWT Executive Committee member responsible for revenue and finance. This, too, should encourage the development of a government-to-government relationship between the GNWT and the federal government.

## THE NORTHWEST TERRITORIES

- 7.5. Although government has evolved quickly in the North, there remain many tasks for the next decade. These include: rendering the territorial government more accountable to the people of the NWT; transferring authorities from the federal government; settling native claims; and giving community governments a status and authority of their own. These changes should not

have to await a decision on the question of whether the Territories should be divided. Even greater frustration and dissatisfaction would result in the North if constitutional evolution were effectively frozen for several years. Furthermore, gradual reform of existing institutions should permit territorial residents to continue to test the potential of these institutions while allowing them, at the same time, to examine other options.

At the same time, it is important that these changes be brought about in a responsible and consistent manner. It would be inappropriate for the federal government unilaterally to set a timetable for effecting the changes. Instead, the Council and the GNWT should initiate and assume responsibility for negotiating with their federal counterparts changes in the jurisdictions and structures of the GNWT. The Council should judge the pace at which the GNWT is best capable of assuming new authorities or adjusting to structural changes. The corollary to this proposition is that the federal government should consult and obtain the concurrence of the NWT Council on any changes that would affect the Council's responsibilities or the structure of the GNWT.

- 7.6. While it is essential that the Council strive to maintain the momentum of constitutional development, it is also important that the long-term question of division not be ignored. To avoid overloading the Council, the two processes—short-term, incremental change and consideration of the fundamental options—might be separated, and a forum created with the specific mandate to examine and advise the Council on the question of division.

Although such a forum might assume several shapes, to be successful it should fulfil certain conditions: it should be broadly representative of the diverse interests in the NWT, including the constitutional positions of the native claimant groups; it should be a public body that would and could accept the task of educating residents of the NWT on the constitutional options and their likely consequences; it should be based in the NWT; and it should be composed of individuals who are prepared to devote their time and energy to this difficult task. Most important of all, it must be acceptable to northerners and be regarded by them as a body that can legitimately and ably articulate the options, test their acceptability and achieve mutual accord. Finally, it should be established by the NWT Council, which would likely wish to receive its report before the expiration of the present Council's mandate.

One possible forum that the Council might consider is a constitutional convention or constituent assembly, to be elected by the residents of the NWT for a specified period of time and charged by the Council with the exclusive task of advising on the question of division. While its terms of reference and the limitations on the area within its competence should be clearly defined, the constituent assembly should be able to establish its own procedures of deliberation. Such a body would have the advantage of being elected with an explicit mandate to advise on division. It would also afford the opportunity for an expanded representation of the organic interests in the NWT, in particular, the community and regional interests, and the native claimant groups.

- 7.7. As a constituent assembly might have the disadvantage of adding yet another body to the plethora of elected and administrative structures in the NWT and result in further confusion among the people, other forums that the NWT Council might consider include the Council itself. The Council might meet in several extra sessions during the next few years in order to examine the question of division. In this sense, the Council would be constituting itself as a constitutional convention during these sessions. While having the advantage of not adding a new structure, this forum suffers from several drawbacks. As was suggested above, it is desirable that the political process continue to function and develop in the NWT at the same time that fundamental questions are being examined. The task of developing and negotiating the jurisdictions and structures in the NWT will be onerous and important and should be the responsibility primarily of the territorial Council. The Council will also be faced with heavy legislative responsibilities during the next few years. Given these major responsibilities and priorities, it is questionable whether the Council would have the time to accept the additional workload required to examine, question and educate the people on the issue of division. This latter process requires a painstaking, dispassionate examination of the conditions and structures appropriate to unity or division and might interfere with the Council's major workload. A further disadvantage is that, as the Council was not elected with the specific mandate to treat the issue of division, its own advice on division may carry less weight.
- 7.8. Either of these alternatives, or any other selected by the Council, should ensure that the public is educated regarding the options. To encourage the process of public education and to test public acceptance of the proposals, recommendations emerging from the forum should be subject to a territory-wide referendum. The intention to hold such a referendum should be indicated by the Council when the forum is first established. This should provide an important incentive for the members of the constitutional forum to maintain an active discussion with and education of the public during the whole process of negotiation and debate.
- 7.9. Finally, if the forum is to produce realistic and realizable solutions, it should be fully informed of the federal government's policies and the constraints that will have a bearing on the issues under discussion. The Commissioner could play a useful role both in keeping the federal government informed of the debate in the forum, and in keeping the forum, in turn, apprised of the federal government's policies. Because the NWT Council will ultimately have to recommend to the federal Parliament any changes that may be required to federal statutes, it is important that the Council also be kept aware of federal policies. Unrealistic expectations that would ultimately prove impossible for the federal government and Parliament to fulfil should not be created in the NWT.

# **APPENDICES**

A



PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 1977-2227  
2 August, 1977

HIS EXCELLENCY THE GOVERNOR GENERAL IN  
COUNCIL, on the recommendation of the Prime  
Minister, pursuant to section 14 of the Senate and  
House of Commons Act, is pleased hereby to request  
the Honourable Charles Mills Drury, Member of  
Parliament for Westmount, Quebec, to travel on the  
public business of Canada as the Special Representative  
of the Prime Minister for Constitutional Development  
in the Northwest Territories with terms of reference as  
attached.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

A handwritten signature in cursive script, appearing to read 'P. H. Pettiford'.

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

July 19, 1977

**SPECIAL GOVERNMENT REPRESENTATIVE FOR CONSTITUTIONAL  
DEVELOPMENT  
IN THE NORTHWEST TERRITORIES**

Terms of Reference

1. The Special Representative for Constitutional Development in the Northwest Territories shall be appointed by the Prime Minister and be authorized:
  - i) to conduct a systematic consultation with recognized leaders of the Territorial Government, northern communities and native groups about specific measures for modifying and improving the existing structures, institutions and systems of government in the Northwest Territories, with a view to extending representative, responsive and effective government to all parts of the Territories and at the same time accommodating the legitimate interests of all groups in northern society, beginning with those of the Indian, Inuit and Métis.
  - ii) to seek consensus among the various groups consulted about specific proposals and measures that could be implemented progressively through legislative amendment of Federal and Territorial laws, as well as through administrative action as required;
  - iii) to coordinate these activities with those taking place concurrently on land claims put forward by northern native groups and with any discussions at the official level about administrative adjustments in the relationships and functions of government in the Northwest Territories;
  - iv) to keep the Territorial Government and other interested parties fully informed about the progress of the consultations;
  - v) to consult as required with the Ad Hoc Committee of Cabinet on Constitutional Development in the North, through its chairman the Minister of Indian Affairs and Northern Development;
  - vi) to report from time to time to the Prime Minister on all these matters with recommendations for action by the Federal Government.
2. In no way restricting the generality of the foregoing, the Special Representative is authorized to include on his agenda for consultation the following specific subjects:
  - i) possible division of the Northwest Territories on the basis of functional factors, including economic, socio-cultural, and other relevant factors, but excluding political divisions and political structures based solely on distinctions of race;
  - ii) phased restructuring of political institutions in the Northwest Territories to achieve a greater degree of responsible government, including but not limited to consideration of the composition and jurisdiction of the Territorial Council, the composition and role of the Executive Committee, the continuing responsibilities and role of the Commissioner, the future relationship with the Federal Government, and reserved powers of the Minister and Governor-in-Council;
  - iii) transfer and delegation of Federal responsibilities and programs to the Territorial Governments;
  - iv) devolution of responsibilities, powers and functions from the Territorial Government to communities, with a community option of creating regional institutions for specific purposes;

- v) statutory and other safeguards for protecting native interests, including language, cultural, and traditional pursuits;
  - vi) arrangements for promoting native participation in government at various levels, including residence requirements, constituency boundaries, a municipal ward system, representation on subsidiary bodies and in the public service;
  - vii) the political role if any of native institutions for economic development deriving from claims settlements;
  - viii) continuing Federal ownership and management of non-renewable resources, with sharing of resource revenues;
  - ix) decentralization of surface land use and management procedures with institutionalized arrangements for jointly-planned economic development;
  - x) appropriate financial arrangements to support the foregoing.
3. The Special Representative will be assisted by an advisory group seconded from the Federal and Territorial Governments together with any other expert consultants he may require from time to time.
4. The Special Representative shall be responsible for the effective conduct of the consultation and to this end is authorized:
- i) to establish a headquarters in the Northwest Territories;
  - ii) to convene meetings in various communities in the Northwest Territories with local leaders and other participants he may wish to invite;
  - iii) to enter into contracts with expert consultants as required;
  - iv) to employ administrative support staff;
  - v) to manage funds provided to the Inquiry;
- on terms and conditions to be approved by the Treasury Board.
5. Departments and agencies of both the Federal and Territorial Governments shall be required on request to provide information, advice and other assistance to the Special Representative.
6. The Special Representative shall complete his consultations and related activities expeditiously so that decisions relating to constitutional development in the Northwest Territories may be taken by the Government at the earliest possible date.

