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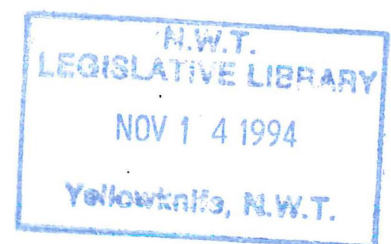
CONSTITUTIONAL DEVELOPMENT
STEERING COMMITTEE

SUMMARIES OF MEMBER GROUP RESEARCH REPORTS

CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE

Western Northwest Territories

September 1994



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CANADIAN CATALOGUING IN PUBLICATION DATA

Main entry under title:

**Summaries of member group research reports: Constitutional Development Steering Committee,
Western Northwest Territories**

ISBN 0-9698784-1-9

- 1. Northwest Territories - Constitutional law.**
- 2. Northwest Territories -- Politics and Government**
- 3. Constitutional Development Steering Committee**
- I. Constitutional Development Steering Committee**

JL462.M45 1994

342.719'2'02

C94-900656-4

Published by the Constitutional Development Steering Committee

Printed by Northern Repro, Yellowknife, NWT

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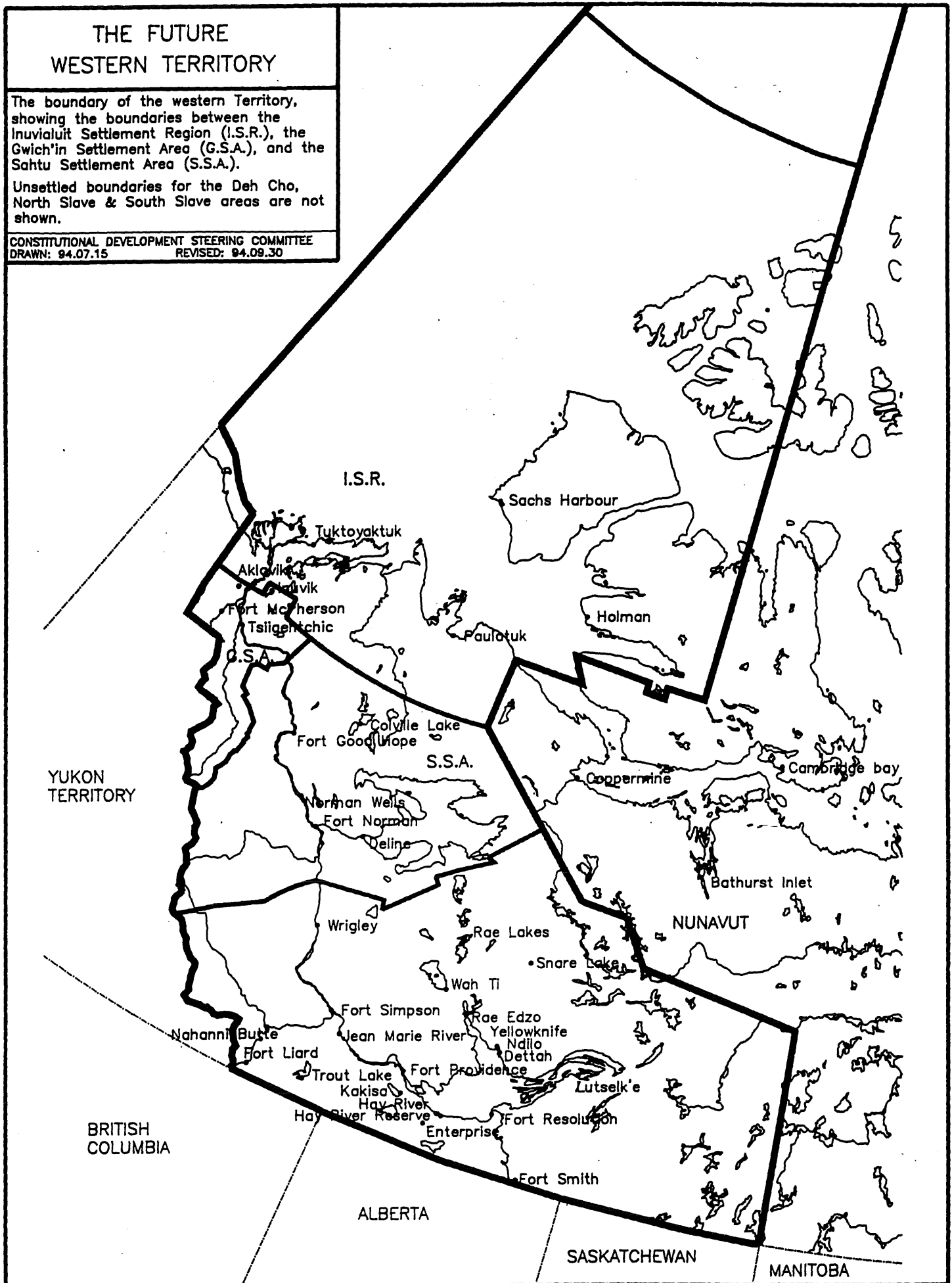
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THE FUTURE WESTERN TERRITORY

The boundary of the western Territory, showing the boundaries between the Inuvialuit Settlement Region (I.S.R.), the Gwich'in Settlement Area (G.S.A.), and the Sahtu Settlement Area (S.S.A.).

Unsettled boundaries for the Deh Cho, North Slave & South Slave areas are not shown.

CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE
DRAWN: 94.07.15 REVISED: 94.09.30



***In 1999 the Northwest Territories will divide and become two new territories,
Nunavut in the East and a new western territory.***

***In November of 1992, the political leaders of the western NWT formed
the Constitutional Development Steering Committee with a mandate to guide the
development of a constitution and structure of government for the new territory.***

***The CDSC consists of leaders representing the aboriginal organizations, the tax-
based municipalities and two women's organizations, as well as the fourteen
western members of the Legislative Assembly of the Northwest Territories.***

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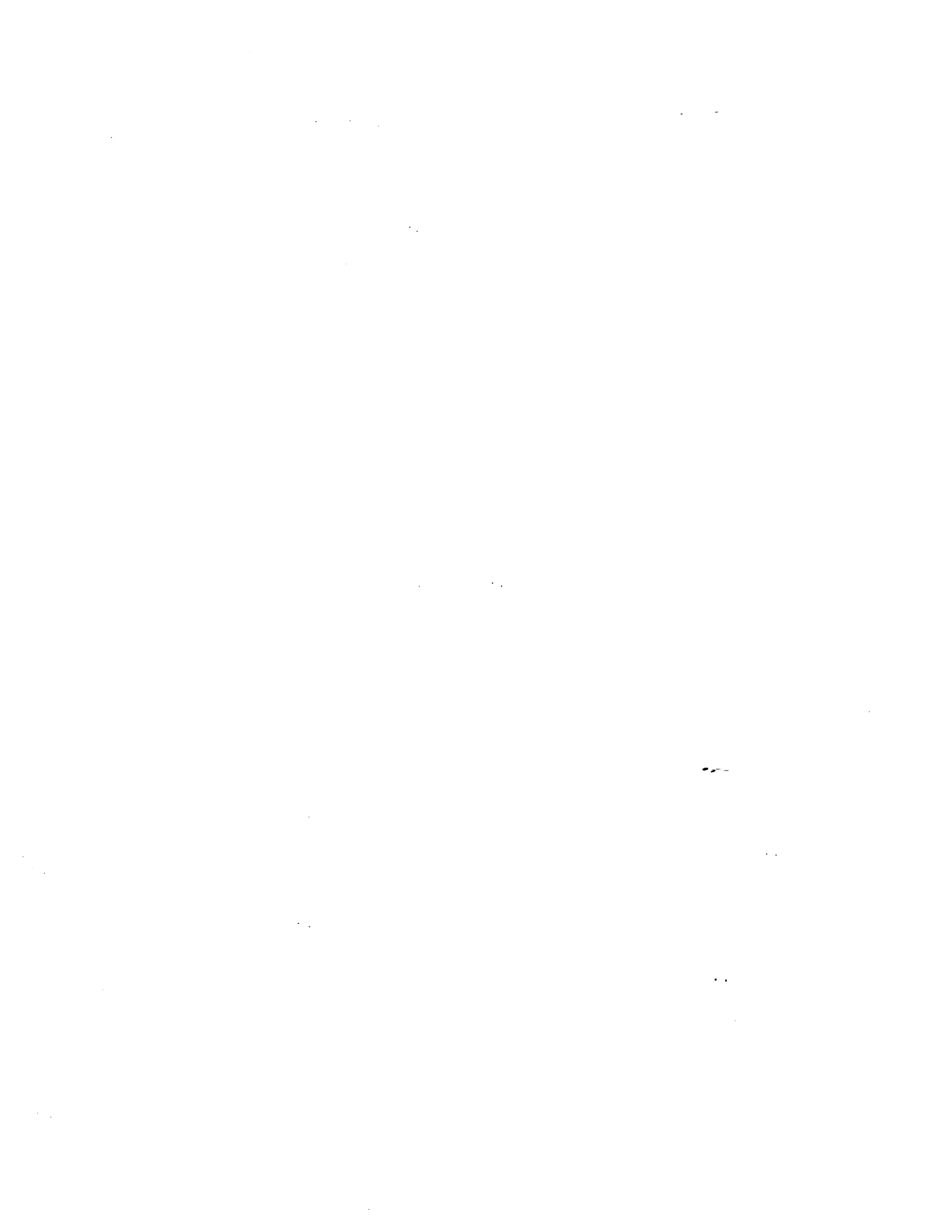
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During 1993, the aboriginal organizations, tax-based municipalities and women's organizations were funded to undertake research on how self government can be accommodated in the new constitution and government structure.

The CDSC has recently published the final research reports submitted by each member group. These summaries of the Reports have subsequently been prepared as a reference guide to the main issues addressed in each report. While every attempt has been made to faithfully reflect the content of each report, there is an unavoidable loss of context and detail which can be obtained only by reading the complete report.

The research reports are the starting point in identifying the major themes and issues to be discussed at a first constitutional conference in January of 1995. The conference will bring together community representatives and political leaders from across the western NWT. The themes and issues arising from the reports will allow the conference participants to provide general direction for the major elements of the future constitution. The CDSC and its member groups will consult the residents of the western NWT about the results of the first conference and convene a second constitutional conference in 1995. The second conference will provide specific direction and recommend a process for drafting and ratifying a new constitution and structure of government.



The Constitutional Development Steering Committee

THE WESTERN NWT CONSTITUTIONAL PROCESS: PRINCIPLES AND THEMES

INTRODUCTION

- On December 26, 1993, the Constitutional Development Steering Committee (CDSC) approved 12 *Draft Principles to Guide the Western Constitutional Process*
- The first eight points are primarily matters of principle, and the last four points are primarily matters of process

PRINCIPLES FOR THE NEW CONSTITUTION

- The Constitutional Development Steering Committee (CDSC) is working towards establishing an innovative constitution and structure of government for a western territory
- The new government will represent and serve all residents of the western territory
- There will be community, central and regional government institutions
- The constitution of the western territory will be consistent with the Constitution of Canada, including the Charter of Rights and Freedoms
- The constitution of the western territory will recognize and affirm, and accommodate to the maximum extent possible, existing Aboriginal and Treaty rights, including modern Treaties and Aboriginal peoples' inherent right of self government
- The new system of government will include Aboriginal government institutions as well as public government institutions
- The new government will recognize self government agreements negotiated by Aboriginal peoples and Canada
- A division of powers will be developed with a view to allowing authority to be exercised by the level of government which is able to deliver a service most efficiently and effectively

THE CONSTITUTIONAL DEVELOPMENT PROCESS

- Based on public involvement and direction, and the support of Aboriginal governments and the Legislative Assembly, the CDSC will continue to guide the constitutional process to its conclusion
- The public will be involved through information distribution, community meetings, regional workshops and constitutional conferences, and residents of the western territory will have the opportunity to ratify a final constitutional package
- The CDSC is committed to having a new constitution and structure of government for the western territory in place for the division of the Northwest Territories planned for 1999
- The Federal government will enact legislation to implement the territorial constitution and Aboriginal self government agreements, and therefore, it must be involved in the western constitutional process

COMMON THEMES

- Included in this document are summaries of the nine research reports prepared with the support of the CDSC and funding from the Government of the Northwest Territories, along with summaries of the Iqaluit Agreement of 1987 and the 1992 report of the Commission for Constitutional Development (the Bourque Commission)
- A review of the CDSC principles, the Iqaluit Agreement, the Bourque Commission report and the nine research reports makes it clear that there are a number of issues which are common to many of these documents
- These common issues can be grouped under five main themes:
 - **Process**
 - **Principles**
 - **Structures**
 - **Powers**
 - **Representation**
- Under each of these themes, the documents raise a number of questions which will have to be addressed in developing a constitution and structure of government for the new western territory

PROCESS

- How can this process accommodate the needs and aspirations of all peoples in the western Northwest Territories?
- How can we achieve consensus on effective structures of government we can all live with and afford?
- What is the connection between this process and aboriginal self government negotiations?
- Can we build compatible public and aboriginal government structures that accommodate each other?
- How should transfers of power from the federal government to the GNWT be handled between now and 1999?
- Who should write the new constitution?
- How should the new constitution be approved?
- What steps do we need to take to complete the constitutional process and develop a new structure of government before April 1, 1999?

