

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

TABLED DOCUMENT NO. 73-86(1)

TABLED ON JUNE 19, 1986

JUN 19 1986

# BUILDING BLOCKS

Aboriginal Rights and Constitutional Development Update

MAY 1986

## Welcome

I am pleased to present the first issue of a monthly newsletter on aboriginal rights and constitutional development in the Northwest Territories.

The purpose of "Building Blocks" is to meet a long-overdue need to provide interested parties and the general public with regular, up-to-date information about the various political and constitutional development issues in the Northwest Territories today. For some time, concern has been expressed about the lack of information available on such matters. This situation has caused a lot of unnecessary - but understandable - fears and misgivings about the future of the North and about the kind of society and government that will emerge out of the current debates and controversy. "Building Blocks" is designed to help fill in this information gap.

As well as providing up-to-date information about what is being negotiated at the land claims table, the progress being made there and the issues to be resolved, "Building Blocks" will also discuss other political and constitutional development initiatives. There will be articles and commentaries on the issues of division and devolution, as well as the constitution-building process undertaken by the Nunavut and Western Constitutional Forums. From time-to-time, there will be guest editorials on a variety of topical issues.

I hope you will find "Building Blocks" to be a useful source of information. I invite you to participate in its development by writing, expressing your views about any matter that may be discussed or you feel ought to be addressed. Any correspondence should be addressed to the Executive Director, Aboriginal Rights and Constitutional Development Secretariat, Box 1320, Yellowknife, N.W.T. X1A 2L9

Dennis G. Patterson  
Minister

## CLAIMS UPDATE

### The Dene/Metis Claim

The Dene/Metis claim is finally beginning to take shape. Over the next few months, negotiators will have their work cut out for them and claimants and governments will have to make some very important decisions.

The negotiators have already signed an eligibility agreement that spells out who can participate in this claim.

Another major part of the claim is nearing completion. A wildlife harvesting and management agreement will establish certain harvesting rights, management rights and wildlife-related economic preferences for the Dene/Metis. A copy of the agreement under negotiation was leaked to the public this winter and caused quite a bit of concern amongst the non-native population. These concerned people quickly formed the NWT Wildlife Federation to represent their interests in this matter and since then, both territorial and federal government officials have met several times with the Federation and their affiliate organizations to hear their concerns and suggestions. Many of their concerns and fears were based on a misinterpretation or lack of information but they did make some very constructive suggestions which the governments have adopted.

(Cont'd over)

## Who We Are

### The Aboriginal Rights and Constitutional Development Secretariat

The Secretariat is an office within the territorial government's department of the Executive, responsible for providing support to the Executive on claims and constitutional development matters. The Secretariat has many interesting and varied tasks: negotiating the 2 main claims in the Northwest Territories, helping implement the COPE claim, supporting and developing constitutional initiatives taken by the territorial government, and advising members of the Executive Council on all of the above.

Although there's a lot of work, the Secretariat has only 8 staff people. The Executive Director is Angus Mackay and the voice you hear when you call is Gail Stryde. Dan Mandin is the political development advisor and the 2 negotiators are Charles Overvold and Ross McKinnon. Our analyst is Nora Arden-Carrriere and Deborah O'Connell is our researcher. Another position is currently vacant but will be filled next month. Glenn Kornichuck, a summer student, completes the Secretariat's staff.

If you have any questions or concerns about land claims or constitutional issues, please feel free to call us. We're located on the fifth floor of the Bowling Green Building in Yellowknife and our phone number is (403) 873-7143.



## CLAIMS UPDATE CONTINUED...

negotiators expect this wildlife agreement will be ready for initialling this summer.

Other major components of this claim include cash payments, non-renewable resource interests (including the Norman Wells Oilfield), and the amount of Dene/Metis lands and taxation provisions. These are all being negotiated together because they all have a relationship to one another. The negotiators are exploring alternate ways the Dene/Metis could obtain benefits from non-renewable resource activities anywhere in the settlement area. Such a scheme would do away with the "gambling" element inherent in selecting sub-surface title to parcels of land which may or may not have non-renewable resource potential. If such an arrangement can be negotiated that is acceptable to all, the federal government expects to grant less land and up-front cash compensation to the Dene/Metis than they otherwise would have.