## **B**

### **Office of the Special Representative: Interpretation of the Mandate of the Special Representative for Constitutional Development in the Northwest Territories**

#### **I. THE MANDATE**

1. By order-in-council P.C. 1977-2227 of August 2, 1977, the Honourable C.M. (Bud) Drury was appointed Special Representative of the Prime Minister for Constitutional Development in the Northwest Territories. Detailed terms of reference authorized Mr. Drury to consult widely in the Northwest Territories, "with a view to extending representative, responsive and effective government to all parts of the Territories and at the same time accommodating the legitimate interests of all groups in northern society, beginning with those of the Indian, Inuit and Métis..." The related policy statement of August 3, "Political Development in the Northwest Territories," called for action-oriented consultation, recommendations for change, decisions on constitutional development to be taken expeditiously, and specific workable proposals and measures for increasing effective government throughout the Northwest Territories.
2. This statement, in stressing the importance of the people of the North—in particular the native peoples, for whom under the constitution, the Government of Canada has a special responsibility and who presently constitute the majority of the population—acknowledged the demand for greater political responsibility on the part of all northerners, including native peoples, communities and the NWT Government. It recognized the tensions and divisive factors created by competing political demands and aspirations, economic development, and the political impact of a potential influx of southern transients.
3. It referred to a process of seeking consensus and agreement among all northerners, reconciliation and redressing of imbalances in political power, flexibility and open-mindedness in the face of institutional and political change, and satisfactory solutions to be worked out with the people most concerned.
4. It referred to the recent extensive public inquiry process on the Mackenzie Valley pipeline, the established process for negotiation on the land claims, the existing responsibilities of the Government of the Northwest Territories and the powers of the Minister and the Governor-in-Council vis-à-vis the Northwest Territories and the Northwest Territories Act.

#### **II. THE PROCESS**

1. Mr. Drury's task will be to consult, to seek consensus, and to report to the Prime Minister with recommendations.
2. He will consult widely with the people of the NWT, with individuals, with communities, with native groups and associations, and with the NWT Government and Council members. His consultations will not take the form of public hearings, public oral or written submissions or public tabling or distribution of documents. Rather, he will invite, and respond to, requests to meet with people throughout the Territories. In this way, those who invite Mr. Drury will choose both the meeting format and the agenda they desire.



3. To achieve consensus, Mr. Drury will assume a role, principally as mediator, between the people and communities of the NWT and the NWT and federal government in the land claims negotiations; between the native peoples and the NWT and federal governments on political and constitutional issues; between the government of the NWT and the federal government on constitutional development. As mediator, he will seek to facilitate negotiation and to achieve agreement among all parties.
4. To support him in his role of mediator, and to assist in the resolution of competing political demands, Mr. Drury and his Office will develop alternative proposals, consistent with his instructions of August 2, for consultation with the people of the Northwest Territories, and for negotiation with specific parties.
5. In undertaking his systematic consultation and mediation, and in putting forward specific proposals, Mr. Drury will keep all interested parties fully informed. Furthermore, he will report publicly from time to time on the status of his work.
6. He will inform and seek the advice of the Ad Hoc Cabinet Committee on Constitutional Development, and will submit to that Committee recommendations for Cabinet approval on the changes proposed, as they develop.
7. Mr. Drury will keep the Prime Minister informed of the progress in the Northwest Territories, advise him on matters where there is no agreement, and on his recommendations.

### III. THE OFFICE

1. Mr. Drury has established his Office as follows:

Northwest Territories:  
 Resources Building  
 5009-51st Street  
 P.O. Box 1349  
 Yellowknife, NWT  
 X1A 2N9

Ottawa:  
 Suite 401  
 151 Sparks Street  
 P.O. Box 1600, Station "B"  
 Ottawa, Ontario  
 K1P 6E9

telephone: (403) 873-5939

telephone: (613) 995-3937

Each office will have a small core staff.

2. Yellowknife: The responsibilities of the Yellowknife Office will be analytic processing of written submissions to Mr. Drury, planning and organization of his consultation tours; public communications; distribution of material and contact with communities throughout the Northwest Territories, as well as liaison with the territorial government.

The public have been invited by means of all northern media, in both English and the applicable native languages, to address requests for information or for consultation with Mr. Drury to his office either by mail or by collect telephone call.

3. Ottawa: The Ottawa Office will be responsible for consultation in the South, especially with headquarters of federal departments, and for work with the Ad Hoc Committee of Cabinet.

#### IV. THE WORK PROGRAM

Mr. Drury invites the NWT Council and Government, associations, communities and people of the North initially to discuss his mandate as interpreted, the problems associated with existing political institutions and political development, and the process outlined here. He will be available for this consultation, on demand, throughout the NWT and in the South.

The purpose for Mr. Drury in his consultation at the first stage is: to focus on and understand the problems, to develop the process of mediation, and define a work program internal to his office. The proposed program is as follows:

##### Phase 1

To review the current political functions and structures, including the territorial government and local governments, with specific attention to:

- the distribution of responsibilities: legislative, administrative, and advisory;
- the extent of participation and representation by native peoples at all levels of government decision making;
- the compatibility of these political structures with native peoples' socio-political traditions and organizations;

By an examination of:

1. The existing political/constitutional functions (executive, legislative, administrative, advisory) in the Territories of:
  - the Commissioner and the Executive Committee
  - NWT Council
  - NWT government departments
  - Governor-in-Council
  - Minister of Indian Affairs and Northern Development
  - DIAND
  - federal departments
  - other federal or NWT agencies;
2. The existing NWT municipal and local institutions, described according to administrative and advisory functions:
  - types of NWT communities
  - forms of local government, i.e., settlements of towns
  - political structures, e.g., municipal
  - councils, committees, associations
  - subject matter under local authority, e.g., advisory on education, wildlife, law enforcement
  - non-governmental institutions or agencies;
3. The native peoples' associations, and other native interest groups:
  - relationship to native political organization and traditional institutions
  - role, functions, representation, and participation.

##### Phase 2

To analyse the functional problems, in relation to:

1. Special constitutional status of the Inuit and Dene people;

## 2. Local-Regional Government:

- decentralization and devolution—NWT Government
- land claims devolution
- municipality and community proposals
- taxation and revenue base;

## 3. Local-Regional-Territorial:

- land claims and other proposals
- taxation and revenue base;

## 4. Territorial-Federal:

- executive powers: Commissioner, ministerial and Governor-in-Council
- legislative powers: Council and Executive Committee vis-à-vis federal departments
- administrative responsibilities, as distinct from legislative powers
- British North America Act, Northwest Territories Act, Department of Indian Affairs and Northern Development Act, Indian Act, other federal legislation bearing on the NWT
- taxation and revenue base.

## Phase 3

To consider resulting from the above analysis, the size, nature, population distribution, and the economic-social-cultural factors of the NWT with regard to the:

1. Political or functional divisions of the NWT;
2. Regional, political subdivisions, jurisdictional and administrative redistribution of powers and responsibilities, particularly in the areas of education, law enforcement, economic development and game management, e.g.,
  - consideration of residency requirements for voting and the entrenchment of native rights in special residency clauses
  - consideration of special rights and enfranchisement in native matters;
3. Responsible government status of the NWT, with respect to:
  - executive powers
  - legislative powers: residency requirements, electoral districts, election procedures, size and composition of the Council, territorial officers, management of public lands, property rights, administration of justice, establishment, maintenance and management of hospitals and asylums, education, revenues, debts, assets and taxation, territorial liabilities
  - administrative responsibilities, as distinct from legislative powers
  - British North America Act, Northwest Territories Act, Indian Affairs and Northern Development Act, Indian Act, and other federal legislation bearing on the NWT
  - recommendations based on consensus with the federal government and people of the NWT;
4. Political organization and responsibilities at the community level, in relation to the regional and territorial geo-political delineations;
5. Non-governmental and quasi-governmental institutions relating to the operation of government at all levels in the NWT;
6. An evolutionary program for political development.