PRINCIPLES

- Should individual and collective rights be recognized and protected in the new constitution?
- Should aboriginal rights be recognized and protected?
- What governing institutions should there be: central? community? regional? aboriginal?
- Which governing institutions should be recognized in the constitution?
- Which individual human rights might be included and which might be addressed in other laws such as a Human Rights Code?
- Should a Social Charter be included and, if so, what should it cover?
- Should the constitution be long and detailed, or short and general?

STRUCTURES

- What should be the roles, if any, of central, community, regional and aboriginal governing institutions?
- What kind of governing bodies are needed to make laws or decisions about policy, programs and services?
- What executive and administrative structures are needed to carry out decisions and deliver programs and services?
- What structures are needed to enforce laws and administer justice?
- Will we have the financial resources to support these structures?
- What aboriginal government structures will there be?
- What will be the relationship between public and aboriginal government structures?

POWERS

- What powers should each level of government have?
- What powers will aboriginal government structures have?
- Which of these powers should be exclusive and which should be shared?
- Should one level of government be able to delegate its powers to another level?
- What powers to raise revenues, including taxation, should each have?
- What transfer payments would each level of government require and from whom?
- Which levels of government should own and control land and resources?
- What considerations of cost and efficiency affect the division of powers?

REPRESENTATION

- How should individual residents and groups be represented in government decision-making?
- Are there aboriginal rights to guaranteed representation in public government which must be recognized?
- Should there be guaranteed representation of women and men, aboriginal and non-aboriginal peoples in our structures of government?
- Can we balance guaranteed representation with individual rights to vote and run for office?
- What is required to amend the constitution?

The Inuvialuit Regional Corporation and the Gwich'in Tribal Council

WESTERN ARCTIC REGIONAL GOVERNMENT: INUVALUIT AND GWICH'IN PROPOSAL FOR RESHAPING GOVERNMENT IN THE WESTERN ARCTIC

INTRODUCTION

- Two parallel processes are currently underway in the Western Arctic:
 - establishment of a new western territory upon division of the NWT
 - negotiation of self government agreements (p.3)
- Both the Gwich'in and the Inuvialuit have settled land claims and are now entitled to negotiate self government agreements (p.4)
- This presents a unique opportunity to explore ways in which the interests of Inuvialuit, Gwich'in and non-aboriginal peoples of the Western Arctic may best be met through the design of government institutions for the region (p.4)

A REGIONAL PUBLIC GOVERNMENT

- The report proposes creation of a regional, public government in the Beaufort-Delta (p.4)
- It aims for the incorporation of:
 - democratic principles in the institutions of public government
 - recognition and protection of the special rights of aboriginal peoples (p.4)
- The primary objective is to maximize overall legislative authority in the region and ensure the delivery of superior government programs and services (p.6)
- A committee of representatives from the Inuvialuit, Gwich'in and municipal governments chose to focus on public government over ethnic self government:
 - to avoid confusion and maintain a clear distinction between public government and aboriginal self government initiatives
 - to ensure the new Western Arctic Regional Government can assume responsibility for Crown (public) lands and the authority to levy real property taxes over those lands, recognizing the long term potential for oil and gas development in the region and the large potential revenues from tax assessments on the resource lands improvements
 - to recognize the mixed population in the region and the accepted tradition of public government at both the territorial and municipal level (pp.6,11)

LINKAGE WITH SELF GOVERNMENT NEGOTIATIONS

- Nothing in the proposal will limit the ability of the Gwich'in or the Inuvialuit to pursue self government structures in addition to or instead of this proposal (pp.4,7,15)

A COMMUNITY-DRIVEN APPROACH

- Local communities are paramount; concern for self, family and community will often take precedence over concern for region or territory (p.7)
- A new regional government should be a partnership of communities with each holding an equal share (p.8)
- The powers of the regional government would be set out in legislation, but no power could be exercised until authorized by the communities through their elected representatives to the regional assembly (p.9)
- Communities would opt into or out of the regional government by a majority vote of residents (pp. 10, 18)
- The constitution of the regional government could be amended by a 2/3 vote of the member communities (p.15)

BOUNDARIES

- The boundaries of the region would include the Gwich'in and Inuvialuit settlement regions (p.9)
- The eight communities within the region are: Sachs Harbour, Holman, Paulatuk, Tuktoyaktuk, Aklavik, Inuvik, Fort McPherson, and Tsiigehtchic (p.9)

REGIONAL COUNCIL

- There would be a Regional Council composed of eleven councillors:
 - one councillor elected for a term of three years from each of the eight communities
 - one councillor elected at large in each of the Beaufort and Delta areas
 - a mayor elected at large in a region-wide election (pp.9, 12)
- There would be a three person executive committee (p.10)
- Administrative committees and departments could be established to manage specific programs (p.10)
- Public meetings would be held at least quarterly (p.10)

DIVISION OF POWERS WITH COMMUNITY GOVERNMENTS

- The main responsibilities of the regional government would be making laws, setting standards, and raising and distributing revenues (p.12)
- Cost, efficiency and practicality would determine whether programs and services would be best delivered at the regional level or the community level (p.12)
- Some communities may wish to assume more authority over program delivery than others, or to assume more authority over time as their capacity develops (pp.12,13)
- This decision would be left to each community; regional government would provide the service only if a community was unwilling or unable to do so (p.12)
- The following table outlines how authority could be divided between the regional government and its member communities: (pp.13,14)

**TABLE I
DIVISION OF POWERS
WESTERN ARCTIC REGIONAL GOVERNMENT**

REGIONAL AUTHORITY	COMMUNITY AUTHORITY
<ul style="list-style-type: none"> • Regional taxation matters and Financial Transfers • Regional health including the regional hospital • Public safety and policing • Capital Planning • Regional Education matters; university entrance, Arctic College, Grollier Hall, distance education, capital planning • Utilities • Some municipal services in communities • Mineral Rights, Land Titles Leases, etc. • Region wide purchasing, POL, public works • Economic Development: regional investment incentives, benefits packages, tourism marketing • Intergovernmental Relations • Lotteries and casinos • Conservation and Renewable Resources • Corrections • Legal Services • Intercommunity Highways 	<ul style="list-style-type: none"> • Some taxation matters • Public health, preventative health, nursing stations • Community justice matters (circle sentencing etc.) • Housing construction, operation and maintenance, allocation • Community schools • Municipal services • Culture, Recreation, Language • Social Services; child welfare, guardianship, custom adoption • Bingo and lotteries licensing • Some aspects of correction

FUNDING THE REGIONAL GOVERNMENT

- A Western Arctic Regional Government would negotiate block formula funding agreements with the central government for the delivery of programs and services, capital programs for infrastructure development, and operating grants (p.11)
- It could also negotiate agreements with the federal and territorial governments for a share of taxes (p.11)
- There is also significant potential for acquiring revenues by taxation of Crown lands, resource development activities and improvements on those lands (p.11)

RELATIONSHIP WITH NEW WESTERN TERRITORY GOVERNMENT

- The Inuvialuit and Gwich'in want strong regional government, not strong central government (p.16)
- However, the creation of a regional government will not sever the relationship between the region and the people and institutions which make up the remainder of the new western territory; the intent is not to isolate the region but to create new relationships (p.16)
- The aim is to redistribute political authority between levels of government to maximize authority at the local and regional level and to improve the quality of government programs and services (p.16)
- The regional government would have wide-ranging authority, including many powers currently held by the Government of the Northwest Territories or the Government of Canada (p.9)
- The regional government will still rely on the central government to provide certain programs and services, such as the court system and the health insurance plan (p.16)
- The challenge is to create a regional government that can enjoy a supportive and complementary relationship with a new government in the west (p.16)---

THE PROCESS OF CONSTITUTIONAL CHANGE

- The development of a constitution for the new western territory will be a complex and difficult process, and consensus may be difficult to achieve on some issues before division in 1999 (p.17)
- The people of the Beaufort-Delta region know what they want and are anxious to achieve it; the development of a regional public government in the Western Arctic should not be delayed if consensus is not achieved on a constitution for the new western territory (p.17)
- The Inuvialuit and Gwich'in will continue to participate as active partners in the development of a new western territory, but they also intend to move forward with the regional government proposal and will include it in any self government negotiations with Canada (p.17)

The Gwich'in Tribal Council

GWICH'IN SELF GOVERNMENT NEGOTIATIONS POSITION PAPER

INTRODUCTION

- The Gwich'in are able to negotiate self government agreements with Canada and direct the formation of a new government in the western Northwest Territories (p.1)

PROCESSES RELATING TO SELF-GOVERNANCE

- The Gwich'in are involved in four processes related to self government: (p.1)
 - the CDSC process
 - the joint IRC/GTC regional government discussions
 - Gwich'in self government negotiations
 - the GNWT's community transfer initiative (CTI)

OBJECTIVES OF THE INHERENT RIGHT OF SELF GOVERNMENT

- The objectives of the aboriginal inherent right of self government can be drawn from the provisions of the Charlottetown Accord: (pp.2,3)
 - the authority of a duly-constituted legislative body, a Gwich'in government, able to pass laws within its own jurisdiction
 - to safeguard and develop their language, culture, traditions, institutions and economies
 - to develop, maintain and strengthen their relationship with their lands, waters and environment
 - to determine and control their development as a people, including controlling and determining the programs and services that support a Gwich'in society

SELF GOVERNMENT POWERS

- The Gwich'in must determine the appropriate mixture of powers that are necessary to meet their self government objectives (p.3)
- This can be accomplished through Gwich'in involvement in the four processes related to self government identified earlier (p.3)
- Gwich'in First Nations should have the right to exercise or pass Gwich'in laws, and to be consulted by public government prior to its passage of laws (p.3)
- Gwich'in First Nations may also work closely with or adopt public government institutions, laws, programs and services (p.4)

PROPOSED COMMUNITY MODELS

- Tsiigehtchic and Aklavik have proposed models of community government appropriate for communities with predominantly Gwich'in populations (Tsiigehtchic and Fort McPherson) and those with mixed populations (Aklavik and Inuvik) (p.4)
- As Tsiigehtchic is a predominantly Gwich'in community, the Gwich'in First Nations Council should be the sole governing institution (p.4)
- Other residents of the community would be given guaranteed access to programs and services, and would have a right of appeal to an independent body to ensure programs and services are delivered fairly and equally (p.4)
- In Aklavik, the proposed model recognizes the inherent self government rights of Gwich'in and Inuvialuit, as well as allowing for public participation (p.4)
- The Aklavik Community Council would be composed of a Mayor and eight Councillors: (pp.4,5)
 - three councillors appointed by each of the Aklavik Gwich'in Council and the Inuvialuit Community Corporation
 - two other councillors and the Mayor elected at large
- These models must be considered in the context of the Regional Public Government proposal for the Beaufort-Delta (p.5)
- Although the regional government will deliver regional programs and services, the communities will determine, over time, which of these programs and services should be developed and implemented at the community level or by the First Nations (p.5)

The Association of Western Tax Based Municipalities

DISCUSSION PAPER ON A CONSTITUTION FOR THE NEW WESTERN TERRITORY

INTRODUCTION

- The AWTBM believes that a strong central territorial government is both necessary and desirable for the new western territory (p.2)
- Care must be taken to avoid fragmentation; it is not desirable to have a constitution which might, in effect, create several new "territories" (p.3)
- While local autonomy is desirable, there should be a greater level of authority for the territorial government than was suggested by the *Bourque Commission* (p.3)
- The AWTBM strongly endorses a number of the draft principles adopted by the CDSC (p.3)
- Some of the AWTBM's recommendations may not be totally consistent with the draft principles and further dialogue is necessary before they can be finalized (p.3)

PROCESS

- The process for constitutional development is as important as its proposed contents (p.4)
- The development of the constitution must be founded on consensus building and reasonable compromises (p.4)
- The constitution should accommodate the reasonable aspirations of all peoples within the new western territory (p.4)
- The constitution should reflect the attitude and philosophy of the people it intends to govern (p.5)
- The AWTBM intends to have an ongoing public consultation process to ensure the views of all of the citizens of our municipalities are reflected (p.5)

TERMINOLOGY

- Use of the term "new western territory" should not be viewed as a position on a name; names of aboriginal origin such as "Denendeh" or the term "Northwest Territory" could be adopted, but further public discussion is required before a name can be adopted (p.6)
- Use of the term "constitution" may be somewhat inaccurate; it is likely the "constitution" will be federal legislation replacing the existing *Northwest Territories Act* (p.6)

PRINCIPLES

- The AWTBM is not proposing provincial status for the new western territory at this time (p.7)
- Care should be taken to ensure that nothing in the constitution creates an impediment to possible provincial status in the future (p.7)
- The constitution should not be overly complex or include too much (p.10)
- The costs of government must be considered; there should not be more levels of government than the people of the western NWT need or can afford (p.11)