The last major component of this claim is seen as another way of controlling land without having title. It is the recognition of certain Dene/Metis rights to participate in the planning and management of land, water and resource activities by participating in government agencies which are publicly accountable. A working group has been appointed to present proposals on how these management rights could be exercised in a practical, simple and co-ordinated way.

There is still a lot of detailed work remaining before the overall package can be signed. The negotiators are aiming to have the main components in place soon so that further direction can be given by the Dene and Metis leadership and governments later this summer. Of course, direction from the federal cabinet hinges on a new claims policy which minister of Indian and Northern Affairs has agreed to introduce to Cabinet at the end of June.

Other parts of the Dene/Metis claims which still have to be discussed include water rights, wildlife compensation, plants (including timber) provisions, an elders program and a schedule for implementing the final settlement.

Charles Overvold  
GNWT Negotiator

## The TFN Claim

The negotiators dealing with the Tunngavik Federation of Nunavut claim (for the Inuit of Nunavut) are back into regular meetings which are going well. We've been discussing the creation of a Nunavut Impact Review Board, a socio-economic environmental review board, which has been worked on for 3 and 1/2 years. There are only a few items left for resolution which we hope to have decided soon.

There has been much pressure from all sides to resolve the problems with the wildlife agreement that was signed in 1981 but wasn't endorsed by the federal government. This agreement was finally initialled, just before we went to print, on May 23.

At present, 15 sub-agreements have been initialled by negotiators and 2 discussion papers have been on the table. In the future we still need to work on offshore rights, eligibility and enrolment, land identification process, social provisions and the implementation process, among others. The implementation process is very important because of the problems that have surfaced with the James Bay and COPE claims.

In future columns we'll be reviewing the various sub-agreements for you.

Ross McKinnon  
GNWT Negotiator

## Definitions

**Aboriginal Interests** Generic term used by government to acknowledge interests of aboriginal people in traditional lands based on continuing use and occupancy.

**Aboriginal Rights** Generic term used by aboriginal groups to encompass their interests currently being defined through various forums such as the national constitutional talks and claims negotiations.

**Aboriginal Title** Rarely used because there is no clear definition vis-a-vis academic/legal studies or courts of the land.

**Preferential Rights** Where there is a harvesting quota established, claim beneficiaries have the first priority to harvest wildlife. Claimants also have certain preferential rights for economic activities related to wildlife.

## MUNICIPALITIES CONCERNED ABOUT LAND SELECTION

Municipal officials want to be involved in land selection for aboriginal claims when it takes place near their communities. These concerns were expressed at the Annual General Meeting of the Association of Municipalities in Yellowknife, April 18 - 20.

Dene and Metis officials have been visiting each community to discuss land identification and selection with their membership in preparation for land selection negotiations which are scheduled to begin later this summer. The territorial government is also gearing up for negotiations, developing its own

criteria for land selection. In the near future, staff from the department of local government and the Secretariat will be meeting with municipal officials and other interested parties to discuss municipal concerns and interests on land selection.

When actual negotiations begin, these talks will be held away from the main negotiations table at regional or community meetings. Where appropriate, and if the all negotiators agree, municipal officials will be invited to participate.

Both the federal government and Dene/Metis have said they are willing to involve the municipalities in

this matter. The Inuit, represented at the table by the TFN, have already said they are open to involving municipalities in land selection talks.

The Secretariat will be coordinating the territorial government's participation at these negotiations. The office is hiring someone to work with government departments and interested parties in developing positions, as well as lead negotiations at the land selections table.

If you want more information on land selection or claims in general, the Secretariat invites you to contact the office in Yellowknife at (403) 873-7143.

## PROGRESS AT LEADERS' CONFERENCE

Substantial progress was made recently in talks between leaders of the major aboriginal organizations and ministers of the GNWT.

Government Leader, Nick Sibbeston, reported he was pleased with the progress achieved in 2 days of discussions during the Northern Leaders Conference and was looking forward to a continuation of the talks.