## V. RESEARCH PROGRAM OF THE OFFICE

Research may be in-house or may be commissioned. (As may be required, Mr. Drury is empowered to second advisors from the federal and territorial governments, and to enter into contracts with other expert consultants.)

1. In-house research on the factors of uniqueness in the NWT and impact on government, e.g.,

- geography and political divisions
- non-renewable resources: economic value and employment
- renewable resources: economic value and employment
- transportation and communication
- demographic: existing settlement patterns versus future demographic potential and population shifts
- exogenous and endogenous influences on political development in the North.

("Research" means in the first instance drawing together existing documentation, information and expertise in these areas, assumed to be relevant to political development, and the preparation of in-house reports as background for the Special Representative in developing alternative political structures.)

2. Special Studies may be carried out in-house, or may be commissioned:

- northern demography: future
- native peoples' education: management and content
- northern political policies and programs: foreign experience
- historic and future constitutional questions affecting the NWT
- socio-political studies: Indian and Inuit cultural traditions and political organization
- legislation: special status of native languages and culture
- impact of the welfare-state dependency role on the NWT.

## VI. TIME FRAME

To carry out this work in cooperation with the NWT Government and Council, the native peoples' associations, communities, northern residents and the federal government, within two years.

Office of the Special Representative  
March, 1978

# C

## Official Meetings of the Special Representative with Individuals and Groups of the NWT

Date	Group/Individual	OSR Staff also in Attendance	Location
1977			
Sept. 29	Metis Association of the NWT Executive	W. Porteous	Ottawa
Sept. 30	Georges Erasmus, President, Dene Nation		Ottawa
Sept. 30	John Amagoalik, Director, Inuit Land Claims Commission		Ottawa
Nov. 13	Stuart Hodgson, Commissioner of the NWT John Parker, Deputy Commissioner of the NWT	W. Porteous	Ottawa
Nov. 22	Committee for Original Peoples Entitlement, Board	W. Porteous	Ottawa
Nov. 23	Arnold McCallum, NWT Council member for Slave River		Ottawa
Dec. 12	NWT Council members		Yellowknife
Dec. 12	Executive Committee, Government of the NWT	W. Porteous	Yellowknife
Dec. 13	Metis Association of the NWT, Executive	W. Porteous	Yellowknife
Dec. 15	Richard McNeely, NWT Council Secretariat		Yellowknife
Dec. 15	Ray Creery, Director, Planning and Program Evaluation, Government of the NWT	W. Porteous	Yellowknife
Dec. 16	Mayor Jim Robertson and Inuvik Town Council	W. Porteous	Inuvik
Dec. 17	Committee for Original Peoples Entitlement, Executive	W. Porteous	Inuvik
Dec. 18	Thomas Butters, NWT Council member for Inuvik	W. Porteous	Inuvik
Dec. 19	Press Conference	W. Porteous	Inuvik
Dec. 19	Press Conference	W. Porteous	Yellowknife
1978			
Jan. 11	Richard McNeely, NWT Council Secretariat	W. Porteous	Ottawa
Jan. 14	Tagak Curley, resident of Coral Harbour	W. Porteous	Ottawa
Jan. 18	Inuit Tapirisat of Canada, Board Members	W. Porteous	Ottawa
Jan. 23	NWT Chamber of Mines	W. Porteous	Yellowknife

<b>Date</b>	<b>Group/Individual</b>	<b>OSR Staff also in Attendance</b>	<b>Location</b>
Jan. 23	Mayor Fred Henne and Yellowknife City Council	W. Porteous	Yellowknife
Jan. 24	NWT Council Members	W. Porteous r. Carrière	Yellowknife
Jan. 24	Metis Association of the NWT, Board	W. Porteous	Yellowknife
Jan. 26	Ray Creery, Director, Planning and Program Evaluation, Government of the NWT	W. Porteous	Yellowknife
Jan. 26	Stuart Hodgson, Commissioner of the NWT		Yellowknife
Feb. 20	Tuktoyaktuk Hamlet Council	W. Porteous	Tuktoyaktuk
Feb. 20	John Steen, NWT Council member for Western Arctic	W. Porteous	Tuktoyaktuk
Feb. 20	Father Lemure, resident of Tuktoyaktuk	W. Porteous	Tuktoyaktuk
Feb. 21	William Nasogaluak, Chairman and Emanuel Felix, Deputy Chairman, Settlement Council	W. Porteous	Tuktoyaktuk
Feb. 21	Committee for Original Peoples Entitlement, Field Workers	W. Porteous	Tuktoyaktuk
Feb. 22	Thomas Butters, NWT Council member for Inuvik	W. Porteous	Inuvik
Feb. 22	Inspector Dan Webster, RCMP	W. Porteous	Inuvik
Feb. 23	NWT Association of Municipalities	W. Porteous	Yellowknife
Feb. 23	Directors and Managers of Northern Affairs Program, DIAND	C. Asselin	Yellowknife
Feb. 23	Aubrey Buttler, Chief Superintendent, RCMP		Yellowknife
Feb. 24	Fort Smith Chamber of Commerce	W. Porteous	Fort Smith
Feb. 24	Mayor Paul Kaeser and Fort Smith Town Council General Public	W. Porteous	Fort Smith
Feb. 24	NWT Metis Association, Local	W. Porteous	Fort Smith
Feb. 25	Committee for Original Peoples Entitlement, Executive and Board Members	W. Porteous	Sachs Harbour
Feb. 25	Settlement Council Hunters' and Trappers' Association General Public	W. Porteous	Sachs Harbour
Feb. 26	Settlement Council Hunters' and Trappers' Association General Public	W. Porteous	Holman
Feb. 27	Settlement Council Hunters' and Trappers' Association General Public	W. Porteous	Paulatuk

<b>Date</b>	<b>Group/Individual</b>	<b>OSR Staff also in Attendance</b>	<b>Location</b>
Feb. 28	Father De Hurtevent, resident of Paulatuk	W. Porteous	Paulatuk
Feb. 28	Hamlet Council General Public	W. Porteous	Akiavik
Mar. 1	Father Ruyant, Grollier Hall	W. Porteous	Inuvik
Mar. 2	Dan Holman, <i>The Drum</i>		Inuvik
Mar. 2	Steve Houser, CBC		Inuvik
Mar. 3	Fort Norman Band and Settlement Council	W. Porteous	Fort Norman
Mar. 3	Richard Hardy, resident of Fort Norman NWT Metis Association, Local	W. Porteous	Fort Norman
Mar. 4	Chief Paul Wright, Mary Wright, Fred Doctor, residents of Fort Norman	W. Porteous	Fort Norman
Mar. 9	Arnold McCallum, NWT Council member for Slave River	W. Porteous	Ottawa
Mar. 17	David Gladders, resident of Yellowknife	W. Porteous J. Edmond	Ottawa
Mar. 21	Ray Creery, Director, Planning and Program Evaluation, Government of the NWT	G. Braden	Frobisher Bay
Mar. 21 & 23	Mayor Bryan Pearson and Frobisher Bay Village Council	G. Braden	Frobisher Bay
Mar. 22	Baffin Regional Council	G. Braden	Frobisher Bay
Mar. 23	Regional Staff, Government of the NWT	G. Braden	Frobisher Bay
Mar. 24	Andrew Theriault, District Manager, DIAND	G. Braden	Frobisher Bay
Mar. 24	CBC <i>Nunatsiaq News</i>	G. Braden	Frobisher Bay
Mar. 25	Frobisher Bay Development Study Group	G. Braden	Frobisher Bay
Mar. 26	Peter Baril, resident of Frobisher Bay	G. Braden	Frobisher Bay
Mar. 27	Father Choque, Roman Catholic Mission	G. Braden	Frobisher Bay
Mar. 27	Willy Kungle and Joe Rizotto, Village Council staff	G. Braden	Frobisher Bay
Apr. 12	Tagak Curley, Executive Director, Inuit Tapirisat of Canada	W. Porteous	Ottawa
Apr. 25	Federal Institute of Management, Yellowknife Chapter	W. Porteous J. Edmond	Yellowknife
Apr. 26	Reverend James Ormiston, resident of Yellowknife	J. Edmond	Yellowknife
Apr. 26	Stuart Hodgson, Commissioner of the NWT		Yellowknife
Apr. 26	Steve Iveson, resident of Yellowknife	W. Porteous	Yellowknife
Apr. 26	NWT Science Advisory Board	W. Porteous	Yellowknife
Apr. 26	Sir John Franklin High School Students	C. Asselin R. Carrière	Yellowknife