FORM OF GOVERNMENT

- We have an unprecedented opportunity to create structures of government that meet the needs and aspirations of residents as individuals and as groups (p.18)
- Given our unique mix of peoples, resources, land and history, we should not be bound by precedent but should look at the best way to meet our needs (p.18)
- The AWTBM does not agree with the *Bourque Commission* proposal for district government; it is inappropriate to have a district order of government which would be more powerful than the territorial order (p.12)
- The strict division of responsibilities proposed by the *Bourque Commission* would lead to much intergovernmental wrangling and create extensive bureaucracies leading to costly and inefficient government (p.12)
- The AWTBM proposes a second order of government referred to as municipal/district government, more oriented toward the existing municipal structure (pp.7,8,18)

MUNICIPAL/DISTRICT GOVERNMENT STRUCTURE

- Existing municipal governments should become municipal/district governments; in some cases this may mean extending the boundaries of a present municipality (pp.18, 19)
- The number of municipal/districts and their boundaries would be determined prior to enactment of the new constitution and included as a schedule (p.19)
- Alterations to boundaries could be accomplished by Order-in-Council of the territorial government (p.19)
- Municipal/districts would not require a full legislature; the municipal council structure should be adequate (p.19)
- Municipal/district councils should be democratically elected by all district residents (p.19)
- If the municipal/district level of government was "fully sovereign", the territorial legislature could not make laws with respect to districts; there is a need for overlapping jurisdictions and responsibilities (p.20)
- Municipal/districts should be "quasi-sovereign", having all the powers of a natural person and not restricted to powers specifically granted to them as with present municipalities (p.21)

TERRITORIAL GOVERNMENT STRUCTURE

- The territorial level of government should have adequate powers in order to provide the services that residents require (pp: 20,21)
- There should therefore be a strong territorial level of government with powers approximating those of a province, but there should also be explicit recognition in the constitution of the municipal/district level of government (p.21)
- The territorial government should be democratically elected on a majority vote basis and not a proportional representation basis (p.20)
- Guaranteed representation for any group or interest in the territorial legislature is not favoured (p.20)
- Nothing in territorial legislation should be permitted to abrogate or derogate from the powers and responsibilities granted to municipal/districts, and there should be a mandatory consultation process for legislation affecting municipal/districts to facilitate better co-operation between the two levels of government (p.22)
- Not all municipal/districts may be able to exercise the same powers and responsibilities, and the territorial government should be able to exercise some of the responsibilities not exercised by certain municipal/districts (pp.22,23)

DIVISION OF POWERS

- The following powers are more appropriate for the territorial level of government than for district governments: (pp.26,27)
 - training and upgrading programs
 - education standards
 - health care and social services standards
 - administration of justice
 - renewable resource management
 - controverted elections
 - licensing of business, trades and occupations
 - incorporation of companies
 - property and civil rights
 - the preservation of game
 - protection of the environment
 - transportation within the territory
 - agriculture
 - management of wills and estates
 - lotteries
 - official languages
 - solemnization of marriages
 - regulation of non-municipally-owned utilities
 - general residual power

DIVISION OF POWERS (continued)

- The AWTBM has serious reservations about separate judicial regimes in each municipal/district and supports establishment of courts by the territorial government for the entire territory (p.51)
- The municipal/district level of government should deal with matters of a local nature and be responsible for the delivery of services (pp.27,28)
- There should be a base list of powers available to municipal/district governments, and another expanded list of powers which they could exercise if they have the resources and the will (p.28)
- The base list of powers should approximate the authority currently exercised by tax based municipalities (p.28)
- Some specific powers which municipal/district government should be able to exercise are:
 - control over land-use planning
 - regulation of public places and assemblies
 - highways, streets and transportation systems
 - safety services and the protection of persons and property
 - municipal utilities and infrastructure
 - regulation of business and business activities
 - specified taxation powers
 - delivery of cultural and recreational services
 - regulation of wild and domestic animals
 - enforcement of municipal/district laws
 - the good government of the municipal/district
 - matters of a purely local concern (pp.29-31)
- Both levels of government would have legitimate concerns and legislative authority in some areas, and some powers and responsibilities would have to be shared; these include:
 - business development and regulation
 - transportation systems
 - environmental control
 - liquor distribution and regulation
 - training and upgrading programs
 - creation and delivery of public housing
 - management and administration of lands and waters
 - management of renewable and non-renewable resources (pp.31,32)
- These areas require further examination to define the scope of authority for each government level and processes for consultation and collaboration (pp.31,32)

TAXATION AND REVENUE GENERATION

- Both the territorial and municipal/district governments must have access to appropriate revenue sources (pp.25,26)
- Present NWT revenue sources are inadequate to meet the responsibilities and obligations of government and we must rely on federal grants (p.33)
- The constitution should contain a commitment by the Parliament and Government of Canada to ensure sufficient revenues to provide levels of service comparable to those received by other Canadians at comparable levels of taxation, similar to the commitment to provincial equalization payments now found in section 36(2) of the Canadian Constitution (p.33)
- The territorial government should have access to all provincial taxing abilities, including full access to revenue from natural resource development (pp.26,34)
- Provinces and the present NWT government are restricted to direct taxation; this restriction should be removed from the constitution for the new western territory (p.35)
- Tax sources which should be open to municipal/district government include: (p.35)
 - property taxes
 - business taxes and licences
 - permit fees for the operation of businesses and services
 - liquor taxes
 - possibly revenues from sales of pelts, furs or other livestock
- Revenue-sharing agreements between the territorial and municipal/district governments would be required, and could include sharing of natural resource revenue (p.36)
- The requirement for revenue-sharing by the territorial government should be set out in the constitution (p.36)

ABORIGINAL SELF GOVERNMENT

- The AWTBM supports the affirmation in the constitution of existing aboriginal and treaty rights and any additional rights which may accrue to the aboriginal peoples (p.37)
- Nothing in the constitution for the new western territory should be interpreted as lessening or abridging aboriginal rights (p.37)
- The issue of aboriginal self government should not be addressed in the constitution but should be left to the aboriginal peoples to address in an appropriate forum outside the CDSC process (pp.12,38)
- The municipal/district governments will co-exist with aboriginal groups and bands, and must have sufficient flexibility to make agreements with bands, tribal councils, First Nations and other land-based aboriginal groups for the joint provision of services (p.39)
- A municipal/district could correspond to the geographic boundaries of a First Nation if the First Nation agreed, so that the aboriginal government could exercise the powers of a municipal/district government (p.40)

RIGHTS

- The *Canadian Charter of Rights and Freedoms* is the supreme law of Canada, and the new constitution should either affirm the supremacy of the Charter or repeat some of the major sections (p.42)
- The right of residents to vote and to run for elected office in the new western territory should be extended to include municipal/district government elections (pp.42,43)
- The right of all residents to equal access to their government and to equal treatment by government, subject only to reasonable limitations, should be included in the constitution or in a preamble to it (p.44)
- A social charter should not be included in the main body of the constitution, but a statement of social principles could be incorporated in the preamble as guidelines for government (p.47)
- A separate *Human Rights Code* passed prior to or concurrently with the new constitution could address the need for legislation ensuring that specified types of discrimination will not be allowed in private sector dealings (pp.45,46)

AMENDMENTS TO THE CONSTITUTION

- Constitutional amendments relating to district government should be approved by two-thirds of the districts having at least 50% of the population, as recommended by the *Bourque Commission* (p.49)
- There should also be a requirement for consultation with the residents and a referendum before any amendment (p.49)
- If the matter affects aboriginal peoples directly, then the First Nations should perhaps have a special role in approving the amendment; however, given the referendum requirement and the fact that First Nations may become district governments, the democratic interests of the people would be adequately safeguarded (p.49)

CONCLUSION

- The proposals contained in this discussion paper must be reviewed by the public and their responses and comments obtained before the AWTBM can adopt a firm position on what should be in a new constitution (p.51)
- The AWTBM recognizes that a constitution must be developed in conjunction with the people on whose behalf it is designed, and is committed to working with all the peoples of the new western territory in this significant task (p.55)

The Native Women's Association & The Status of Women Council

NORTHERN WOMEN SPEAK: A VISION FOR A NEW WESTERN TERRITORY

INTRODUCTION

- We were asked to find out what barriers stand in the way of more northern women becoming political leaders (p.iv)
- We also thought about northern society as a whole: (pp.iv,v)
 - how can we make sure every northerner has a chance to take part in our society?
 - what rights should all people have, what special rights do some people need, and what responsibilities should every citizen have?
 - do we all want to live together, in the same territory, with one government?.....
 - what are our common values and hopes, what chances in life do we want our children to have, and what help will we give to people who are poor, isolated, sick or abused?
- Working together is the way women achieve success; we do want to live together, and we don't want to see our communities cut off from one another or our families broken up (p.v)
- Our elders' laws guide us: caring, sharing, trust and respect are the foundation for our ideas (p.v)

BARRIERS FOR WOMEN IN POLITICS

- Women are only 13% of the 295-member federal parliament; only five have ever been elected to the NWT Legislative Assembly (p.5)
- There are no women deputy ministers or regional directors, and only two are assistant deputy ministers; only three of 28 Dene chiefs are women (p.9)
- Municipal and Band Councils continue to be dominated by men, although women are often most in touch with the needs of the community (p.5)
- Barriers to women in politics include: (p.5)
 - family duties
 - lack of money
 - culture and language
 - distance from communities
 - lack of education
- Many women are politically active; most non-profit groups in the NWT are run by women while corporate organizations are dominated by men (p.5)

BARRIERS FOR WOMEN IN POLITICS (continued)

- Most women do not want to move away from their community activities; they feel they would be frustrated in native or territorial politics by inaction, bureaucracy and over-regulation (p.6)
- Women are not concerned only with "women's issues" (p.8)
- Aboriginal and non-aboriginal women struggle with the same issues, though they sometimes have different solutions (p.8)
- Leadership development for women is a priority; other priorities include: (p.8)
 - self government
 - gaining economic and political power
 - family violence
 - sexual abuse of elders, women and children
 - child care
 - poverty
 - training and education
 - family law
 - suicide prevention
 - support for people with disabilities
 - other health care and social services issues

VIOLENCE AND HEALING

- It is likely that one in four NWT women has been abused by her partner, and the NWT rate of reported sexual assaults is the highest in the country (p.10)
- This issue must be addressed at the highest level; no citizen of the western NWT should live in fear, abuse or neglect and all leaders must be advocates of zero tolerance to violence (pp.10,11)
- There is a growing consensus among all leaders, male and female, that our communities must heal before they can govern themselves (p.11)
- We should stop building new roads and buildings and taking on new programs until a process of healing for families and communities is in place (p.12)
- We need leaders who are good examples and show a sense of caring for the people; leaders must be sober and healthy and have a more holistic approach to governing (pp.12,13)
- There must be Codes of Conduct for MLA's and all holding positions of public interest, with consequences for non-compliance including possible recall (p.13)

EDUCATION

- Communities will not be able to take more control and responsibility until our young people are educated and we have northern professionals who are more culturally sensitive (p.17)
- Women in the western NWT need more control over policy, curriculum and support services to provide an education that reinforces positive identity (p.15)
- Our children need to understand and appreciate their heritage; elders should be used more in teaching traditional life skills, aboriginal language and culture (pp.15,16)
- Post-secondary education and training are not meeting the needs of women in the communities; they cannot leave their families to go to school or afford the cost of academic education, and more training and mentorship programs are needed (p.16)
- Society must stop pushing women toward the support sector and help prepare them for more management positions and work in fields requiring math and science (p.17)
- The education system must be one of the most influential institutions in the new western territory, offering post-secondary education and specialized training (p.17)

THE SOCIAL CHARTER

- A Social Charter, or at least a Human Rights Code embodying its principles, must be included in the constitution for the new western territory to guide government in the development of legislation and social policy and the allocation of resources (p.19)
- Community sharing is the founding principle of a Social Charter, and includes: (p.18)
 - respect for elders, for women as equal partners, and for our children
 - recognition of the importance of labour and the obligation of employers to treat workers fairly
 - recognition of the right to a life free from violence
- It is the responsibility of government to ensure that all residents have equitable access to:
 - child care
 - a safe work place
 - a safe home and community
 - economic equality
 - affirmative action programs to eliminate systemic barriers in education, employment and politics
 - programs to eliminate drug and alcohol abuse, physical and sexual abuse and family violence
 - a basic standard of health care and social services
 - education and training opportunities
 - adequate shelter (pp.18,19)

WOMEN AND ECONOMIC POWER

- Women in the North are not properly paid for the work they do, and are tired of being asked to be volunteers when men get paid for similar jobs (p.20)
- Women feel they are under-involved in corporate boards and commissions and are underpaid for the same jobs (p.20)
- Pay equity could reduce poverty among women and help women to achieve economic power; it could change the labour market and reduce the large difference in pay between traditionally male and female jobs (p.20)
- Economic policies do not meet the needs of women; there is a need to ensure fair business practices and business opportunities for women (p.20)
- Gaining economic power is necessary if women's voices are to be heard in developing a new constitution, but will only be achieved when more women hold decision-making positions (p.20)

