

LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
10TH ASSEMBLY, 7TH SESSION

TABLED DOCUMENT NO. 59-86(1)

TABLED ON JUNE 10, 1986

59-86(1)

TABLED DOCUMENT NO.
TABLED ON

JUN 10 1986

**Government of the Northwest Territories
response to the
Report of the Task Force
to review comprehensive claims policy
"Living Treaties: Lasting Agreements"**



Aboriginal Rights and Constitutional Development

GOVERNMENT OF THE NORTHWEST TERRITORIES
RESPONSE TO THE
REPORT OF THE TASK FORCE
TO REVIEW COMPREHENSIVE CLAIMS POLICY
"LIVING TREATIES: LASTING AGREEMENTS"

May 27, 1986

GNWT RESPONSE TO THE
REPORT OF THE TASK FORCE
TO REVIEW COMPREHENSIVE CLAIMS POLICY
"LIVING TREATIES: LASTING AGREEMENTS"

TABLE OF CONTENTS

Executive Summary	i
Introduction	1
Purpose of a New Policy	2
Scope of a New Policy	3
Framework Agreements.....	3
Aboriginal Self-government	3
Extinguishment vs. Affirmation	5
Economic and Financial Provisions	6
Implementation	8
Non-claimant Interests and Public Information	9
The Offshore	10
Appendix 1 List of Recommendations	

Executive Summary

The GNWT has responded positively to the report of the Task Force and is generally supportive of the aims and objectives the report sets out for a new comprehensive claims policy. The specific recommendations contained in the report are, for the most part, in harmony with those put forward by the GNWT in September 1985.

There are however a number of issues that the GNWT feels it must address. The unique situation in the North in terms of political and constitutional development would suggest that the new policy contain separate provisions to deal with the political rights of aboriginal people in the context of the NWT. There is already a public process in place that was designed to deal with this issue (the NWT Constitutional Alliance and its two Forums) and the GNWT takes the position that this process be encouraged to continue. Should political and constitutional issues find their way onto the claims table, the GNWT would want to have equal status with the other parties. The GNWT advocates the development of framework agreements, one with the Inuit and one with the Dene/Metis. These agreements would sort out what is and is not on the table for negotiation. The GNWT would want equal status in their development.

With regard to other specific issues addressed by the Task Force report, the GNWT reaffirms its position that aboriginal rights should be affirmed and not extinguished.

In the area of economic aims and objectives, the GNWT feels that the concept of economic self-sufficiency must be more clearly defined. As well, methods for achieving it must be explored and examined carefully. Periodic reviews of settlements are essential so that an analysis of their effectiveness can be conducted.

The implementation of settlements must be fully addressed in the new policy. Pre-settlement implementation could occur, however workplans must be developed and cost responsibility identified as part of the pre-settlement implementation agreement.

With regard to the Offshore, the GNWT reaffirms its support for the aboriginal groups that Canada should be as open to negotiating rights in the offshore as they are with respect to land.

It has become increasingly clear that there is a need for a co-ordinated public information program about claims. The public have become alarmed that their interests may not be represented at negotiations which are, for the most part, confidential. Non-claimants are also seeking more involvement in the process. The GNWT recommends that a co-ordinated public relations and information strategy be developed by governments and aboriginal groups. It also recommends that the "second table" concept currently being experimented with the Dene/Metis claim should be provided for in the new policy. This table has the potential of including non-claimants in discussions on a variety of topics on the claims agenda.

Introduction

This paper is a response to the Federal Task Force Report on Comprehensive Claims Policy. Generally, the GNWT has responded positively to the overall aim and objectives for a new policy as outlined in the report. Its specific recommendations are in harmony with most of those made by the GNWT last September 1985. Consequently, this paper will focus on the key issues that, from a GNWT perspective, must be addressed fully in any new comprehensive claims policy that may be developed.

If there is one shortcoming of the report it is in regard to the way it deals with political and constitutional issues north of 60°. Perhaps a more satisfactory approach would have been to make a clear distinction between policy appropriate for the Provinces and one that is appropriate for the Territories.

The GNWT now endeavors to offer some recommendations on this matter in the following pages. Before proceeding however, it is important to outline the GNWT perspective on political and constitutional development in the NWT.