Along with the government leader, Aboriginal Rights and Constitutional Development minister, Dennis Patterson, and Justice minister, Michael Bellentyne, also participated in the talks with native leaders. The Dene Nation, Metis Association of the N.W.T., the Committee for Aboriginal People's Entitlement, the Tungavik Federation of Nunavut and the Inuit Committee on National Issues were all represented at the meetings which took place in Yellowknife, April 24 and 25.

Division, devolution (the transfer of powers from Ottawa to the GNWT) and claims negotiations were the main topics discussed in an attempt to resolve some of the problems raised by these issues.

Inuit leaders have been concerned that the devolution of powers could get in the way of division of the N.W.T. Both they and the Dene/Metis leaders also want to be involved in the devolution process to make sure any transfer of powers does not interfere with claims negotiations.

Much of the conference centred on drawing up an agreement to lay out how native groups would participate in the devolution process. That agreement was not reached at the short meeting but GNWT delegates to the conference were optimistic that a memorandum of understanding could be signed at the next leaders' conference which will take place in Rankin Inlet.

There is also hope these leaders can reach an agreement on a boundary to divide the Northwest Territories. If consensus is achieved on a boundary location it will be recommended to the Constitutional Alliance.

The Alliance, made up of the Western Constitutional Forum and the Nunavut Constitutional Forum has the mandate to arrive at a decision on the location of a boundary between the Eastern and Western N.W.T.

The next leaders conference in Rankin Inlet had been scheduled for May 13 and 14 but was postponed at the request of the Inuit organizations. They want to wait until after a plebiscite on the boundary issue is held in Inuvialuit communities and the results are made public. They also want to confer with Indian and Northern Affairs minister, David Crombie, before returning to the talks.

The plebiscite of Inuvialuit communities was scheduled for April 14 but has also been indefinitely postponed.

What's happening?

### THE CONSTITUTIONAL ALLIANCE OF THE NORTHWEST TERRITORIES

The last meeting of the Constitutional Alliance was held in November, 1985. Since then, the Committee for Original People's Entitlement (COPE) conducted a public opinion survey to find out how Inuvialuit feel about the boundary issue. The results revealed that most Inuvialuit are not overly supportive of division but that if it were to take place, they would prefer a boundary that would leave Inuvialuit together in the West. These results are likely to be a focus of attention at the next Alliance meeting which is tentatively scheduled for June.

The NCF also plan to hold a plebiscite on division in the Western Arctic and it is expected that a date for it will also be discussed at the Alliance meeting.

In the meantime, both the Nunavut and Western Constitutional Forums have been busy planning and carrying out activities to further their work on developing new constitutions for the 2 new territories that will be created when division occurs.

The WCF held a 2 day workshop in Aklayik where a small group of people from Aklayik, Inuvik, Paulatuk, Sechs Harbour, Arctic Red River and Fort McPherson came to discuss many constitutional issues in detail. WCF plans to hold public meetings in each of these communities in the near future. Members of the WCF have also held public meetings in Snowdrift and Fort Resolution and a tour of the Deh Cho communities is planned for later this summer.

The WCF is also planning a third constitutional working session in Yellowknife in early June.

Participants at this session will further examine the idea of a partnership approach to constitutional development.

The Nunavut Constitutional Forum has recently chosen John Amagoalik to be its new chairman. Amagoalik takes over from Roger Gruben who resigned earlier this year to be the chairman of the Inuvialuit Regional Corporation.

NCF executive committee members recently met in Ottawa and endorsed a workplan for members and staff. Out of this, NCF members will travel throughout the Eastern Arctic in the next few months, gathering input on the structure and style of government best for Nunavut. An NCF spokesman said members also hope to meet with Inuvialuit leaders to further discuss the plebiscite on the boundary. Following this, the NCF will meet with the WCF - an Alliance meeting in effect. A second Northern leaders conference could then be convened - it is hoped for by the end of June - at which time NCF members will be prepared to discuss with government and native leaders the issues of division, devolution and the constitutional development process.

Both Forums view a meeting of the Constitutional Alliance as critically important, especially in light of the federal government's recent announcement that further funding to the Alliance and the two Forums may be withheld pending an agreement on a timetable and a process to decide on the location of a division boundary.