<b>Date</b>	<b>Group/Individual</b>	<b>CSR Staff also in Attendance</b>	<b>Location</b>
Apr. 27	Fisheries and Marine Service, DFO	J. Edmond	Yellowknife
Apr. 27	Health and Social Services, Government of the NWT	J. Edmond	Yellowknife
Apr. 27	Jarvis Jason, resident of Yellowknife		Yellowknife
Apr. 27	John Parker, Deputy Commissioner of the NWT	W. Porteous	Yellowknife
Apr. 28	Chief Harry Deneron and Band Council	W. Porteous J. Edmond C. Asselin	Fort Liard
May 28	Arnold McCallum, NWT Council member for Slave River Dave Nickerson, NWT Council member for Yellowknife North Peter Ernerk, NWT Council member for Keewatin	W. Porteous J. Mackenzie G. Braden J. Edmond	Ottawa
Aug. 22	Arnold McCallum, NWT Council member for Slave River	W. Porteous	Ottawa
Sept. 13	Steve Duncan, <i>Financial Post</i>	W. Porteous C. Barnabé	Yellowknife
Sept. 14	Dave Nickerson, NWT Council member for Yellowknife North	W. Porteous	Yellowknife
Sept. 15	Ann Samson, <i>News of the North</i>		Yellowknife
Sept. 16	Mike Moore, Regional Director, Baffin Region, Government of the NWT	W. Porteous G. Braden	Yellowknife
Oct. 12	Executive Committee, Government of the NWT	W. Porteous C. Barnabé	Yellowknife
Oct. 13	Cominco Management, Pine Point Mines Ltd.	C. Asselin	Pine Point
Oct. 13	Robert Garlick, President of United Steelworkers of America	C. Asselin	Pine Point
Oct. 13	Town Council of Pine Point	C. Asselin	Pine Point
Oct. 13	NWT Fishermen's Federation	C. Asselin	Hay River
Oct. 16	Fort McPherson Settlement Council General Public	G. Braden	Fort McPherson
Oct. 17	Ken McGregor, Manager, Tetlit Co-op	G. Braden	Fort McPherson
Oct. 17	John Itsi, Deputy Chairman, Hunters' and Trappers' Association	G. Braden	Fort McPherson
Oct. 17	Steve Housser, CBC		Inuvik
Oct. 17	John Scullion, Regional Director, Inuvik Region, Government of the NWT	G. Braden	Inuvik
Oct. 17	Mayor Jim Robertson and Inuvik Town Council	G. Braden	Inuvik



Date	Group/Individual	OSR Staff also in Attendance	Location
Oct. 18	Regional Director and Regional Superintendents, Government of the NWT	G. Braden	Inuvik
Oct. 18	Inuvik and District Chamber of Commerce	G. Braden	Inuvik
Oct. 20	Address to NWT Council	Yellowknife Staff	Yellowknife
Oct. 20	Press Conference	W. Porteous G. Braden D. Crosbie R. Carrière	Yellowknife
Oct. 20 1979	Stuart Hodgson, Commissioner of the NWT		Yellowknife
Jan. 23	Central Arctic Area Council	G. Braden	Coppermine
Jan. 23	Settlement Council	G. Braden	Coppermine
Jan. 23	Hunters' and Trappers' Association	G. Braden	Coppermine
Jan. 23	Kugluktuk School Teachers	G. Braden	Coppermine
Jan. 23	Education Advisory Committee	G. Braden	Coppermine
Jan. 24	Larry Whittaker, Manager, Igloo Hotel	G. Braden	Coppermine
Jan. 26	Allan Maghagak, Kitikmeot Inuit Association	G. Braden	Cambridge Bay
Jan. 26	Government of NWT Area Office Staff	G. Braden	Cambridge Bay
Jan. 27	Press Conference	G. Braden	Yellowknife
Feb. 10	John Parker, Deputy Commissioner of the NWT		Yellowknife
Feb. 11	Steve Housser, CBC	G. Braden	Inuvik
Feb. 11	Mayor Cynthia Hill	G. Braden	Inuvik
Feb. 12	Sam Raddi, President, and Committee for Original Peoples Entitlement Staff	G. Braden	Inuvik
Feb. 12	United Native Council of Inuvik	G. Lennie	Inuvik
Feb. 13	Village Council	G. Braden G. Lennie	Fort Simpson
Feb. 14	Government of the NWT Area Office Staff	D. Mullins	Fort Simpson
Feb. 14	Education Advisory Committee	D. Mullins	Fort Simpson
Feb. 14	Hunters' and Trappers' Association	D. Mullins	Fort Simpson
Feb. 15	Koe Go Cho Society	D. Mullins	Fort Simpson
Feb. 16	Northern Mineral Advisory Group	G. Braden	Yellowknife
Feb. 17	Address to Yellowknife Rotary Club	C. Asselin	Yellowknife
Feb. 17	Arnold McCallum, NWT Council member for Slave River	G. Braden	Yellowknife

Date	Group/Individual	OSR Staff also in Attendance	Location
Feb. 19	Constitutional Development Committee, Government of the NWT	G. Braden	Yellowknife
Mar. 29	Baffin Regional Council	C. Barnabé	Yellowknife
Mar. 29	Address to the NWT Council	Yellowknife Staff	Yellowknife
Mar. 29	Press Conference	G. Braden	Yellowknife
Apr. 10	Mike Moore, Regional Director, Baffin Region, Government of the NWT	K. Harper	Frobisher Bay
Apr. 12	Charlie Manning, Settlement Secretary	K. Harper	Cape Dorset
Apr. 12	Greg Hill, Community Adult Educator	K. Harper	Cape Dorset
Apr. 12	Christine Rowe, Dental Therapist	K. Harper	Cape Dorset
Apr. 12	Frank Gonda, School Principal	K. Harper	Cape Dorset
Apr. 13	Sandy Reynolds, Settlement Council Member	K. Harper	Cape Dorset
Apr. 13	Ed Horne, teacher	K. Harper	Cape Dorset
Apr. 13	Settlement Council	K. Harper	Cape Dorset
Apr. 14	Press Conference: Ian Creery, CBC Isabelle Pringle, <i>Nunatsiaq News</i>	K. Harper	Frobisher Bay
Apr. 16	Hamlet Council	K. Harper	Pangnirtung
Apr. 16	Hunters' and Trappers' Association	K. Harper	Pangnirtung
Apr. 16	Gary Magee, resident of Pangnirtung	K. Harper	Pangnirtung
Apr. 17	Education Committee	K. Harper	Pangnirtung
Apr. 17	Ipeelee Kilabuk, NWT Council member for Central Baffin	K. Harper	Pangnirtung
May 12	Fred Henne, President, and Paul Nind, Executive Director, NWT Association of Municipalities	K. Harper G. Braden C. Asselin D. Mullins D. Crosbie	Yellowknife
May 13	John Parker, Commissioner of the NWT	K. Harper	Yellowknife
May 13	Robert MacQuarrie, resident of Yellowknife	K. Harper	Yellowknife
May 15	Settlement Council	K. Harper D. Crosbie	Spence Bay
May 15	Hunters' and Trappers' Association	K. Harper D. Crosbie	Spence Bay
May 15	Public Meeting	K. Harper D. Crosbie	Spence Bay
May 16	Land Claims Committee	K. Harper D. Crosbie	Spence Bay
May 18	Allen Maghagak, Kitikmeot Inuit Association	K. Harper D. Crosbie	Cambridge Bay