The situation in the NWT is unique and cannot readily be viewed in the same light as the provinces. It has a small population with an aboriginal majority. This reality is reflected in the composition of the Legislative Assembly. In contrast, its geographic parameters comprise almost one third of the Canadian land mass. Politically and constitutionally the NWT is still in its embryonic stage. And fortunately, many of the mistakes made in the provinces and elsewhere in North America in relations with the aboriginal people have been and can continue to be avoided.

Over the past few years the aboriginal groups and the GNWT have sought alternate ways to deal with the political rights of aboriginal people in the context of the political and constitutional development in the Territories. Indeed, this was

the main impetus behind the NWT Constitutional Alliance, which was designed to resolve division and establish new forms of government with political guarantees for aboriginal people. Both government and Aboriginal groups in the NWT remain committed to this process, in which all parties are equal and the process is public. If successful, the outcome will be viewed by Aboriginal people in a practical sense, to be a type of "self-government" through which they can effectively participate in public institutions. If this "grand-experiment" fails, the aboriginal groups will likely seek self-government either through the claims process or through processes that may be established through the First Ministers' Conferences on Aboriginal Rights and the Constitution. The GNWT continues to hope that changes to the public government in the NWT can be effected through a public process.

Purpose of a New Policy

It is a widely shared view that a fundamental change in claims policy is necessary. The purpose of a new policy should first be: "to encourage the cultural and economic development of aboriginal communities as strong, confident, and distinctive societies within Confederation", and second: "to provide a climate suitable for the economic growth of Canada". A new policy should stress the need for good faith and a search for equity based upon a sharing of power and resources. The future well-being of aboriginal societies is seen as one necessary objective but all objectives must be clearly spelled out in the new policy in order to show exactly what it is that we hope to achieve through negotiated settlements. Claims settlements should be flexible and while 'certainty' is desirable, efforts to create certainty should not result in the indiscriminate extinguishment of aboriginal rights.

Scope of a New Policy

The GNWT is concerned that should the scope of negotiations be broadened to include such items as self-government, devolution, or linkages between an aboriginal bureaucracy and the current GNWT public service, then the GNWT would of necessity have to play a major role at such negotiations because of its responsibility to represent all NWT residents. The GNWT's role should be one of equal status with the other parties. The GNWT would want to participate and have an equal say as to what would be, or what would not be on the table for negotiation.

Framework Agreements

In deciding what items would be on the table for negotiation, 'framework agreements' should be entered into with each of the claimant groups as suggested by the Task Force. It may be that the TFN and the Dene/Metis claims may have advanced too far already for this process to be effective. However, this is a fundamental matter and the GNWT strongly recommends framework agreements be discussed with the Dene/Metis and TFN. Indeed, one is already being developed with the Dene/Metis. The same can be developed with the TFN.

Aboriginal Self-Government

Issue

The Penner Report on Self-Government called for the

.... constitutional entrenchment of the principle of self-government and for the enactment of federal legislation to establish self-government within its jurisdiction over "Indians and lands reserved for Indians".

The Minister of INAC has begun work on self-government in some provinces. The definition of Aboriginal self-government is being addressed in the context of First Ministers Conferences on

Aboriginal Rights and the Constitution. In the NWT, however, the situation is different from that of the provinces. The Task Force Report suggests that the relationship between the process of land claims and political and constitutional development in the NWT should be addressed through the negotiation of Memoranda of Understanding with the TFN and Dene/Metis. The report argues that this would help facilitate the sorting of issues and offers a set of principles to guide their development.

GNWT Position

The GNWT has a responsibility to represent the interests of all peoples of the NWT and must have a major role in any change to the political and constitutional framework of the NWT. The sorting of claims/political and constitutional issues should be done through the negotiation of framework agreements as discussed earlier. Changes to the existing political and constitutional framework must be done through a public process. The current process that is in place (the Constitutional Alliance) should be allowed and encouraged to continue.

Recommendations

- The Constitutional Alliance through its two forums should continue to develop forms of public government with which all peoples in the NWT can identify.
- Memoranda of Understanding should be reached as soon as possible between the GNWT and the Aboriginal groups on the process for resolving division of the Northwest Territories.
- Framework agreements should be developed with the Inuit and with the Dene/Metis outlining what topics are to be on the table for negotiation at claims talks. The "sorting" of issues to be dealt with at the claims table and in public processes should be done through such agreements.