## CARC HOSTS 6 SYMPOSIUMS ON THE NORTH

Throughout 1986, the Canadian Arctic Resources Committee (CARC) will be hosting 6 national symposiums on the North in the 1980s. The first of these, dealing with the public review of the Coolican Report, was held in Yellowknife on April 21 and 22.

Last summer, the minister of Indian and Northern Affairs, David Crombie, set up an independent task force to review the federal comprehensive claims policy - particularly the requirement that aboriginal people must extinguish their aboriginal title in a final settlement. The final report of the task force (commonly called the "Coolican Report" after the chairman) was a positive one and met with the general approval of the territorial government's executive council as well as the participants at the first CARC symposium.

Under the chairmanship of Yellowknife lawyer, John Bayly, the symposium involved representatives from each of the major Native organizations in the NWT as well as the oil and gas industry, the mining sector and the territorial government - including government leader Nick Sibbeston and Justice minister, Michael Ballantyne.

The first topic of discussion was broadening the scope of land claims, out of which arose the issue of negotiating aboriginal self-government in native claims. Yellowknife MLA, Bob MacQuerrrie, told the seminar that because the Northern situation is unique, aboriginal self-government must be of the type acceptable to both native and non-native people. He added that if the discussion of new forms of public government arose, territorial government officials must be involved and the discussions must take place in a public forum such as the Constitutional Alliance.

On the second day, seminar discussion turned to alternatives to extinguishment of aboriginal rights and 3 possibilities were discussed.

The first alternative is to return to the legal technique of pre-Confederation treaties where aboriginal groups might keep their title - or certain aspects of it in relation to traditional areas, and surrender other parts.

The second idea is similar, but while some rights to land and resources would be surrendered, the rights contained in claims settlements would be affirmed and other rights would be defined through the courts or the constitutional process.

The third alternative is to pursue an agreement along the lines of the Atlantic Accord signed by Canada and Newfoundland and aboriginal rights would be set aside and dealt with in other forums. Aboriginal groups agreed most with the second alternative because, "aboriginal rights are now recognized in the Constitution and because there are processes in place to define those rights, the question of extinguishment has been effectively laid to rest".

The role of money in comprehensive claims was discussed at great length and it was agreed that

the economic and financial provisions must be a foundation for economic self-sufficiency and be enough to cover the groups' fixed, long-term obligations that will be created by a settlement.

Some of the financial provisions could include resource-revenue sharing, benefits from development projects, ownership of subsurface resources in certain areas, royalties through the Crown and other revenues from licences, bidding and annual fees. Resource-revenue sharing would reduce the need for federal transfer payments and allow the costs of implementation to be spread over time as well as help create economic self-sufficiency for native people.

On implementation, the symposium concluded that some portions of agreements could be put in place before the final settlement. There are many pros and cons to this arrangement but the GNWT conceded that it could prove advantageous in some cases. In this way, the public would have an opportunity to see firsthand how some parts of the settlement would operate and have ample opportunity to make suggestions for improvement or change.

In the case of third-party interests, the non-renewable resource industries said they wanted to deal with only one agency in accessing lands for development or exploration. There was also general agreement that there must be more information for people not included in the claims.

The role of the GNWT in claims was discussed briefly and it was agreed that it would remain part of the federal team. When negotiations directly affect the territorial government, however, as in the case of devolution, it could expect to play a more active role.

The next issue of "Building Blocks" will include an outline of the GNWT's response to the task force report.

### WHAT'S A SECOND TABLE?

The second table is a term used to describe the way of working out details of agreements initiated between Canada, the Dene/Metis and the GNWT, prior to the agreement being packaged into the overall agreement-in-principle.

It is called a second table to show it is subordinate to the main claims negotiation table which sets the agenda, timetable and receives recommendations from the second table.

It is different from the main table in that the discussions are usually technical and the GNWT has a more equal status in the talks.

One of its potential benefits is to get away from the secrecy shrouding the main table negotiations and involve expertise and advice from people outside of aboriginal organizations and government.