<b>Date</b>	<b>Group/Individual</b>	<b>OSR Staff also in Attendance</b>	<b>Location</b>
May 20	Press Conference	D. Crosbie	Yellowknife
June 16	Adolf Duesterhus, resident of Yellowknife	B. Darling	Yellowknife
June 17	Richard McNeely, President, Metis Association of the NWT	B. Darling	Yellowknife
June 18	Government of the NWT Task Force on Administration	B. Darling C. Barnabé C. Asselin	Yellowknife
June 19	John Parker, Commissioner of the NWT	B. Darling	Yellowknife
June 19	Chris Hopkins, Settlement Band Manager	B. Darling G. Lennie	Fort Providence
June 19	Jim Christie, President, Metis Local	B. Darling G. Lennie	Fort Providence
June 20	Sig Phillips, Hotel Owner	B. Darling G. Lennie	Fort Providence
June 20	Albert Canadien, Settlement Secretary	B. Darling G. Lennie	Fort Providence
June 20	Settlement Council General Public	B. Darling G. Lennie	Fort Providence
June 20	Aggie Brockman, CBC Hubert Johnson, <i>Edmonton Journal</i>	B. Darling G. Lennie	Fort Providence
June 21	Committee for Original Peoples Entitlement	G. Braden B. Darling C. Barnabé	Yellowknife
June 21	Mike Moore, Regional Director, Baffin Region, Government of the NWT	B. Darling C. Barnabé	Yellowknife
June 22	Press Conference	G. Braden R. Carrière	Yellowknife
June 22	Roland Semjanovs and Rosemary Cairns, <i>Northern News Report</i>	G. Braden	Yellowknife

# D

## Participants in the Special Representative's Seminars in Ottawa and Yellowknife

### GREENLAND HOME RULE COMMISSION MARCH 21, 1979

Mr. Dick Abernathy,  
Secretary to the Executive Committee,  
Government of the Northwest Territories

Mr. Phil Airhart,  
Coordinator of Land Claims Secretariat,  
Government of the Northwest Territories

M. Marc Baudouin,  
Director General, European Affairs,  
Department of External Affairs

Mr. Tom Butters,  
Executive Committee Member Responsible  
for Economic Development and Tourism,  
and Social Development,  
Government of the Northwest Territories

Mr. Ewan Cotterill,  
Assistant Deputy Minister,  
Department of Indian Affairs and  
Northern Development

Mr. Tagak Curley,  
Executive Director,  
Inuit Tapirisat of Canada

Professor Isi Folghel,  
Chairman,  
Government Commission for  
Local Autonomy in Greenland

M. Yvon Fortin,  
Group Chief,  
Social, Employment and Housing Division,  
Program Branch,  
Treasury Board

Mr. Fred Gibson, Q.C.,  
Assistant Deputy Minister,  
Justice Department

Mrs. Katherine Graham,  
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Institute of Local Government,  
Queen's University

M. Roger Hébert,  
Executive Assistant to  
Minister of Federal-Provincial Relations

Mrs. Cynthia Hill,  
Mayor,  
Town of Inuvik

Mr. Peter Jull,  
Studies and Research Division,  
Federal-Provincial Relations,  
Privy Council Office

Dr. Trevor Lloyd,  
Executive Director,  
Association of Canadian Universities  
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Mr. Peter Lyman,  
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Minister of Indian Affairs and  
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Department of Finance

Mr. Arnold McCallum,  
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and  
Chairman of Committee on Constitutional  
Development,  
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Mr. Gary Mullins,  
Assistant Commissioner,  
Government of the Northwest Territories

Mr. Enoch Obed,  
Land Claims Director,  
Labrador Inuit Association

**Mr. Gordon Robertson,**  
Secretary to Cabinet,  
Federal-Provincial Relations,  
Privy Council Office

**Mr. David Searle,**  
Speaker of the Legislature,  
Government of the Northwest Territories

**COMMUNITY LAND PLANNING AND MANAGEMENT  
MAY 28, 1979**

**Mr. Will Dunlop,**  
Town Planning and Lands Division,  
Government of the Northwest Territories

**Mrs. Katherine Graham,**  
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**Mr. Gerry Tanner,**  
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Government of the Northwest Territories

**MUNICIPAL COUNCIL FINANCING  
MAY 29, 1979**

**Mr. Al Falconer,**  
Municipal Affairs,  
Department of Local Government,  
Government of the Northwest Territories

**Mr. Glenn Pitman,**  
Municipal Affairs,  
Department of Local Government,  
Government of the Northwest Territories

**Mr. Norman Macleod,**  
Chief, Municipal Affairs,  
Department of Local Government,  
Government of the Northwest Territories

**COMMUNITY FINANCING  
MAY 30, 1979**

**Mr. Jim Anderson,**  
Department of Social Services,  
Government of the Northwest Territories

**Ms. Carol McKillop,**  
Department of Education,  
Government of the Northwest Territories

**Mr. Roland Gosselin,**  
Department of Natural and Cultural Affairs  
(Recreation),  
Government of the Northwest Territories

**Mr. Rupert Tinling,**  
Department of Natural and Cultural Affairs  
(Wildlife),  
Government of the Northwest Territories

**Mr. Fred Koe,**  
Department of Social Services,  
Government of the Northwest Territories

**Mr. John Verhappen,**  
Northwest Territories Housing Corporation

**PROCESS OF CONSTITUTIONAL CHANGE  
IN THE NORTHWEST TERRITORIES, AND  
RESPONSIBLE GOVERNMENT  
IN THE NORTHWEST TERRITORIES  
JULY 19 AND 20, 1979**

**Dr. Lloyd Barber,  
President,  
University of Regina**

**Professor C. E. S. Franks,  
Department of Political Science,  
Queen's University**

**Professor John Harney,  
Department of Humanities,  
Atkinson College, York University**

**Mr. Norman Macpherson,  
Director General,  
Federal Liaison Bureau,  
Department of Indian Affairs and  
Northern Development**

**Mr. Arnold McCallum,  
Executive Committee Member Responsible  
for Local Government, Land Claims,  
and Chairman of Committee on  
Constitutional Development,  
Government of the Northwest Territories**

**Professor Howard McConnell,  
College of Law,  
University of Saskatchewan**

**Mr. Howard McDiarmid,  
Researcher,  
Committee for Original Peoples Entitlement**

**Mr. John Merritt,  
Legal Advisor,  
Inuit Tapirisat of Canada**

**Professor Paul Tennant,  
Department of Political Science,  
University of British Columbia**

**SPECIAL STATUS OF THE NATIVE PEOPLES  
IN THE NORTHWEST TERRITORIES  
AUGUST 21, 1979**

**Mr. Justice T. R. Berger,  
Supreme Court of British Columbia**

**Ms. Gloria George,  
Commissioner,  
Canadian Human Rights Commission**

**Professor Howard McConnell,  
College of Law,  
University of Saskatchewan**

**Professor Douglas Sanders,  
Faculty of Law,  
University of British Columbia**

**Mr. Barry Strayer,  
Assistant Deputy Minister,  
Justice Department**

**Observers:**

**Mr. Peter Jull,  
Advisor on the Constitution,  
Federal-Provincial Relations,  
Privy Council Office**

**Mr. John Merritt,  
Legal Advisor,  
Inuit Tapirisat of Canada**

**Professor Mike Whittington,  
Department of Political Science,  
Carleton University**

# E

## **Responses of Federal Departments and Agencies to the Special Representative's Formal Requests for Studies**

### **Agriculture Canada:**

"Agriculture in the NWT," Honourable J. Wise

### **Canadian Human Rights Commission:**

"Application of the Canadian Human Rights Act," R.G.L. Fairweather, Chief Commissioner

### **Central Mortgage and Housing Corporation:**

"Housing in the NWT," R. J. Bolvin, Vice President, Program Operations

### **Environment Canada:**

"Departmental Mandate and Structure," Honourable J. Fraser

"National Parks in the NWT," Honourable J. Fraser

"Report to Regional Director General, Western and Northern Region, on Constitutional Development in the NWT," M. McConnell, Senior Advisor, Federal-Provincial Relations, Intergovernmental Affairs Directorate, Corporate Planning Group

"Environmental Assessment Review Process," P. Wolf, Director, Process Development, Federal Environmental Assessment Review Office

### **Finance Canada:**

"Federal Transfers to the Northwest Territories: The Financial Implications of Provincial Status," J. H. Lynn, Director, Federal-Provincial Relations Division

### **Fisheries and Oceans:**

"Study of Inland and Marine Fisheries in the NWT," Honourable J. McGrath

### **Health and Welfare Canada:**

"Transfer of Health Services," B. Rawson, Deputy Minister

### **Indian Affairs and Northern Development:**

"Federal Employment Agreements with the Private Sector," E. Cotterill, Assistant Deputy Minister, Northern Affairs Program