FUNDAMENTAL PRINCIPLES OF CONCERN TO NORTHERN WOMEN

- The new constitution must establish minimum rights for all citizens regardless of ethnic origin, community or region of residence, gender, ability or sexual orientation; no government, including aboriginal governments, should be able to "opt out" (p.22)
- The constitution must guarantee the social and economic rights of all citizens by means of a Social Charter having four basic elements: (p.23)
 - a statement of the values and principles which residents of the new western territory affirm and which should guide governments in the realm of social policy
 - institutions for developing, protecting, negotiating, monitoring and enforcing policies to give concrete expression to the values and principles
 - a provision for broad public participation to ensure that policies, programs and services continue to be responsive to public need
 - a recognition that territorial sharing is required for realizing the social charter's principles across the new western territory
- Communities should be recognized as the basic unit of governing authority, with power flowing up to the central government; regional government systems should not be entrenched, but community governments should have the right to form regional governments if they so desire (p.24)
- The constitution must recognize the equality of men and women in its Preamble and Statement of Principles (p.25)
- The aboriginal right to self government must be entrenched; aboriginal rights relating to language, culture and any political rights not included in claims agreements should be entrenched in the constitution and means found to ensure that all aboriginal rights are protected (p.26)
- Aboriginal people must also have guaranteed participation in the central government (p.26)
- A Code of Conduct must be entrenched in the constitution to ensure accountability of government and members of the Legislative Assembly (p.26)

NORTHERN WOMEN'S VISION FOR THE NEW CONSTITUTION

- Women must be represented in all government institutions and processes, including Western Arctic constitutional development, and should make up 50% of all government appointed boards, agencies and commissions; however, most women do not favour guaranteed seats for women in the Legislative Assembly (pp.27,33)
- Women's equality rights must be protected in a new Western Arctic Constitution and women must be informed of their rights; the constitution should state that women are equal participants in the social and economic mainstream of society (p.29)
- The rights of our aboriginal sisters and their families, including the inherent right to self government, must be entrenched in the constitution: (pp.32-34)
 - a model for aboriginal self government could include a Council of Elders to determine policy and legislation for aboriginal people at the territorial level
 - aboriginal people should have the right to freely determine their political, economic, social and cultural development
 - laws of aboriginal governments should apply to all persons, aboriginal or non-aboriginal, within a particular jurisdiction
 - aboriginal people should have a veto over issues directly affecting them
 - the territory should adopt a model of dispute resolution reflecting aboriginal values of healing and mediation in place of the adversarial system now existing in the courts and legislatures
- The right of all people, especially women and children, to be free from violence of all kinds should be recognized in the new constitution; there must be zero tolerance toward violence in our society, and women and children should be informed of their right to be free from violence (p.34)
- The constitution for the new western territory must be drafted in gender-neutral language (p.35)

PARTICIPATORY MODELS OF GOVERNMENT

- Government in the new western territory should be more participatory, and favour representation that provides an advantage to smaller aboriginal communities (p.35)
- The Government Leader would be elected separately by a majority of all voters, plus a majority of all communities based on the majority vote in each community (p.35)
- The Speaker would be an elder from the community at large, appointed by the Assembly, who would be responsible for the Code of Ethics (p.35)
- Cabinet members would be selected by the government leader, balancing representation of men and women, natives and non-natives, and urban and rural MLA's; the MLA's would approve the selection but the number of appointments they could reject would be limited (p.36)
- The legislative powers of the Assembly would be diminished, and communities would control and administer government programs and services that directly affect their well-being (p.36)

THE PEOPLES' ASSEMBLY

- There is a need for greater community control over decision-making, fairer representation of women and more effective participation of "communities of interest", i.e. grass-roots organizations involved in or affected by government programs and services (p.36)
- A People's Assembly is a way to meet these requirements without creating another layer of government (p.36)
- The People's Assembly would be composed of: (p.37)
 - the senior elected representative of each community, aboriginal and regional government
 - the senior elected representative of each incorporated society with a territory-wide membership and a specified minimum number of members
 - the members of the Legislative Assembly
- The People's Assembly would meet publicly before each Assembly to formulate priorities for the next four years; MLA's would not be bound by the recommendations, but the People's Assembly would meet again at the end of Legislative Assembly's term to review progress and set the stage for the next election (p.36)

CONCLUSION

- Northern women have unique experiences and perspectives that must be heard in developing the new constitution (p.38)
- Northern women continue to be under-represented on the CDSC and this must be changed (p.38)
- This process must successfully conclude in a new constitution that meets the needs and aspirations of all northerners, or we may forever pass up the opportunity to make positive change for the North (p.38)
- Northern women have shared their vision of what they want in a new constitution; an equal partnership with a focus on holistic governing is required, and we challenge you to respect our voice and our vision (p.38)

The NWT Treaty 8 Tribal Council

THE SPIRIT AND INTENT OF TREATY 8 IN THE NORTHWEST TERRITORIES

INTRODUCTION

- The spirit and intent of Treaty 8 is of vital importance to NWT Treaty 8 First Nations (p.2)
- The primary goal is to investigate the history of the signing of Treaty 8 in the NWT, the promises made at the time of its signing, and how these were interpreted by the Dene (p.2)
- This is not a policy statement, but gives general background information to assist in future policy development of an NWT First Nations government (p.2)
- The CDSC process is detrimental to the interests of the Treaty First Nations (app.1)
- The NWT Treaty 8 Tribal Council Chiefs decided to investigate constitutional and treaty issues with other treaty groups using a structure parallel to the CDSC process (p.2, app.1)
- By a January 1994 Dene Nation resolution, the Treaty 8 and Treaty 11 First Nations established a Treaty First Nation Committee, to promote and maintain the spirit and intent of aboriginal and treaty sovereignty and to facilitate the constitutional development of Denendeh (app.1)

DENE PERSPECTIVE OF TREATY 8

- There are two versions of Treaty 8: (p.9)
 - the **government version**, reflected in the Report of the Treaty Commissioners describing verbal promises made at the time the treaty was signed and the text of the Treaty which includes only some of those promises
 - the **Dene version**, reflected in the oral historical account of Treaty negotiations as told by Dene participants and their descendants who have special knowledge of the events, and representing what was promised to the Indians during the negotiations and what they understood their benefits to be
- The two versions differ substantially (p.9)
- The Commissioners' Report of the negotiations is closer to the Dene version than the text of the treaty is (p.9)

THE LAND EXTINGUISHMENT ISSUE

- While officials saw Treaty 8 as a means to extinguish land title, the Dene believed that the Treaty guaranteed and recognized their rights to land (p.12)
- There is no discussion in the Report of the Treaty Commissioners of how land cession was explained to the people, nor any mention of how it was received by native participants (p.14)
- The Dene believe that they own the land and have never surrendered title (p.14)

AN AGREEMENT FOR PEACE AND FRIENDSHIP

- The Dene understand Treaty 8 as an agreement of peace and friendship, "for peace with the white man" (pp.18-25)
- The cooperative spirit of the Dene and their views on sharing the land had in the past allowed non-natives to settle on Dene land; In taking treaty, Indians and settlers were "not to get in each other's way" and the Indians promised "to love" the newcomers (pp.19,25)
- The Dene negotiated Treaty 8 in good faith and did not sign the Treaty until they were absolutely sure their conditions and terms would be met (p.42)
- In exchange for formally accepting non-natives to their land, the Dene were to receive forever: (pp.42,43)
 - annuities and rations
 - medical care
 - educational rights
 - social assistance for those in need
 - hunting, fishing and trapping guarantees
 - farming and economic development rights
 - guarantees of lands
 - freedom from taxation and military service
 - other rights
- Above all, they received the guarantee that the Treaty would not interfere with their mode of life, that "nothing would be done or allowed to interfere with their way of living as they were accustomed to, and as their antecedents had done." (p.43)

A NATION-TO-NATION AGREEMENT

- The Dene understand Treaty 8 as a nation-to-nation agreement, to ensure peace and friendship for mutual advantage, with the government providing protection and assistance in times of need, and with the Dene allowing free passage of Canadians through their land (p.115)
- The Dene signatories understood that they entered a relationship with white people as brothers; they did not relinquish their sovereignty, nor did they cede their land (p.117)
- The Dene view the Treaty as a sacred pact which can only be changed by bilateral, nation-to-nation agreement (pp.117, 124)

DENE AND THE TERRITORIAL GOVERNMENT

- The Treaty 8 Dene see the *Indian Act* and the *Northwest Territories Act* as unilateral changes to and violations of Treaty 8, passed without their consent (p.128)
- From their perspective, the Government of the Northwest Territories and the federal government have violated the nation to nation relationship (p.128)
- Because of the special bilateral nature of the agreement, Treaty 8 Chiefs reject the suggestion that they are subject to laws passed by the GNWT and are wary of participating in further amendments to the *Northwest Territories Act* (p.128)
- The *Bourque Commission* recommendations attempted to solve some of the grievances and to write principles that would incorporate Dene values and laws into the amendments to the *Northwest Territories Act* (p.132)
- The Chiefs are concerned that entering negotiations with the Territorial Government would diminish the special bilateral relationship between Treaty 8 First Nations and the Crown (p.134)
- The *Bourque Commission*:
 - did not deal comprehensively with the spirit and intent of Treaty 8 or the sovereignty of Treaty nations
 - did not detail the governmental powers of Treaty First Nations
 - does not mention any other possibilities for First Nations Governments larger than Bands with their present-day powers (p.134)
- The *Bourque Commission* may be promoting the development of First Nations' government on a local municipal model (p.134)
- The Treaty 8 Dene should not be considered only as Northerners participating in public government, because this ignores their special bilateral relationship with Canada and appears to be a method of assimilating the Treaty 8 First Nations as planned in the federal government's White Paper of 1969 (pp.136,137)
- The Treaty 8 Chiefs do not believe that the Territorial Government recognizes Treaty 8 rights, as it is not in its interest to recognize and entrench the Nation status of indigenous peoples (p.137, 134)

CONSTITUTIONAL DEVELOPMENT: REQUIREMENT FOR CONSENT

- Consistent with their beliefs, the NWT Treaty 8 Chiefs, acting as nations, insist that their consent is needed prior to altering the *Northwest Territories Act* (p.142)
- The NWT Treaty 8 Chiefs feel strongly that consent has to be given by NWT Treaty 8 First Nations prior to amending the *Northwest Territories Act* or developing a constitution for the new western territory (pp.138,142)

TRIBAL GOVERNMENT

- The Treaty 8 Tribal Council Chiefs want First Nations government to be based on Dene values, customs, principles and laws (p.142)
- They wish to establish a Tribal Government based exclusively on Treaty 8 First Nations principles and values (pp.130)

The Deh Cho Tribal Council

DEH CHO FIRST NATIONS REQUIREMENTS FOR DENE GOVERNMENT

INTRODUCTION: THE DENE AND THE LAND

- For the past two years, the Deh Cho First Nations leadership have consulted with the elders on the principles and structures required for Dene government in the Deh Cho (p.1)
- This work has strengthened the Deh Cho First Nations position on the inherent right to self government and the establishment of a First Nation government in the region (p.1)
- The Dene understanding of the treaty relationship established by the elders with the Crown in 1921 is central to the Deh Cho First Nations decisions regarding land and jurisdiction (p.1)
- The Spirit of Creation and the land are determining forces in the governance of Dene life (p.2)
- The Dene have the responsibility to govern themselves at personal, family, regional and national levels in a manner which honours and respects the land (p.2)

COMPREHENSIVE CLAIMS POLICY AND ADMINISTRATIVE TRANSFERS

- The elders have directed the leadership to maintain the defining relationship between the Dene of the Deh Cho and the land at all costs (p.4)
- It is therefore inconceivable that the leadership would enter into any agreement that erodes the nature of their people by extinguishing title (p.4)
- The federal process of treaty land entitlement presupposes that Treaty 11 was a treaty of cession rather than of peace; the Dene understanding of Treaty 11 rejects this (p.4)
- The Deh Cho First Nations interpret their inherent right to self government in terms of exclusive jurisdiction over their traditional lands (p.4)
- The administrative transfer of federal responsibilities to the NWT is problematic: (p.5)
 - it undermines the Indian/Crown relationship
 - it violates existing aboriginal claims
 - it is inconsistent with the inherent right of self government
 - it does not have the consent of the Deh Cho First Nations
- The problems can be resolved by the direct transfer of funds to a Deh Cho First Nation Government (p.5)

TREATY AND LAND

- The Dene entered into Treaty 11 with the intent of improving living conditions, and as a sacred trust (p.6)
- The Dene position with respect to Treaty 11 is that the Dene agreed to allow the subjects of the Crown to live on Dene lands in peace and friendship and, in return, the Crown would provide certain benefits to the Dene (p.6)
- Euro-Canadian processes of decision making and values have meant disorientation, dissolution of the customary social and political order, and lack of control over government structures and processes for the Dene (p.6)
- Good government for the Dene will bring peace back into the families and communities of the First Nations, and will be government according to Dene law, social and political structure and economic activity (p.7)
- Treaty 11 recognizes the sovereignty of both parties within their own territories and constitutes a social contract between the Dene and Canada (p.7)
- The Deh Cho region remains firm in its position on keeping the Treaty, and seeking a constitutional relationship with Canada which will recognize Dene aboriginal title to their lands and allow Dene law and custom to stand as the basis of First Nations government in the Deh Cho (p.7)