The second table is still an experiment and only received its terms of reference last January. The first task it was assigned was to develop an integrated management system for land and water. Despite a continuing commitment to this approach, changes in staff on all sides have made it necessary to put further discussion on hold. In the meantime, the territorial government is proceeding with the work assigned to it in the work plan.

## GEARING UP FOR THE FMC

Aboriginal self-government will again be the topic when federal, provincial and territorial ministers responsible for aboriginal affairs meet with national native leaders in Ottawa on June 12. This meeting is one of several held in preparation for the third and last constitutionally-required First Ministers' Conference (FMC) on aboriginal rights in the Canadian Constitution, to be held on or before April 14, 1987.

At the previous FMC's held in 1984 and 1985, the focus was on defining aboriginal self-government, because it was felt that the early resolution of this key subject would help resolve the other issues. But the 1984 meeting showed that agreement wasn't going to be easy and little progress was made. Many of the provincial governments refused to entrench the right of aboriginal self-government, or agree to amending the Constitution on a piecemeal basis.

The April, 1985 conference started out well but once again, little progress was made. The conference was adjourned for six weeks and started again in May, but the issue remained unresolved. With only one more meeting required of government leaders, there has been a great deal of pressure to make progress. And, it is likely that the leaders will consider amending the Constitution to allow for further FMC's if, at the end of the 1987 meeting, aboriginal rights have not been defined.

The related issue of the federal task force report on comprehensive claims policy may eclipse the agenda for the FMC preparatory meetings and the final conference. Aboriginal organizations across Canada are preparing for a major blitz on both government and industry to solicit the support of as many governments and organizations as possible.

### DEFINING DEVOLUTION

Devolution is the process whereby provincial-type powers held by the federal government are transferred to the territories. In some cases the GNWT will be given total authority, in others, authority will be retained jointly or retained by Ottawa and delegated to the territorial government.

The territorial government wants to expand its authority so that Northerners have a greater say in decisions normally made by a provincial government - areas such as health, resource management or justice. It would also give the territories a greater say in national issues; provide for the development of a northern-based resource management system; and would minimize the duplication of programs.

As the first step in devolution, government leader, Nick Sibbeston, approached the aboriginal groups to reach an understanding on how those groups would be involved in negotiations with the federal government. A Memorandum of Understanding (MOU) on this was signed with the Dene/Metis, but no agreement has been reached with the Inuit.

The MOU simply divides devolution subjects into 2 categories: those involving aboriginal rights being discussed at the claims table and at the FMC's, and those that are not. A further "Participation" agreement needs to be reached on how the Dene and Metis will be involved in the devolution negotiations.

Efforts to develop similar agreements with the Inuit continue.

## WORKSHOPS HELD ON IMPLEMENTING INUVIALUIT SETTLEMENT

At long last, it seems that the key elements of the Inuvialuit settlement, signed in 1984, are being implemented. Wildlife, fisheries and environmental protection were the subject of Inuvialuit settlement implementation workshops held in Inuvik April 21-23. For the first time, the workshop brought together the recently appointed chairmen and members of the various joint government/Inuvialuit boards and agencies established by the settlement.

The workshop was broken into 2 groups, 1 to deal with environmental management and the other with resources management.

The resources group made considerable progress in developing plans and priorities, due to the fact that the Hunters and Trappers Associations and the Inuvialuit Game Council have been operating for some time now. Thus, the Wildlife Management Advisory Council (WMAC) was able to quickly develop its relationship with these groups. They helped the WMAC to set its immediate priorities: collection of harvesting information, development of a wildlife management

plan and a review of existing wildlife legislation.

The Environmental Impact Screening Committee session was not so easy. Links between government agencies and the other bodies created in the settlement were not clearly defined, nor were their terms of reference. Thus, most of the workshop was spent trying to sort out these matters and little time was left to deal with policy development, staffing and priorities. It was agreed, however, that pooling of dollars and staff was appropriate, and that the development of a joint secretariat to service all the joint government/Inuvialuit boards and comm-

mittees should be attended to as soon as possible. Another workshop in Inuvik is planned for the beginning of June to continue the work begun at this meeting.

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