### **Justice Department:**

"Further Devolution of Responsibility for the Administration of Justice to the Government of the NWT," Honourable J. Flynn

"Application of the Canadian Human Rights Act," F. E. Gibson, Chief Legislative Counsel

**Labour Canada:**

"Study of the Desirability and Feasibility of Transfer of Labour Relations Jurisdiction to the Government of the NWT," Honourable Lincoln M. Alexander

**Public Service Commission:**

"Report on Northern Careers Program," W.R. Tremaine, Acting Director, Northern Careers Program

"Employment in the Federal Government in the NWT of Northerners and of Indigenous People," E. Gallant, Chairman

**Public Works Canada:**

"Housing in the NWT," Honourable E. Nielsen

**Transport Canada:**

"Administration and Funding of Airports in the NWT," J.J. Séguin, Director General, Arctic Transportation Directorate

**Treasury Board Department:**

"Federal-Territorial Financial Arrangements," R.D. Jackson, Director, Social, Employment, Culture and Housing Division, Program Branch



## **F**

### **Reports Received by the Special Representative**

- Administrative Action in Relation to Constitutional Development in the NWT. Government of the Northwest Territories. July 1979 (unpublished)**
- Concepts and Factors for Constitutional Development in the NWT. Jim Mackenzie. April 1979**
- Development of Local Government in the NWT. Town of Fort Simpson. January 1979**
- Directions for the 1980's. Department of Local Government, Government of the Northwest Territories. October 1978**
- Inuvialuit Nunangat, Agreement-in-Principle between the Government of Canada and Committee for Original Peoples Entitlement. October 1978**
- Local and Regional Government in the NWT. Institute of Local Government, Queen's University. October 1979**
- Nunavut, Agreement-in-Principle between the Government of Canada and Inuit Tapirisat of Canada. February 1976**
- NWT Water Board: Role, Function, and Legislative and Administrative Basis. NWT Water Board. June 1979**
- Position of the NWT Legislative Assembly on Constitutional Development in the NWT. March 1979**
- Recognition of the Dene Nation through Dene Government, presented by Georges Erasmus for Northern Native Rights Campaign. March 1979**
- Report of the NWT Association of Municipalities Conference. April 1979**
- Report of the Task Force on Administration. Government of the Northwest Territories. July 1979 (unpublished)**
- Report on Linkages between Selected Native Institutions and Government Structures in British Columbia. Paul Tennant and Ardyth Cooper. September 1979**
- Report of United Steel Workers of America, Local 804. October 1978**
- Review of Local Government Activities in Inuvik. Town of Inuvik. March 1979**

# **G**

## **Issues and Proposals Discussed by Community Groups with the Special Representative or his Staff**

**Issues and Proposals Discussed  
by Community Groups with  
the Special Representative or his Staff**

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1. Jurisdictions:
  - Increased authority in education .....
  - Discontent with education system (absenteeism, dropout, curriculum) .....
  - Increased authority in social services .....
  - Increased authority in wildlife management .....
  - Increased authority in land and resources .....
  - Increased authority in housing and interest in home ownership .....
2. Increased authority for elected officials .....
3. Local government structures and processes:
  - Residency requirements, decided locally, changes in residency length .....
  - Community committees amalgamated .....
  - Council procedures decided locally .....
  - Municipal council to be principal representative body in community .....
4. General public civic education required .....
5. Greater flexibility in GNWT procedures and regulations .....
6. GNWT procedures and regulations too complex .....
7. Changes in financial processes required .....
8. Improvements in communications (translations, consultations) .....
9. Current jurisdictions and processes satisfactory .....
10. More local hiring by GNWT and federal government .....
11. Interest in regional public institutions .....
12. Overwhelming presence of bureaucracy .....
13. Employment and economic opportunities .....



# H

## Population of NWT Communities by GNWT Administrative Region

Community	Type <sup>1</sup>	Total Number	Percent		
			Status Indian	Percent Inuit	Percent <sup>2</sup> Other
<b>Baffin Region:</b>					
Arctic Bay .....	H	403	0.0	95.0	5.0
Broughton Island .....	S	329	0.0	95.1	4.9
Cape Dorset .....	S	693	0.0	93.8	6.2
Clyde River .....	H	411	0.0	92.9	7.1
Frobisher Bay .....	V	2,693	0.0	58.4	41.6
Grise Ford .....	S	99	0.0	91.9	8.1
Hall Beach .....	H	396	0.0	95.7	4.3
Igloodik .....	H	753	0.0	95.0	5.0
Lake Harbour .....	S	301	0.0	92.7	7.3
Pangnirtung .....	H	878	0.0	89.9	10.1
Pond Inlet .....	H	649	0.0	91.8	8.2
Resolute .....	S	167	0.0	89.2	10.8
Sanikiluaq .....	H	326	0.0	96.9	3.1
Residual <sup>3</sup> .....		273			
Regional Total .....		8,371	0.0	79.4	20.6
<b>Inuvik Region:</b>					
Aklavik .....	H	763	43.6	45.3	11.1
Arctic Red River .....	S	111	94.6	0.0	5.4
Fort Franklin .....	H	512	92.4	0.0	7.6
Fort Good Hope .....	S	446	79.6	0.9	19.5
Fort McPherson .....	S	813	76.4	1.0	22.6
Fort Norman .....	S	329	69.3	0.0	30.7
Inuvik .....	T	2,938	6.7	17.4	76.0
Norman Wells .....	S	352	13.3	2.0	84.7
Paulatuk .....	S	163	0.0	100.0	0.0
Sachs Harbour .....	S	177	2.3	85.9	11.8
Tuktoyaktuk .....	H	760	2.2	86.4	11.4
Residual <sup>3</sup> .....		71			
Regional Total .....		7,435	33.0	24.6	42.4
<b>Regional Total Excluding Town of Inuvik .....</b>					
		4,487	50.3	29.2	20.5

Notes: 1. H—Hamlet  
S—Settlement  
V—Village  
T—Town  
C—City

2. "Percent Other" includes Metis, non-status Indians and non-native people  
3. "Residual" reflects unorganized communities

Community	Type <sup>1</sup>	Total Number	Percent		
			Status Indian	Percent Inuit	Percent <sup>2</sup> Other
<b>Keewatin Region:</b>					
Baker Lake .....	H	1,007	1.1	86.4	12.5
Chesterfield Inlet .....	S	291	0.0	90.7	9.3
Coral Harbour .....	H	414	0.0	86.7	13.3
Eskimo Point .....	H	960	0.0	93.9	6.1
Rankin Inlet .....	H	978	0.0	72.3	27.7
Repulse Bay .....	H	295	0.0	91.5	8.5
Whale Cove .....	H	201	0.0	92.0	8.0
Regional Total .....		4,146	0.4	85.6	14.0
<b>Fort Smith Region:</b>					
Cambridge Bay .....	S	853	1.0	76.8	22.2
Coppermine .....	S	803	0.0	91.7	8.3
Enterprise .....	S	40	0.0	0.0	100.0
Fort Liard .....	S	327	94.8	0.0	5.2
Fort Providence .....	S	556	76.4	0.0	23.6
Fort Resolution .....	S	521	32.8	0.0	67.2
Fort Simpson .....	V	1,080	44.0	0.9	55.1
Fort Smith .....	T	2,347	11.6	1.0	87.4
Gjoa Haven .....	S	464	0.0	92.9	7.1
Hay River .....	T	3,398	10.8	0.0	89.2
Holman .....	S	328	0.0	88.4	11.6
Lac la Martre .....	S	225	99.1	0.0	0.9
Pelly Bay .....	H	287	0.0	93.0	7.0
Pine Point .....	T	1,763	16.3	0.0	83.7
Rae-Edzo .....	H	1,269	91.3	0.0	8.7
Rae Lakes .....	S	172	98.2	0.0	1.8
Snowdrift .....	S	262	90.8	0.0	9.2
Spence Bay .....	S	454	0.0	93.0	7.0
Wrigley .....	S	175	94.9	0.0	5.1
Yellowknife .....	C	9,981	9.5	0.9	89.6
Residual <sup>3</sup> .....		1,141			
Regional Total .....		26,446	21.3	11.4	67.3
Regional Total Excluding City of Yellowknife, and Towns of Fort Smith, Hay River and Pine Point					
		8,957	42.0	32.3	25.7
<b>Northwest Territories:</b>					
Total .....		46,398	17.5	32.4	50.1