- If the scope of negotiations respecting political development is broadened, the GNWT should be afforded equal status during the negotiation of framework agreements and subsequent negotiations on these matters.

- Claims Settlements should not bind future northern governments to the status quo respecting the division of powers between those governments and Ottawa.

Extinguishment vs. Affirmation

Issue

This is an issue that has constantly been a bone of contention in the settlement of comprehensive aboriginal claims. Aboriginal organizations take the position that the affirmation of rights should be stressed. The Task Force report offers three alternatives in dealing with this issue.

GNWT Position

In its September 1985 submission to the Task Force the GNWT took the position that "Settlements should affirm, not extinguish rights. Settlements should be final only with respect to the rights with which they deal, in order to ensure a sufficient degree of certainty with respect to land and resources". No recommendation was offered at that time as to how this might be achieved.

Recommendation

The GNWT strongly endorses the assumption that aboriginal rights have a much broader content than land-related rights. Certainty as to land and resources should be achieved in the agreements by dealing explicitly with aboriginal title to land and resources. However, other rights that might eventually receive definition through the courts or constitutional process should be preserved.

Economic & Financial Provisions

Issue

The objectives of the economic and financial provisions of settlements must be clarified. If economic self-sufficiency is an objective this concept must be more clearly defined. Methods of achieving economic self-sufficiency under varied circumstances must be examined.

GNWT Position

The Report recommends that certain responsibilities which have traditionally been in the sphere of public government be included in negotiations (eg, wildlife management, education, social services, etc.). However, the GNWT agrees that before this is done consideration must be given to:

- creation of double standards of public government services;
- decision-making mechanisms for changing service levels;
- degree of duplication and complexity of administration and delivery of services;
- government's ability to pay, and flexibility to adjust programs in light of changing economic realities;
- adequacy and capability of the claims negotiation process to address public government issues, public government's ultimate responsibility for the welfare of its residents.

It is also the GNWT position that the economic and financial provisions could include:

- a) resource revenue sharing;
- b) compensation monies with guidelines for producing lasting investment revenues;
- c) economic benefits from development projects;
- d) aboriginal ownership of a subsurface resources in certain areas;

- e) a share of royalties derived through the Crown; and
- f) a share of other revenue sources such as licence, bidding and annual fees.

Recommendations

- The new policy must recognize that mechanisms are necessary to enable aboriginal people to meet the purpose and objectives of settlements. The GNWT strongly urges the sharing of resource revenues amongst governments and claimant groups.
- Rather than placing a ceiling on resource revenues, the claimant groups should be guaranteed continuing access to resource revenues.
- Subjects traditionally within the jurisdiction of public government should not be negotiated at the claims table unless they are included in a framework agreement. Framework agreements would outline which topics are to be on the table for negotiation.
- The GNWT agrees that there should be periodic reviews of the claims settlements to analyze their effectiveness.
- The concept of Revenue Sharing from resource development flowing from a fractional generalized interest in non-renewable resources should continue to be explored. Before this concept is included in the new policy it must first be clearly defined.

Implementation

Issue

The pre-settlement and post-settlement implementation of agreements requires further attention. The Task Force Report did not fully address this important topic.

GNWT Position

Pre-settlement Implementation

In September 1985, the GNWT took the position that "interim agreements could be implemented where appropriate, but only after an overall agreement-in-principle is in place".

It is now the view of the GNWT that the advantage of pre-settlement implementation in some instances might outweigh the disadvantages. However, the timing, the funding and the extent of implementation must be negotiated and be part of the sub-agreement.

GNWT Position

Settlement Implementation

It is crucial to lay out a work schedule for implementation, including cost responsibility, the identification of who is to be involved and at what level and to ensure that work is done within a reasonable timeframe. Some mechanism should be inserted so that parties live up to the terms of the agreements. The creation of an office of a Commissioner of Claims could prove invaluable in the implementation process.

Recommendations

- On a case-by-case basis, certain elements of sub-agreements could be implemented prior to settlement or even before an overall agreement-in-principle is in place. Workplans must be developed and cost responsibility identified as part of the pre-settlement implementation agreement.
- Settlement agreements must include detailed implementation work schedules, including cost responsibility and who is to be involved, and the new policy should provide for this.