PRINCIPLES OF THE CONSTITUTION OF DENENDEH

- The First Nations of the Deh Cho Tribal Council want their inherent governing authorities recognized by a federal *Denendeh Act* and creation of a new territory composed of the Deh Cho region (p.8)
- The structures and jurisdiction of the Deh Cho First Nations will reflect the traditional principles and values of the Dene, and will apply to aboriginal and non-aboriginal persons within the Deh Cho territory (p.8)
- The closest parallel to the desired form of government is that of a province; however, given the aboriginal and treaty rights attaching to the Deh Cho, the form of government will be unique as it may also assume federal jurisdictions and powers (p.8)
- The NWT Constitutional Development Committee has suggested two ways of accommodating the constitutional development of the western NWT and First Nation government: (p.8)
 - an integrated approach, whereby First Nations concerns would be dealt with by existing institutions and procedures
 - a parallel system, in which one central government would coexist with several First Nations governments
- The Government of the Northwest Territories favours the integrated system and, in doing so, under-estimates the complexity of self government and land claims which cannot be accommodated by a centralized public government system (p.8)

PRINCIPLES OF THE CONSTITUTION OF DENENDEH (continued)

- The ultimate goal of the GNWT is the creation of a province, and this outcome will marginalize First Nation governments (pp.8,9)
- The Deh Cho Tribal Council rejects the NWT's approach and favours a new territory in the Deh Cho based on the inherent right of self government (p.9)

RIGHTS AND NEEDS OF NON-ABORIGINAL RESIDENTS

- The governments of Denendeh will deliver services to all residents (p.9)
- The democratic and legal rights of Canadians guaranteed under the *Charter of Rights and Freedoms* will be respected, but special provisions will protect aboriginal concerns, such as a perpetual aboriginal deciding vote on all matters directly affecting aboriginal and treaty rights (p.9)
- Non-aboriginal persons may hold interests in land, conduct business, participate in government councils and hold positions in the administration and courts of Denendeh (p.9)

STRUCTURES OF GOVERNMENT

- A Deh Cho First Nations government would be recognized by a federal *Denendeh Act* and would have legislative, executive and judicial branches (p.10)
- The *Denendeh Act* would replace the application of the *Indian Act* and the *Northwest Territories Act* in the Deh Cho (p.11)
- The Denendeh model of government will emphasize local government rather than central government (p.9)
- It would be composed of elected Deh Cho First Nation Councils as the basic unit of government, replacing band councils and municipal councils (p.10)
- A senate of elders would serve as advisors to the elected councils (p.10)
- Deh Cho First Nations Councils may delegate powers to:
 - boards and tribunals, with the extended family having a central role in their composition
 - a confederacy of Deh Cho First Nations Councils, which will have jurisdiction over all matters of mutual concern to the First Nations Councils (p.10)
- Election procedures would be set out under the Constitution of Denendeh in a First Nation Election Code, which would recognize custom selection of leadership and provide for the removal of leaders (p.11)

MANAGEMENT OF LANDS AND RESOURCES

- Title to Deh Cho lands would be held by the crown in right of Denendeh, in trust for the use and benefit of the First Nations (p.11)
- Deh Cho First Nations government would have exclusive legislative jurisdiction over:
 - granting interests in land
 - the management and use of lands and waters
 - the management and use of renewable and non-renewable resources
 - environmental protection, standards and assessment
 - the inspection of premises for health and safety (pp.11,12)

FINANCIAL ARRANGEMENTS

- A Deh Cho Financial Transfer Arrangement, similar to a federal/provincial transfer payment, would provide: (p.12)
 - funding for the three-branch government
 - start up funding for infrastructure and training
 - ongoing funding to cover all services and the maintenance of statutory programs, equivalent to that provided to other Canadians

ADMINISTRATION OF JUSTICE

- Deh Cho First Nations government would have exclusive legislative jurisdiction over the administration of justice regarding: (p.12)
 - review of legislation and executive acts
 - enforcement of law
 - prosecutions
 - representation in the form of a cultural-legal advocacy program
 - legal aid
 - corrections
- A Denendeh Court would be established, with jurisdiction similar to that of a superior court elsewhere (p.12)

OTHER POWERS

- Deh Cho First Nations would also exercise jurisdiction over: (p.13)
 - education
 - social services and health care
 - public works and transportation
 - business licensing
 - culture, language and heritage
 - public finance including taxation and debt financing

The Dogrib Treaty 11 Council

CDSC RESEARCH FINAL REPORT

INTRODUCTION: OVERVIEW OF CONSTITUTIONAL POSITION

- The Dogrib Treaty 11 Council believes that the present system of government in the western NWT must be substantially restructured to accommodate the desire of the Dogribs and other aboriginal peoples for greater self government (p.1)
- Some reforms will occur through changes to the constitutional and legal arrangements for public government in the new Western territory (p.1)
- A large part of the restructuring must be carried out through self government negotiations with the Government of Canada (p.1)
- Care must be taken to ensure that the results of constitutional reform and Dogrib self government talks complement and support each other (p.1)
- Dogrib self government arrangements must co-exist effectively and harmoniously with the public government system of a new western territory (p.1)
- The Dogrib Treaty 11 Council is prepared to co-operate with the other communities and organizations represented on the CDSC in undertaking a comprehensive initiative of constitutional reform (p.1)

PRINCIPLES

- The constitutional framework for a new western territory must respect and give recognition to the inherent aboriginal right of self government (p.2)
- A new system of power sharing is required, with a significant redistribution of authority and resources away from the central government to regional and community-based governments; transfers of authority and resources from the Government of Canada may also be required (p.2)
- The new constitution must accommodate self government arrangements which the Dogrib people negotiate with Canada (p.2)
- There must be constitutional guarantees for Dogrib representation in the central government (p.2)
- Institutional arrangements recognized in the constitution must be flexible enough to allow for the varying aspirations and circumstances of the aboriginal peoples in the territory (p.2)

REGIONAL AND COMMUNITY GOVERNMENTS

- Regional and community governments in the Dogrib area are not appropriate subjects for discussion in the western constitutional reform process; they must be addressed through self government negotiations (p.1)
- Some CDSC members are interested in district or regional forms of government, and the Dogrib position is compatible with these various constitutional objectives (pp.1,2)
- Constitutional arrangements agreed upon for the western NWT must be both comprehensive and flexible to accommodate the aspirations of all CDSC members (p.2)

DOGRIB SELF GOVERNMENT

- The Dogribs seek to negotiate self government arrangements within the overall context of their regional land claims settlement (p.3)
- Any self government arrangements negotiated will be protected under the Canadian Constitution, along with the rest of the Claim Agreement (p.3)
- The aim is to have Dogrib governing bodies legally empowered to operate with independent legislative authority and sufficient resources to permit them to do so effectively (p.3)

RELATIONSHIP WITH PUBLIC GOVERNMENTS

- Dogrib governing bodies will operate on an equal footing with public government institutions and their powers will not be vulnerable to unilateral amendment or repeal by either the territorial or federal governments (p.3)
- Relations between Dogrib governing bodies and public government institutions will take place in a framework of negotiated inter-governmental agreements, inter-delegations of power and sharing of resources (p.3)

GUARANTEED REPRESENTATION IN CENTRAL GOVERNMENT

- The Dogrib Treaty 11 Council also seeks guarantees for Dogrib representation in the institutions of a restructured territorial government (p.4)
- These must be explicitly spelled out in a new territorial constitution (p.4)
- The Dogrib people feel they are entitled to a minimum number or percentage of seats for their representatives in the Legislative Assembly for the new western territory (p.4)
- Simple representation by population in a new Assembly is rejected in favour of a formula based on several factors including: (p.4)
 - proportion of total population
 - number of regional or district units
 - provision of minimum guarantees to each aboriginal group

ABORIGINAL AND LANGUAGE RIGHTS

- A new constitution must recognize certain fundamental collective rights (p.4)
- At a minimum, it must affirm and protect: (pp.4,5)
 - the aboriginal and treaty rights of the aboriginal First Nations of the new western territory, including the inherent right of self government and rights specified in land claim and self government agreements
 - the languages of the aboriginal First Nations, through official language status in the territorial assembly, courts and bureaucracy

A SIMPLE CONSTITUTION

- An overly complicated constitution could result in endless wrangling over interpretation (p.4)
- A relatively simple constitutional text is preferred (p.4)

AMENDMENT OF THE CONSTITUTION

- The nature of the constitutional amending formula is a crucial issue (p.5)
- The formula must not be so complicated that it blocks future constitutional change, but it must also ensure that no change can be made without the consent of the Dogrib people (p.5)
- Suggestions include: (p.5)
 - amendments must be approved by a specified majority of the members of the territorial assembly and the aboriginal groups represented in the assembly (e.g. three quarters)
 - amendments affecting guaranteed aboriginal and treaty rights must be approved by all aboriginal groups
 - amendments affecting the distribution of powers must be the subject of a territory-wide referendum and receive majority approval in each region

CONSTITUENT ASSEMBLY AND REFERENDUM

- Drafting of the new constitution should be done by an elected or appointed constituent assembly, with substantial guaranteed representation for the Dogrib Treaty 11 Council (p.5)
- The final constitutional proposals must be approved in a territory-wide referendum, by a majority of voters in each region (p.6)

CONCERNS OVER DEVOLUTION

- The GNWT's devolution initiatives, including the transfer of legislative authority over sub-surface resources, have implications for NWT constitutional development which are as significant as the work of the CDSC and which could pre-empt or undermine the CDSC's role in constitutional reform (p.6)
- There must be a full and frank discussion concerning the relationship between the CDSC process and the GNWT's ongoing devolution negotiations with Canada (p.6)
- The Dogrib Treaty 11 Council would prefer there be no further devolution of powers from Ottawa to the GNWT until agreement has been reached on the constitutional framework for a new western territory (p.6)
- If jurisdictional transfers do occur, the following conditions should apply: (p.6)
 - approval by all aboriginal members of the CDSC before negotiations on a particular transfer begin
 - direct involvement of the aboriginal members of the CDSC in all stages of negotiation and implementation

WESTERN CONSTITUTIONAL REFORM PROCESS

- The Dogrib Treaty 11 Council supports the draft principles and workplan developed by the CDSC to guide the western constitutional process (p.7)
- The Council intends to participate fully in the process, to see a new constitution and system of government ratified and put in place by the time of division in 1999 (p.7)

The Sahtu Secretariat Incorporated

WORK PROJECT FOR THE CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE WORKING GROUP

INTRODUCTION: SAHTU LAND CLAIM AND SELF GOVERNMENT

- The Sahtu land claim was recently ratified, but our aspiration to govern our own affairs as a distinct cultural identity within Canada has not been fully addressed (p.2)
- The Claim incorporates a Framework Agreement for negotiating self government agreements with the Canada, and guarantees the Sahtu Dene and Metis participation in any process for constitutional reform in the NWT (p.2)
- The objectives in the self government negotiations are: (pp.2,3)
 - to describe the nature, character and extent of self government
 - to accommodate self government within the framework of public government
 - to have self government as close to the community level as reasonably possible

SELF GOVERNMENT: THE SENIOR PROCESS

- The Sahtu Dene and Metis are also participants in the CDSC process to define a public government for the western NWT (p.3)
- The self government and CDSC processes are mutually exclusive yet dependent on each other (p.3)
- A new western NWT constitution must recognize aboriginal self government rights (p.3)
- Self government mechanisms must also accommodate public government (p.3)
- Self government negotiations are the senior process for achieving self government aspirations; participation in developing a new western constitution is secondary (p.4)
- The positions taken in the constitutional process will be drawn from the principles adopted for self government negotiations (p.4)

GNWT TRANSFER INITIATIVES

- GNWT initiatives to transfer program and service responsibilities to the community level make the situation more complex (p.3)
- These are being initiated without knowing what authorities may eventually be vested at the community level as a result of self government or constitutional development (p.3)
- The initiatives may be premature and could result in a fragmented regime for program and service delivery having little relevance under a new constitution (p.3)

COMMUNITIES: THE SENIOR LEVEL OF GOVERNMENT

- Self government must be based on our traditional rights and history as sovereign people (p.5)
- The traditional social structure consisted of three levels:
 - tribes (communities, such as Deline)
 - bands within tribes (e.g. Colville Lake people, Mountain people)
 - clans within bands (family groupings, e.g. Aubrey Lake clan) (p.5)
- Any practical expression of aboriginal self government, including the new constitution, must therefore recognize the community as the senior level of government (p.5)
- Regional groupings are a relatively recent development, and interrelationships between tribes, bands and clans are an internal matter which vary within and between regions (p.5)
- The new constitution should therefore not define regional structures (p.5)

PROGRESS TO DATE

- The *Bourque Commission* recommendations, with the proposed establishment of "District Orders of Government" as the senior level, closely match the Sahtu position (p.6)
- However, the Sahtu Dene and Metis must have major input and influence over the development of standards governing activities on their aboriginal lands (p.6)
- Some powers recommended for the central government should be shared with districts:
 - land use standards and regulations
 - environmental protection standards and regulations
 - wildlife and marine mammal management standards
 - industrial and non-renewable resource development standards (p.6)
- The constitution must provide flexible structures to allow for central government co-ordination of initiatives and varying delivery capacity of district governments (p.7)