Source: Government of the Northwest Territories, December 31, 1978

Notes: 1. H—Hamlet  
S—Settlement  
V—Village  
T—Town  
C—City

2. "Percent Other" includes Metis, non-status Indians and non-native people  
3. "Residual" reflects unorganized communities

## **Acknowledgements**

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**Summary—**

**Oral Tapes:**

Florence Catholique	Chipewyan
Violet Chalfoux and Leah Bill	Cree
Elisapee Davidee	Eastern Inuktitut
Tom Kakwi	Hareskin
Emily Katlak	Western Inuktitut
Peter Liske	Dogrib
Henry Squirrel	Slavey-Fort Simpson dialect
Christine Tatti	Slavey-Fort Franklin dialect
Mary Teya	Loucheux



# J

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### **FEDERAL**

Agriculture Act, Department of  
Alberta Act  
Alberta Natural Resources Act  
Alberta-Northwest Territories Boundary  
Act  
Arctic Waters Pollution Prevention Act  
British North America Acts  
Broadcasting Act  
Canada Elections Act  
Canada Labour Code Act  
Canada Lands Surveys Act  
Canada Water Act  
Canada Wildlife Act  
Canadian Bill of Rights Act  
Canadian Human Rights Act  
Canadian Radio-television and Telecommunications Commission Act  
Central Mortgage and Housing Corporation Act  
Clean Air Act  
Criminal Code Act  
Dominion Water Power Act  
Electoral Boundaries Readjustment Act  
Energy, Mines and Resources Act, Department of  
Environment Act, Department of the  
Established Programs Act (Interim Arrangements)  
Expropriation Act  
Federal-Provincial Fiscal Arrangements Act  
Financial Administration Act  
Fisheries Act  
Government Organization Acts  
Income Tax Act  
Indian Act  
Indian Affairs and Northern Development Act, Department of  
Interpretation Act

Land Titles Act  
Manitoba Act  
Migratory Birds Convention Act  
National Health and Welfare Act, Department of  
National Housing Act  
National Parks Act  
Native Claims Settlement Act, James Bay and Northern Quebec  
Northern Canada Power Commission Act  
Northern Inland Waters Act  
Northwest Territories Act  
Northwest Territories Boundary Act  
Official Languages Act  
Oil and Gas Production and Conservation Act  
Public Service Employment Act  
Public Service Rearrangement and Transfer of Duties Act  
Public Service Staff Relations Act  
Saskatchewan Act  
Saskatchewan Natural Resources Act  
Statutory Instruments Act  
Terms of Union with Newfoundland Act  
Territorial Lands Act  
Transport Act  
Transport Act, Department of  
Yukon Act  
Yukon Territory Act

### **TERRITORIAL**

Apprentice Training Ordinance  
Area Development Ordinance  
Commissioner's Land Ordinance  
Co-operative Associations Ordinance  
Council Ordinance  
Council Retiring Allowances Ordinance  
Education Ordinance  
Elections Ordinance

Electoral District Boundaries Commission Ordinance  
Environmental Protection Ordinance  
Expropriation Ordinance  
Fair Practices Ordinance  
Financial Administration Ordinance  
Financial Agreement Ordinance  
Forest Protection Ordinance  
Freshwater Fish Marketing Ordinance  
Game Ordinance  
Income Tax Ordinance  
Interpretation Ordinance  
Judicature Ordinance  
Labour Standards Ordinance  
Loan Authorization Ordinance No. 1  
Magistrate's Court Ordinance  
Medical Care Ordinance  
Medical Profession Ordinance  
Mining Safety Ordinance  
Municipal Ordinance  
Northwest Territories Housing Corporation Ordinance  
Northwest Territories Public Service Association Ordinance  
Petroleum Products Tax Ordinance  
Planning Ordinance  
Public Health Ordinance  
Public Highways Ordinance  
Public Service Ordinance  
Public Utilities Ordinance  
Regulations Ordinance

Royal Canadian Mounted Police Agreement Ordinance  
Safety Ordinance  
Science Advisory Board Ordinance  
Social Assistance Ordinance  
Societies Ordinance  
Supplementary Financial Agreement Ordinance  
Taxation Ordinance  
Territorial Hospital Insurance Service Ordinance  
Territorial Parks Ordinance  
Wildlife Ordinance  
Workers' Compensation Ordinance

### PROVINCIAL

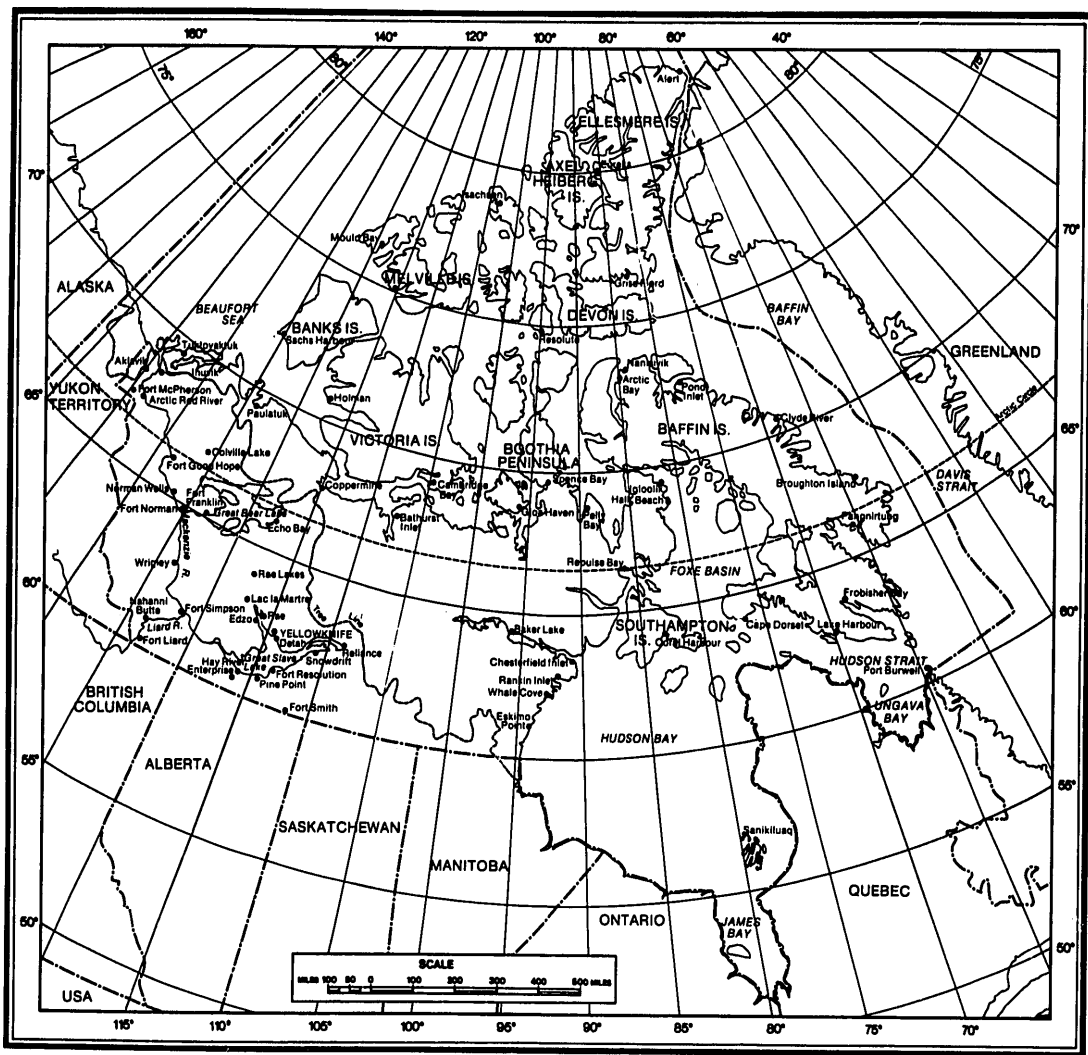
Direct Legislation Act (1913, repealed 1958) Alberta  
Provincial Elections Act (1953) British Columbia  
Bills 23, 24, 25, 26, 27, 32, 33, 34, 42 relating to the James Bay and Northern Quebec Agreements (1978) Quebec