- There should be provisions to ensure that parties live up to the terms of agreements.
- An office of Commissioner of Claims be established to oversee the process including pre- and post-settlement implementation.

Non-Claimant Interests and Public Information

Issue

There is a need for a public information program on the claims process. The confidentiality of negotiations has created suspicion and resentment towards the claims process by those not directly involved. The general public and third parties want assurances that their interests are being taken into account. Non-claimants are also seeking more involvement in negotiations.

GNWT Position

The GNWT agrees that there is a need for a public relations and information program about claims. The GNWT also feels that it is in the interests of all parties to improve communications with the public. Other means should be sought to open up the process. The "Second Table" concept, for example, currently under experimentation with the Dene/Metis has potential as a means of including non-claimants in discussions.

Recommendations

- Governments and aboriginal groups in the NWT should continue to develop a co-ordinated public relations and information strategy.

The "second table" concept currently being experimented with in the Dene/Metis claims should be provided for in any new claims policy.

The Offshore

Issue

Aboriginal groups are seeking to have their rights to the offshore recognized and dealt with in the same manner as land. This is a vital issue for many of the aboriginal people in the NWT and it is important to re-emphasize that the GNWT continues to support the aboriginal groups in this regard.

GNWT Position

The GNWT reaffirms its support for the aboriginal groups that Canada should be as open to negotiating with aboriginal groups with respect to the offshore as it is with respect to land.

Recommendation

Within the limits of its jurisdiction and subject to the requirements of sovereignty, Canada should be as open to negotiating with aboriginal groups with respect to the Offshore as it is with respect to land.

List of Recommendations

1. The Constitutional Alliance through its two forums should continue to develop forms of public government with which all peoples in the NWT can identify.
2. Memoranda of Understanding should be reached as soon as possible between the GNWT and the Aboriginal groups on the process for resolving division of the Northwest Territories.
3. Framework agreements should be developed with the Inuit and with the Dene/Metis outlining what topics are to be on the table for negotiation at claims talks. The "sorting" of issues to be dealt with at the claims table and in public processes should be done through such agreements.
4. If the scope of negotiations respecting political development is broadened, the GNWT should be afforded equal status during the negotiation of framework agreements and subsequent negotiations on these matters.
5. Claims Settlements should not bind future northern governments to the status quo respecting the division of powers between those governments and Ottawa.
6. The GNWT strongly endorses the assumption that aboriginal rights have a much broader content than land-related rights. Certainty as to land and resources should be achieved in the agreements by dealing explicitly with aboriginal title to land and resources. However, other rights that might eventually receive definition through the courts or constitutional process should be preserved.
7. The new policy must recognize that mechanisms are necessary to enable aboriginal people to meet the purpose and objectives of settlements. The GNWT strongly urges the sharing of resource revenues amongst governments and claimant groups.
8. Rather than placing a ceiling on resource revenues, the claimant groups should be guaranteed continuing access to resource revenues.

9. Subjects traditionally within the jurisdiction of public government should not be negotiated at the claims table unless they are included in a framework agreement. Framework agreements would outline which topics are to be on the table for negotiation.
10. The GNWT agrees that there should be periodic reviews of the claims settlements to analyze their effectiveness.
11. The concept of Revenue Sharing from resource development flowing from a fractional generalized interest in nonrenewable resources should continue to be explored. Before this concept is included in the new policy it must first be clearly defined.
12. On a case-by-case basis, certain elements of sub-agreements could be implemented prior to settlement or even before an overall agreement-in-principle is in place. Workplans must be developed and cost responsibility identified as part of the pre-settlement implementation agreement.
13. Settlement agreements must include detailed implementation work schedules, including cost responsibility and who is to be involved, and the new policy should provide for this.
14. There should be provisions to ensure that parties live up to the terms of agreements.
15. A office of Commissioner of Claims be established to oversee the process including pre- and post-settlement implementation.
16. Governments and aboriginal groups in the NWT should continue to develop a co-ordinated public relations and information strategy.
17. The "second table" concept currently being experimented with in the Dene/Metis claims should be provided for in any new claims policy.
18. Within the limits of its jurisdiction and subject to the requirements of sovereignty, Canada should be as open to negotiating with aboriginal groups with respect to the Offshore as it is with respect to land.