IMPLEMENTATION

- The manner of implementing the new constitution is as important as its substance (p.7)
- An implementation strategy will have to be identified, given the significant changes being considered and their impact on public service delivery (p.7)
- The implementation strategy must address the need for healing, awareness and capacity building, because the Sahtu Dene and Metis have suffered cultural exclusion and governmental insensitivity to their traditions resulting in damaged self-esteem and increased dependency (pp.7,8)
- The need for administrative efficiency will guide district government decisions regarding which programs and services they take responsibility for; responsibilities will not be assumed unless financially advantageous or the quality of services will improve (p.8)
- During implementation, the existing bureaucracy will deliver programs under the authority of district governments, and will be challenged to be more responsive to the needs of district government (p.8)

CONSTITUTIONAL FRAMEWORK

- Government is the people and government institutions exist only to serve the people (p.9)
- At all levels of government, there is the danger of creating a bureaucracy which is perceived as the "government" and which tends to take on a life of its own (p.9)
- The new constitution should limit the size and future growth of government political and bureaucratic structures at the territorial level and provide for rigid accountability to the senior community governments (p.9)
- Central government activities should be narrowly defined and limited to those which are essential to meet the common needs of the people in such areas as: (pp.9,10,11)
 - protection of individual and collective rights
 - setting territorial policies and priorities
 - making territorial laws
 - providing economies of scale in program and service delivery
 - collecting taxes
 - external affairs, defense and security
 - perhaps some environmental protection

DISTRICT AND CENTRAL STRUCTURES AND INSTITUTIONS

- Two and possibly three levels of government are envisaged: (p.10)
 - district (community) government as the senior level and prime decision-making body
 - central (territorial) government as the second level of the decision-making process
 - regional organizations or alliances which may be created by district governments
- The structure and mandate of district government would be determined by the people of each district within the framework of the constitution (p.10)
- District governments will represent both aboriginal and non-aboriginal people, but certain areas would be under the jurisdiction of the aboriginal constituents (pp.10,11)
- Decisions made by the central government on issues within its mandate must first be discussed and positions taken by district governments (p.11)
- District governments would have a veto over matters affecting their district (p.13)
- The central government assembly should consist of six (6) MLA's to be elected by communities/regions according to local processes, plus district government representatives (p.11)

ABORIGINAL AND PUBLIC JURISDICTIONS

- Areas of jurisdiction for the district and central levels of government would be clearly defined, and both would involve aboriginal and public areas of jurisdiction (p.11)
- Areas of exclusive aboriginal jurisdiction would include: (pp.11,12)
 - treaties
 - land claims
 - self government negotiations
 - traditional lands
 - wildlife harvesting
- Areas of public jurisdiction would include (p.12)
 - education, training and upgrading
 - economic development
 - housing and municipal infrastructure
 - health care
 - policing and corrections
 - wills and estates
 - social services
 - taxation

A SOCIAL CHARTER

- A Social Charter needs to be established and defined in the constitution (p.14)
- The Social Charter would recognize:
 - individual and collective rights
 - aboriginal rights (political, social, cultural and economic)
 - the rights of the handicapped
 - the rights of women (including to live without violence or discrimination and to participate fully in social, cultural and political activities)
 - the rights of children (including to live without being impacted by family violence, to learn their culture and history and to learn the language of their land)

FOLLOW-UP

- There are a number of areas relating to the proposed model that require further study and thought; one such issue is representation by population (p.14)
- The principles and ideas put forward provide an insight on where the Sahtu stands with respect to constitutional development and suggest possible approaches to the development of a framework for the new constitution (p.14)

Metis Nation - Northwest Territories

A DISCUSSION PAPER ON CONSTITUTIONAL DEVELOPMENT IN A NEW WESTERN TERRITORY

INTRODUCTION

- The Metis constitute 11 to 12 percent of the population of the western NWT, and occupy a position between native society and non-native society (p.2)
- The Metis must ensure their aboriginal rights under section 35 of the Canadian Constitution are entrenched and will not be overridden by the larger constituent groups of society (p.2)
- The Metis people will also strive to protect the interests of all groups, as a balance of power must exist in order that none feel disenfranchised or disenchanting (p.2)....
- Division of the NWT in 1999 will affect the current balance of power among the various groups in the western NWT, requiring a constitution for the west that recognizes and entrenches the rights of each group (p.2)
- The western constitutional process and the negotiation of land, resource and self government agreements with the Government of Canada give the Metis an unprecedented opportunity to ensure their aboriginal rights are entrenched and protected and their place in society is recognized (p.2,3)

GUIDING PRINCIPLES

- Section 35 of the Canadian Constitution, recognizing existing aboriginal and treaty rights and defining the aboriginal peoples of Canada, must be entrenched in the new constitution (p.3)
- A strong central government for the new western territory is necessary to ensure representation of our collective interests in southern Canada (p.4)
- The existence of districts and regions with diverse interests, concerns and ethnic populations, and the need to bring government back to the communities, must be recognized (p.4)
- The Metis support the reaffirmation of rights set out in the *Canadian Charter of Rights and Freedoms*, and the protection of the collective rights of aboriginal peoples including the Metis (p.4)

GUIDING PRINCIPLES (continued)

- The Metis have recently obtained assurances of negotiations to ensure them the same rights as other aboriginal peoples, and seek recognition of rights to: (p.5)
 - hunt, gather, trap and fish
 - extended medical benefits
 - equality of access to funding for housing programs
 - access to funding for heritage research and development of educational materials to preserve Metis culture
 - control over delivery of economic development opportunities for Metis
- Any rights granted under a constitution could be amended or eliminated through changes passed by larger groups and the Metis therefore need the right to veto any legislation directly affecting them, such as through a Denendeh Senate as proposed by the Dene and Metis in 1982 (p.5)
- Land claims and other specific agreements, such as the Northern Accord, should be settled before a new western territory is established to ensure that aboriginal rights, areas of exclusive control over specific areas of land and resources, and other self government issues will be clearly established (p.6)
- Education is fundamental to individual development and to the cultural development of the Metis Nation as a whole; the Metis desire full access to funding to manage and control delivery of education and the preservation of their cultural heritage (p.7)
- Aboriginal systems of justice must be included as part of self government; communities should be able to assume responsibility for policing themselves through a district government (p.7)

PRESENT NWT CONSTITUTION

- No single document can be said to be the constitution of the Northwest-Territories (p.7)
- The one having the greatest day-to-day effect is the *Northwest Territories Act* (p.7)
- The *NWT Act* is an Act of Parliament which can be changed or repealed at Parliament's discretion (p.7)
- The Government of Canada retains the power to rescind legislation passed by the NWT Legislative Assembly (p.7)
- The NWT remains very much a colony of the Government of Canada and the real decision making power lies with Ottawa (pp.7,8)
- The *NWT Act* was passed in 1905 and reflects the dominant philosophy of the time that aboriginal people were not capable of governing themselves (p.8)
- This philosophy is changing, and division of the NWT in 1999 is a perfect opportunity to redefine government and its processes to reflect this changing philosophy (p.8)
- The federal government has been responsible for all legislation concerning the NWT and must be involved in changing that legislation (p.8)
- The federal government should therefore take an active role in the discussions for a new western NWT constitution (p.8)

THE *BOURQUE* COMMISSION REPORT

- The Metis First Nations strongly endorse the recommendations of the *Bourque Commission* as contained in its report *Working Toward A Common Future* (p.9 & Appendix)
- Two items are of particular interest to the Metis Nation: (pp.9,11)
 - affirmation and entrenchment of Metis rights
 - the proposed district model of government

AFFIRMATION AND ENTRENCHMENT OF METIS RIGHTS

- The rights listed in the *Bourque Commission* report are consistent with the Metis Nation position as reflected in the Guiding Principles (p.10)
- These rights are: (pp.9,10)
 - the same rights to hunt, fish, trap and gather as those of Treaty First Nations
 - the right of Metis First Nations to a land base equivalent to that offered under the failed Dene/Metis agreement (5 square miles for each citizen)
 - the right of each Metis First Nation to exercise its inherent right to self government on its land base and to provide services to citizens not living on the land base
 - the right of each Metis First Nation to set the rules under which citizenship in the First Nation will be granted
 - the right to receive the same program benefits received by Indians and Inuit from the Government of Canada and to administer these benefits

THE PROPOSED DISTRICT MODEL OF GOVERNMENT

- The proposed model can be referred to as the "Union of Regions Model" (p.11)
- It proposes development of a regional or district level of government from which power flows up to a strong central territorial government (p.11)
- This recognizes that the cultural, economic and geographic diversity of the North makes regional or district government practical and desirable (p.11)
- Each district is able to define its own government, recognizing each group's traditional ways of governing and ensuring the government is respected by those governed (p.11)
- The term "district" can apply to aboriginal or district bodies; for example, the people of the Sahtu or the people of Yellowknife can be recognized as a district (pp.11,12)
- The federal Parliament would recognize the authority of aboriginal and regional bodies instead of delegating authority to them (p.12)
- The central government gets its authority delegated upwards from the district governments, reflecting the fundamental principle that power flows from the people (p.12)
- Protection of culture and language is assured and accountability to the individual is optimized (p.12)

THE PROPOSED DISTRICT MODEL OF GOVERNMENT (continued)

- District governments can deliver all programs except those they choose to delegate upwards to the central government (p.13)
- The process is flexible and as a district is able to manage more of its own affairs it can revoke the delegated powers and re-establish control (p.13)
- The central government is restricted to the powers delegated by district governments; it is the clearing house for federal public government funding, has all taxing powers except property taxes, and allocates funds to the districts (p.13)

GUARANTEED REPRESENTATION AND VETO

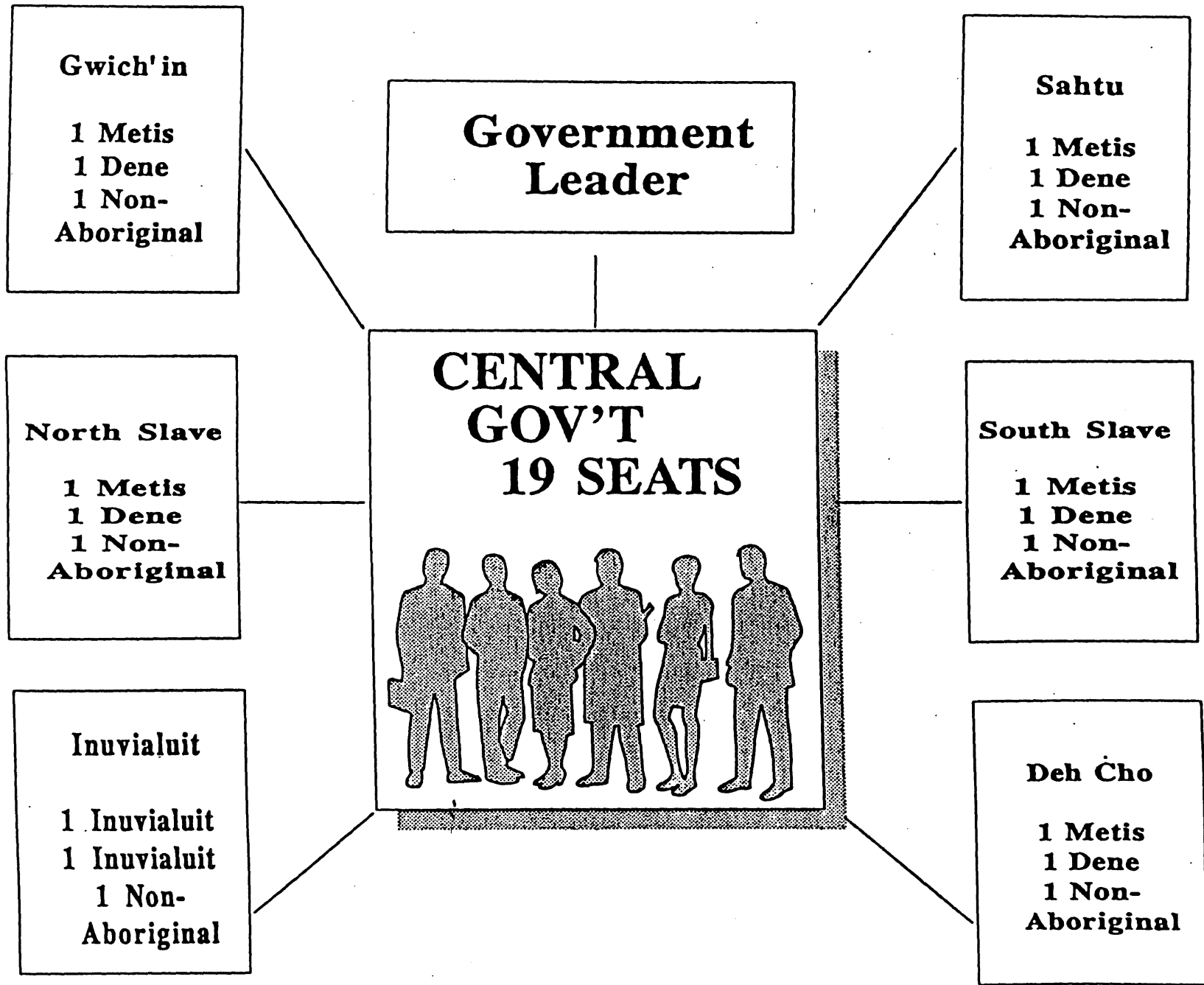
- The Metis insist on some insurance of their involvement in future decision-making, because Metis interests have for too long been over-ridden or ignored (p.14)
- The Metis wish to see one Metis representative from each region sit in the central government legislature, with the exception of the proposed region for the Inuvialuit (p.14)
- The Metis also wish to see a constitutionally guaranteed aboriginal veto over any changes directly affecting aboriginal rights or issues (p.14)