### OTHER

Greenland Home Rule Act (1978) Denmark  
Indian Self-Determination and Education Assistance Act (1975) United States  
Referendum Act (1948) United Kingdom

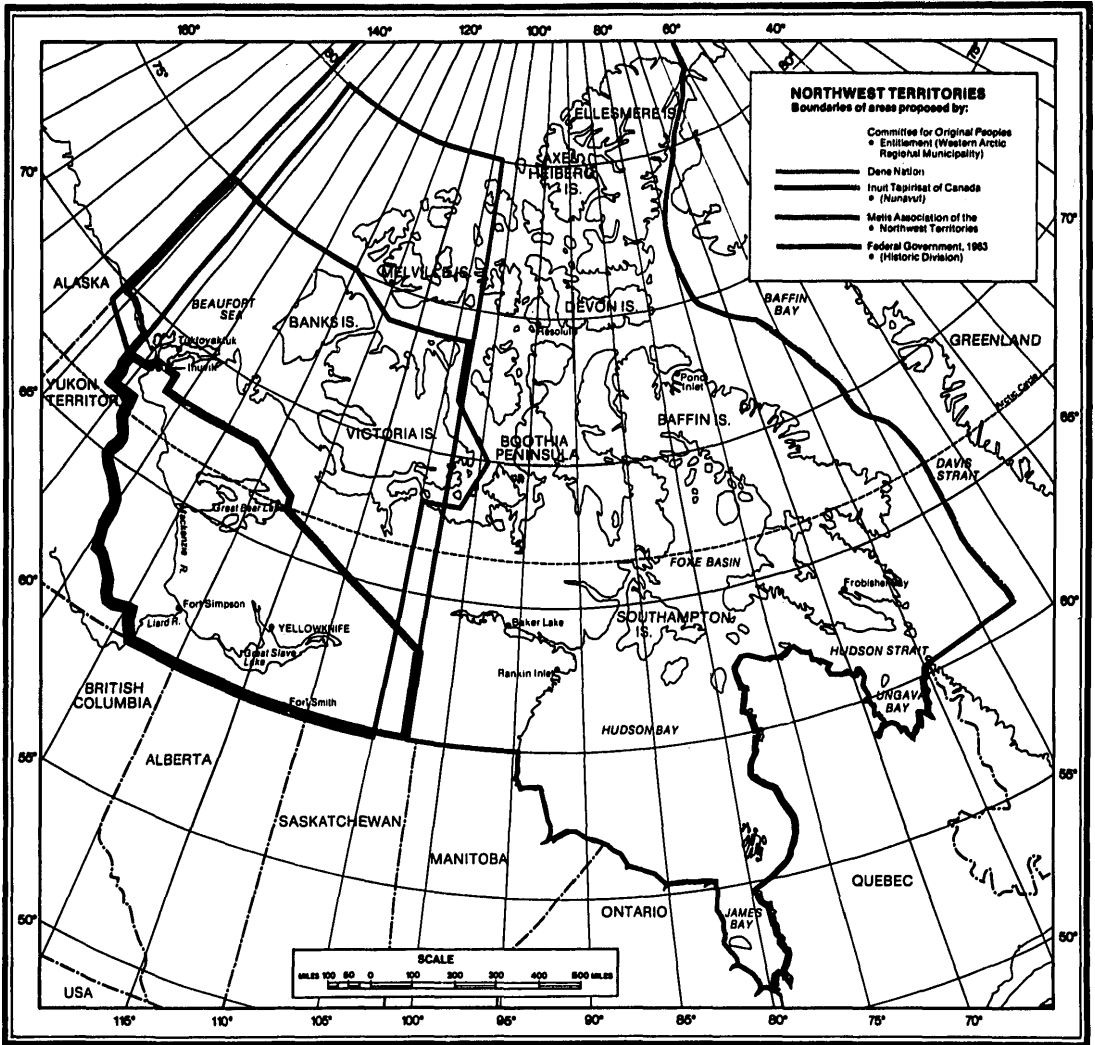
MAP 1

NORTHWEST TERRITORIES

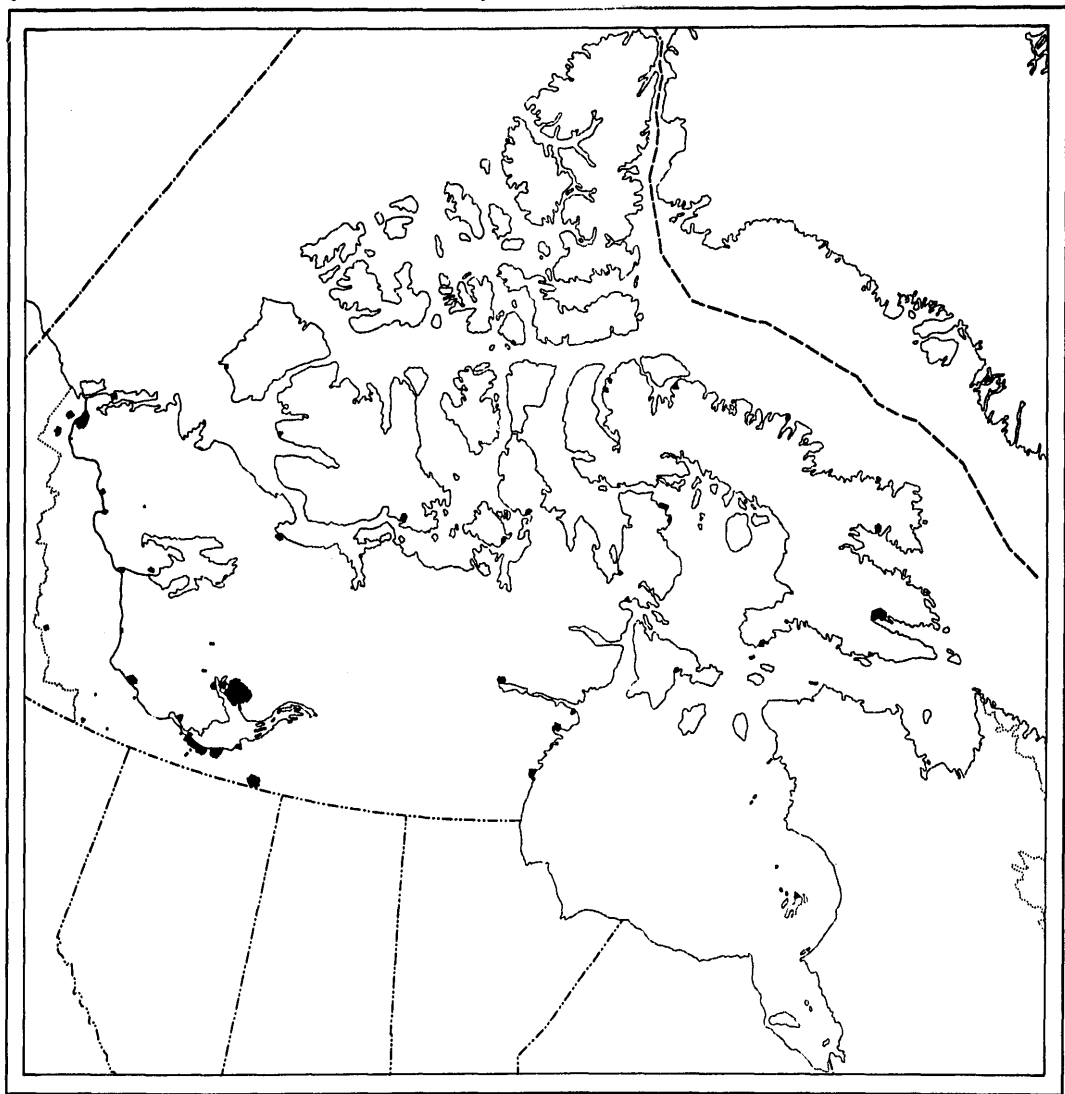


MAP 2

LAND CLAIMS BOUNDARIES PROPOSED BY THE  
NATIVE GROUPS AND THE FEDERAL GOVERNMENT,  
NORTHWEST TERRITORIES



**MAP 3**  
**NORTHWEST TERRITORIES POPULATION DISTRIBUTION**  
**(ESTIMATED DECEMBER 31, 1978)**



**FEDERAL AND TERRITORIAL ELECTORAL DISTRICTS,  
NORTHWEST TERRITORIES**