RECOMMENDATIONS

- That section 35 of the Canadian Constitution be included in a constitution for a new western territory (p.15)
- That the necessity for a strong central government be accepted (p.15)
- That the central government be comprised of nineteen members with guaranteed Metis representation in each district or region (p.15) (see attached chart)
- That the concept of regional governments as proposed by the *Bourque Commission* be accepted (p.15)
- That any amending formula for the constitution of the new western territory include a veto for Metis over any legislation concerning Metis (p.16)
- That self government rights negotiated by Metis through land claims and other specific agreements be assured by explicit protection in the constitution (p.16)
- That the Federal government be invited to participate in the western NWT constitutional process as early as possible to ensure that a new constitution is developed before 1999 (p.16)
- That all agreements such as the Northern Accord which will spell out self government rights along with land and resource rights and land claims be settled before the establishment of a new territory (p.16)
- That aboriginal justice systems continue to be developed and utilized by any and all jurisdictions in the current and new western territory (p.16)

CONCLUSION

- The *Bourque Commission* report and subsequent agreements which the Metis have negotiated offers the Metis Nation hope that at last change is possible (p.17)
- The *Bourque Commission* offers as its point of departure a model of government that ensure self government, control of aboriginal lands and control of education and culture all in aboriginal hands (p.17)
- This is the ideal for the Metis: to be in control of our own land, education, culture and ultimately our own destiny (p.17)
- That this has long been denied us has been a tragedy; that this is now being discussed as a possibility gives us hope for the future (p.17)



The Western Constitutional Forum and the Nunavut Constitutional Forum

THE IQALUIT AGREEMENT BOUNDARY AND CONSTITUTIONAL AGREEMENT FOR THE IMPLEMENTATION OF DIVISION OF THE NORTHWEST TERRITORIES

INTRODUCTION

- In a plebiscite on division in 1982, NWT residents voted in favour of dividing the Northwest Territories (p.1)
- The Western Constitutional Forum and the Nunavut Constitutional Forum were formed to develop constitutions for each of the new territories to be created; together they formed the Constitutional Alliance of the Northwest Territories (p.1)
- In January of 1987, the WCF and NCF reached an agreement on constitutional principles for Nunavut and a western territory and issues required to implement division (p.1)
- This agreement, known as the "Iqaluit Agreement", was approved by the NWT Legislative Assembly and general assemblies of the Dene Nation, the Metis Nation and the Tungavik Federation of Nunavut
- Subsequent difficulties in finalizing a claims boundary between the Inuit and the Dene and Metis caused the Constitutional Alliance process to lose momentum
- Commitments by Canada in the Inuit Land Claim negotiation process to divide the NWT in April 1999 led to the formation of the Committee of Political Leaders, the establishment of the Bourque Commission, the successful boundary plebiscite in 1992, and creation of the Constitutional Development Steering Committee

TRANS-BOUNDARY INTERESTS

- The constitutions of both Nunavut and the new western territory will require their governments to protect non-resident aboriginal rights recognized in overlap agreements between the Dene/Metis and the Inuit (p.1)
- Provision will be made in both constitutions to require co-operation between the governments in decisions relating to: (p.1)
 - non-resident aboriginal rights and interests
 - management and use of resources
 - harvesting
 - other matters to be agreed upon

BRINGING PEOPLES TOGETHER

- Aboriginal people will likely constitute a minority of the population in the new western territory and are concerned that their political rights, culture and future as individuals and as aboriginal peoples be secured in the new constitution (p.3)
- Non-aboriginal residents recognize and accept the need to address Dene, Metis and Inuvialuit concerns within the context of a public government system based on democratic principles (p.3)
- The overriding objective of a new western constitution is to build a system of public government which will protect the individual rights of all citizens and the collective rights of its aboriginal peoples, and whose overarching principle is one of bringing peoples together (p.3)

PROTECTION OF INDIVIDUAL AND ABORIGINAL RIGHTS

- A new western constitution must balance two principles:
 - protection of individual rights
 - protection of the aboriginal rights of Dene, Metis and Inuvialuit (p.3)
- Every bona fide resident should have the right to participate in and benefit from public institutions, programs and services according to basic democratic principles guaranteed in the constitution (p.3)
- Each aboriginal community shall be explicitly recognized in the constitution, and mechanisms entrenched to enable each community to flourish as a distinct cultural entity regardless of its proportion of the total population (p.3)
- Aboriginal rights relating to language, culture and any other political rights which are not included in claims agreements shall be entrenched in the constitution and means found to help ensure that all aboriginal rights are protected (p.4)
- There shall be a guarantee of aboriginal participation in government and significant impact on decision-making (p.4)
- This could include exclusive aboriginal jurisdictions in limited areas of direct concern to aboriginal people, focussing on: (p.4)
 - cultural matters
 - the special relationship existing between aboriginal peoples and the land, and the political protections required to ensure its maintenance
- If negotiations toward a western territory constitution succeed, they will result in a constitution whose relevant sections are designed to constitute, together with provisions in land claims agreements, the definition of aboriginal self government in the western territory (p.4)
- That definition must fully reflect any right of self government held by the Dene, Metis and Inuvialuit (p.4)

DECISION-MAKING CLOSE TO THE COMMUNITY

- Government decision-making should rest as closely as possible with those governed (p.4)
- People and communities should have control over those matters which affect them exclusively, and input in and influence over those decisions which affect them as well as others (p.4)

GOVERNMENT POWERS AND FUNDING

- A major objective of division is to improve the quality of government and the delivery of services to citizens (p.2)
- Adequate funds must be provided by the Government of Canada to ensure that, in the process of division, the level and quality of services available to NWT residents and the rate at which capital needs are met are at least maintained (p.2)
- Every level of government in the new western territory must have sufficient powers, authority and resources to enable it to carry out its responsibilities (p.4)
- The level of funding should be assured and predictable, and restrictions on use should be flexible (p.4)

AMENDMENTS TO THE CONSTITUTION

- The constitution, or those parts which address each of these principles and objectives, must not be amendable without the approval of aboriginal and non-aboriginal peoples (p.4)

FURTHER TRANSFER OF POWERS FROM OTTAWA

- In the negotiation of a new western territory constitution with the Government of Canada, in the context of recognizing aboriginal self government, and without prejudice to land claims negotiations, the further transfer of powers and jurisdictions from Ottawa shall be vigorously pursued (p.4)

REGIONAL GOVERNMENT

- The WCF adopted a set of provisional principles applicable to regional government throughout the new western territory (p.4)
- These principles were intended as a minimum guarantee, in case the western constitution did not ultimately address aboriginal self government (p.4)
- If provisions for aboriginal self government can be entrenched in a new constitution, trade-offs on these regional government principles may be required (p.4)

PROVISIONAL PRINCIPLES FOR REGIONAL GOVERNMENT

- Communities would have the right to form regional governments, and the territorial level of government would be obliged to recognize and accept these regional governments (p.5)
- A number of issues relating to the formation of regional governments have yet to be decided, including: (p.5)
 - the method of deciding among and within communities whether they wish to form a regional government
 - the method of establishing regional government
 - the number of consenting communities required
 - the terms upon which a community may withdraw from membership in a regional government
- The structure and accountability of regional governments would be determined by member communities according to democratic principles (p.5)
- Funding must be fair and adequate, and include funds covering duties assumed from other governments (p.5)
- Regional governments could obtain shared responsibility, management and control over certain programs or services from the territorial or community governments, including aspects of: (p.5)
 - education
 - economic development
 - local government relations
 - police services
 - game management
 - land use planning and management
 - property taxation, business taxes and licences, and amusement taxes
- Regional government would not have legislative authority in these areas unless that authority is delegated to it by the community or territorial governments (p.5)
- Boundaries of regional governments would consider community composition at any given time and could change as communities join or withdraw (p.5)
- The regional aboriginal language or languages and English would be the official working languages of a regional government (p.5)
- Every resident of the region shall have an equal right to participate in regional government and to benefit from its programs and services, but programs and services and the manner of participating need not be identical for members of different cultural groups (p.5)
- Public lands outside community boundaries but within regional government boundaries should be held by the territorial government (p.5)
- Territorial authority over the management of sub-surface resources should be exercised in the interests of all residents in the territory, but regional land interests may receive formal consideration in land use planning and management (p.5)

The Commission for Constitutional Development

THE BOURQUE COMMISSION REPORT: WORKING TOWARD A COMMON FUTURE

INTRODUCTION

- In 1991 the Committee of Political Leaders of the western Northwest Territories asked the NWT Legislative Assembly to establish a 6-person Commission for Constitutional Development, which came to be known as the *Bourque Commission* (Fwd)
- The Commission's objective was to develop a comprehensive constitutional proposal for the those regions of the Northwest Territories remaining after the creation of Nunavut (App.4)
- In April 1992, after conducting research, receiving submissions and holding public hearings, the Commission published its Phase I report *Working Toward A Common Future* (Fwd, p.2)
- The principles and recommendations contained in the report provide a valuable starting point for detailed consideration in the next phase of the constitutional development process (Fwd)
- The Commission's work was not continued to the second phase following publication of the report, but led to the creation of the Constitutional Development Steering Committee and the present process for the development of a constitution and structure of government for the new western territory

BASIC ELEMENTS OF A CONSTITUTION

- The basic elements of a formal constitution include: (p.4)
 - the name and description of the geographic area covered
 - a definition of the people to be governed, together with a statement of their unique and shared experiences, values, interests and aspirations
 - statements of any special rights and freedoms enjoyed by people governed by the constitution
 - a description of the orders of government, if any, and the ways authority and responsibility are divided among the orders of government
 - the kinds of institutions which will make laws, decisions and settle disputes in these orders of government
 - how people are appointed or elected to serve in these governing institutions
 - the way the constitution is changed or amended

CONSTRAINTS AND EXPECTATIONS

- The residents of the new western territory are not making their constitution in a vacuum; there are a variety of legal instruments which set limits on what they can and cannot do, including: (p.4)
 - Treaties 8 and 11
 - modern land claims agreements
 - the Canadian Constitution, including the *Charter of Rights and Freedoms*
- A new constitution will not solve all of the long-standing problems of the western Northwest Territories (p.4)
- The new western territory constitution cannot and need not be all things to all people (p.6)
- Some guarantees people are seeking are already found in the Canadian Constitution, the Charter of Rights and Freedoms, and existing constitutional protection of aboriginal and treaty rights (p.6)
- New territorial laws, improved enforcement of existing laws, and social programs may offer more immediate solutions to problems of equity and caring than constitutional proposals (p.6)
- When the constitutional development process is completed, the people of the new western territory will know a little better who they are and who their neighbours in the territory are, and will have said what they think they can reasonably expect from each other and their governments (p.7)
- The members of the Commission for Constitutional Development believe the constitutional process will lead to a workable and lasting constitution for the new western territory (p.7)

NAME AND GEOGRAPHIC AREA

- The constitution must include a name for the new western territory (p.9)
- The name of a political entity is symbolic of its residents and their language, history, environment and future aspirations (p.9)
- The name of the new western territory should come from a First People's language, as the First Peoples have names describing their homeland (e.g. Nahendeh, Denendeh) (p.9)
- The geographic area of the new western territory must also be described (p.9)

PEOPLES, VALUES AND RESPONSIBILITIES

- The new constitution requires a preamble which: (p.10)
 - captures the spirit and vision of our land and peoples
 - recognizes the distinct peoples and unique history of the new western territory
 - states the values and aspirations we have in common
- First Peoples should be recognized as founding peoples of the new western territory, and the many other groups and individuals who have chosen to make the territory their home should be recognized as an integral part of its society (p.10)

PEOPLES, VALUES AND RESPONSIBILITIES (continued)

- The preamble should also include a statement of common values: (p.11)
 - recognition of the land as the source of our well-being and a commitment to live in balance with it
 - desire to restore balance and harmony among all peoples of the territory
 - belief that authority to govern belongs to the people and flows from them to their institutions of government
 - respect for our distinct cultures, traditions and languages
 - desire to create a balance between individual and collective rights
- Further consideration should be given on whether or not to include a statement of the basic responsibilities of residents to balance the statement of rights (p.11)

SPECIAL RIGHTS

- An important element in any constitution in a modern democratic society is the definition of the fundamental rights and freedoms of all residents (p.12)
- A balance must be struck between a constitution which is for people as opposed to governments, and the reasonable limits which government can put on the rights and freedoms of individuals (p.12)
- Although the *Canadian Charter of Rights and Freedoms* will apply in any event to the new western territory, the constitution should reaffirm the rights set out in the *Charter* (p.12).
- During its hearings, the Commission was told that Charter rights should not only be affirmed, but strengthened and added to by including a number of new rights: women's rights, the right to refuse medical treatment, human rights, workers' rights, environmental rights and social rights (p.13)
- Further consideration should be given to the matter of additional constitutionally protected rights for women (p.14)
- The constitution should establish the right of a competent person of majority age to refuse medical treatment to prolong life for themselves or their minor children (p.14)
- The government of the Northwest Territories should consider the development and enactment of a *Human Rights Code* prior to the coming into force of a new constitution (p.15)
- The issue of workers' rights raises legal questions which must be addressed before specific recommendations can be made, and should be revisited in the next phase of development of the constitution (p.15)
- An Environmental Bill of Rights already exists as a territorial law, and a complete environmental charter raises legal and jurisdictional issues which require further consideration (p.15)
- A charter of environmental rights or other environmental laws should recognize traditional indigenous knowledge of the environment, both aboriginal and non-aboriginal, and western science as being equally valuable (p.16)

SOCIAL RIGHTS

- Constitutions are not just about government institutions or individual rights; they are also about measures to ensure the individual and collective well-being of the people who make up the human and social fabric of a territory, province or country (p.16)
- The constitution should include a Social Charter identifying the basic necessities required for the spiritual, emotional, mental, physical and economic well-being of all members of the new western territory society (p.16)
- The Social Charter should include a statement of social principles addressing: (p.17)
 - respect for elders and their traditional knowledge
 - respect for women as equal participants in the mainstream of society
 - respect and care for children
 - recognition of the dignity and importance of the family
 - recognition of the dignity and importance of labour and the obligation of employers to treat workers fairly
 - recognition of the right of all people, but especially women, children and elders, to a life free from violence
- The Social Charter should state government's responsibility to ensure access to: (p.17)
 - health and social services
 - education and training opportunities
 - child care
 - adequate shelter
 - a safe work place
 - a safe home and community
 - economic equality
 - affirmative action programs in education and employment for the disadvantaged
 - positive programs to eliminate drug and alcohol abuse, physical and sexual abuse and family violence
- The Commission originally felt the Social Charter should not be enforceable by the courts, and other means should be developed to monitor government performance in responding to its objectives, but this matter requires further consideration (pp.17,18)

FIRST PEOPLES RIGHTS

- The First Peoples have an inherent right of self government, and the new constitution should recognize, uphold and protect this right (pp.18,19)
- This right includes the right to use their own languages, and the constitution should recognize First Peoples' languages as official languages that will be used in public, central, district and aboriginal government institutions (p.19)
- This right also includes the right to opt out of the constitutional process for the new western territory and seek a direct link with the federal government, and this right must be recognized (p.19)

RIGHTS OF TREATY FIRST NATIONS

- The spirit, meaning and intent of Treaties 8 and 11 must be recognized, upheld and protected, and the constitution should state that: (p.21)
 - the treaties deal with education, housing, health, economic development and state that taxes would not be imposed
 - the treaties guarantee rights to hunt, fish and trap without interference
 - the treaties were not land surrenders but agreements to share the land, air and water
 - the treaties established Band Councils as Treaty First Nations governments, and these governments are recognized as such
 - Treaty First Nations have the right to establish a justice system and code of ethics that embodies their traditions, cultures, values, customs, laws and institutions
 - Treaty First Nations will determine their own membership, which may include non-Dene

RIGHTS OF METIS FIRST NATIONS

- The aboriginal rights of the Metis First Nations must also be recognized, upheld and protected, and the constitution should state that: (p.22)
 - Metis have the same rights as Treaty First Nations to hunt, fish, trap and gather
 - Metis have the right to a land base equivalent to that offered under the failed Dene/Metis agreement, five square miles for each citizen
 - Metis First Nations have the right to exercise the inherent right of self government on their land base and to provide services to citizens not living on the land base
 - Metis First Nations have the right to set the rules under which citizenship will be granted
 - Metis are entitled to receive the same program benefits from the Government of Canada as Indians and Inuit, and to administer them through Metis First Nations governments

RIGHTS OF GWICH'IN AND INUVIALUIT FIRST NATIONS

- The Gwich'in Comprehensive Claim Agreement, the Inuvialuit Final Agreement and any future self government agreements negotiated with Canada should be recognized, upheld and protected in the new constitution (pp.23,24)
- In considering the rights of the Gwich'in and Inuvialuit, it must be noted that: (pp.23,24)
 - these agreements do not prejudice their rights as Canadian citizens or as aboriginal peoples within the Canadian constitution
 - they continue to be eligible for all the rights and benefits received by all other citizens and native peoples
 - they have the right to negotiate self government agreements with Canada
 - Gwich'in First Nations continue to hold many rights under Treaty 11

FUTURE RIGHTS OF ABORIGINAL FIRST NATIONS

- It is possible that First Peoples other than the Gwich'in and the Inuvialuit will reach land claim agreements or self government agreements with Canada in the future (p.24)
- All future agreements between Aboriginal First Nations and Canada on land and resources and self government should be recognized, upheld and protected in the constitution (p.24)

ORDERS OF GOVERNMENT: DISTRICT AND CENTRAL

- Aboriginal First Nations could exercise the right to establish an exclusive order of government in the new western territory and flexible arrangements will be necessary if people want to stay together under one government in one territory (p.25)
- The constitution should affirm that all authority to govern belongs to the people, collectively, and flows, collectively, from them to their institutions of government (p.25)
- An order of government does not exercise powers delegated from a superior level of government but rather exercises its own powers recognized in a constitution (p.26)
- The new western territory constitution should recognize different orders of government and their powers (p.26)
- In order to meet aspirations for more control and decision-making by Aboriginal First Nations, communities and regions, the constitution should establish a district order of government which may be public, exclusively aboriginal, or a combination of both (p.26)
- The district approach would provide more flexibility: (p.27)
 - present municipalities could remain as municipalities or municipal districts
 - communities could choose to amalgamate into a regional district
 - Aboriginal First Nations could create exclusive aboriginal district governments
- The people of a district must have a voice in determining whether the district government will be a public, exclusively aboriginal or mixed form of government (p.27)
- The geographic area of a district may include one or more established communities or municipalities within its boundaries, but must be a geographically contiguous area (p.28)
- District governments should encompass the entire geographic area of the territory (p.28)
- Communities may opt into a district government, have their own district government, or in the case of Aboriginal First Nations, opt out of the new western territory constitutional process and seek a direct link with the federal government (p.28)
- Participation in a district government would not prejudice the right of Aboriginal First Nations to negotiate with the federal government regarding their lands (p.28)
- The constitution should also establish a central order of government, for reasons of practicality and economy and to act as a force for the greater good of all residents (p.29)

DISTRIBUTION OF POWERS

- District governments would be responsible for making laws and administering programs, and not merely administering programs on behalf of the central government (p.29)
- Aboriginal governments and mixed aboriginal-public governments may have different lists of exclusive powers, and some district governments could negotiate different types of powers than others because of their location or other factors (p.30)
- The principle of asymmetry, or unequal distribution of powers, should be recognized as acceptable among district governments (p.30)
- District government powers could include, at a minimum: (p.30)
 - culture, recreation and language
 - education, training and upgrading
 - public housing and housing support programs
 - delivery of health care, social and child welfare services
 - tribal or municipal infrastructure
 - economic development
 - tribal and municipal administration of justice, police and corrections services
 - renewable resource management, agriculture and district parks
 - ownership and administration of lands and waters, including surface and subsurface title
 - wills and estates and solemnization of marriages
 - regulation of liquor and lotteries
 - official languages in addition to English and French
 - fiscal policy including property taxation and direct taxation except income tax
 - any other matters not specifically assigned to the central government
- The central government should be restricted to the following responsibilities: (pp.31,32)
 - fiscal policy and relations, including direct taxation
 - external intergovernmental relations
 - trade regulation and standards
 - transportation infrastructure regulation and standards
 - utilities regulation and standards
 - labour relations, labour standards and worker safety regulation and standards
 - education standards and post-secondary education facilities
 - health standards and territorial health facilities
 - building, construction and fire safety codes
 - securities regulation and incorporation of companies
 - police services and administration of justice including territorial courts
 - correction services standards and territorial correction facilities
 - land use and environmental protection standards and regulation
 - forest fire management and suppression
 - wildlife and marine mammal management standards
 - industrial and non-renewable resource development standards
 - standards for and regulation of professions
 - regulation of property and civil rights not assigned to district governments
 - other matters requiring territory-wide standards and regulation

DISTRIBUTION OF POWERS (continued)

- The constitution must allow districts to gradually assume increased powers while ensuring the central government can deliver programs and services during the transition (p.34)
- Provision should be made for the temporary assignment of authority to the central government by a district government, during the transition or at any time (p.34)
- Provisions to review and change the division of powers between the central government and any district at specified intervals (e.g. every 5 years) should also be considered (p.34)

TERRITORIAL-DISTRICT FISCAL RELATIONS

- All levels of government in the present NWT are dependent on federal transfer payments and have limited ability to raise significant revenues (p.33)
- The central and district governments will have to harmonize fiscal policy and relations through negotiated agreements for sharing financial resources (p.33)
- District governments may require more taxation authority, but there may also need to be limits on their borrowing powers (p.33)
- The constitution should state that each order of government will be assured an equitable distribution of financial resources in order to properly deliver programs and services for which it is responsible (p.33)

INSTITUTIONS OF GOVERNMENT

- District governments should have legislative, executive and, if necessary, judicial branches (p.35)
- Districts may wish to exercise some creativity in the form of these institutions, as district assemblies or traditional forms of government may be preferred in some districts (p.35)
- The form of each district government and the manner of appointment or election and terms of office would be set out in a charter attached to the new constitution (p.35)
- The central government should have legislative, executive and judicial branches (p.35)
- Models for these institutions require further study and discussion, but whatever form they take must reflect a balance among all the cultures of the new western territory (p.35)
- The Commission assumes the central government institutions will include a Legislative Assembly in some form, and may included other institutions such as a senate or council of elders (p.35)
- The matter of whether the new western territory requires a "Commissioner" or "Lieutenant Governor" and the duties and method of appointment also require further consideration (p.37)
- The name for such a chief executive officer for the territory should be taken from a First Peoples' language (p.37)
- An ombudsperson, to monitor and report on the Social Charter and regional disparities, would be a useful addition to the institutions of government in the central order (p.38)

THE RIGHT TO VOTE AND STAND FOR OFFICE

- The *Canadian Charter of Rights and Freedoms* guarantees to every citizen the right to vote in an election of members to the legislative assembly of a province or territory, and the right to be qualified for membership in the assembly (p.38)
- The option for traditional forms of representation should remain open, at least for district government, in accordance with the wishes of the residents living within a district's boundaries (p.38)
- The Legislative Assembly of the central government should be: (p.39)
 - representative of the residents of the new western territory
 - structured to ensure that First Peoples' representatives and non-aboriginal residents are present as members
 - representative of men and women
- A variety of models should be further considered to fulfil the goals of guaranteed representation of women and men and First Peoples and non-aboriginal residents, including the option of proportional representation (pp.39,40)

ENACTING AND AMENDING THE CONSTITUTION

- The present "constitution" of the NWT is the *Northwest Territories Act*, a federal statute which can be changed by the Parliament of Canada without the consent of NWT residents (p.40)
- Territorial jurisdictions and orders of government should be recognized and entrenched in the Constitution of Canada, with the new western territory constitution becoming a schedule to the Constitution of Canada (p.54)
- Amendment of the new western territory constitution should be under the exclusive authority of the people of the territory and subject to amending procedures established in the constitution (p.41)
- The First Nations, the central legislature or district governments should be able to initiate a constitutional amendment (p.41)
- The constitution must identify amendments which require the consent of Aboriginal First Nations, district governments, and the central legislature (p.41)
- The constitution should guarantee a public information and consultation process on all amendments, including a definition of those amendments which will require public support through a referendum or plebiscite before ratification by the central legislature (p.41)
- The central legislature should be the final authority for passing amendments to the new constitution, subject to the veto powers of Aboriginal First Nations, district governments and the central government (p.42)
- Treaty First Nations believe they must consent to any new western territory constitutional amendments through their own ratification process, such as by an assembly or on a band-by-band basis (p.42)

RATIFYING A NEW WESTERN TERRITORY CONSTITUTION

- The ratification process for the new constitution should: (p.53)
 - provide for the consent of Aboriginal First Nations
 - guarantee a public information and consultation process
 - provide for approval by New Western Territory residents in a plebiscite or referendum

CONCLUSION

- The Commission consistently heard that there is an urgent need for constitutional reform in the new western territory (p.54)
- The Commission has attempted to show that reform is possible and practical (p.54)
- These proposals represent what may be the last effort to accommodate public government combined with aboriginal government in a new western territory (p.55)
- If something similar to the district government concept cannot be made to work, public government on a territory-wide basis may be a thing of the past (p.55)
- The members of the Commission are confident that the next phase of the public process of constitutional development will provide the people of the new western territory with a workable, affordable and acceptable constitution (p.55)