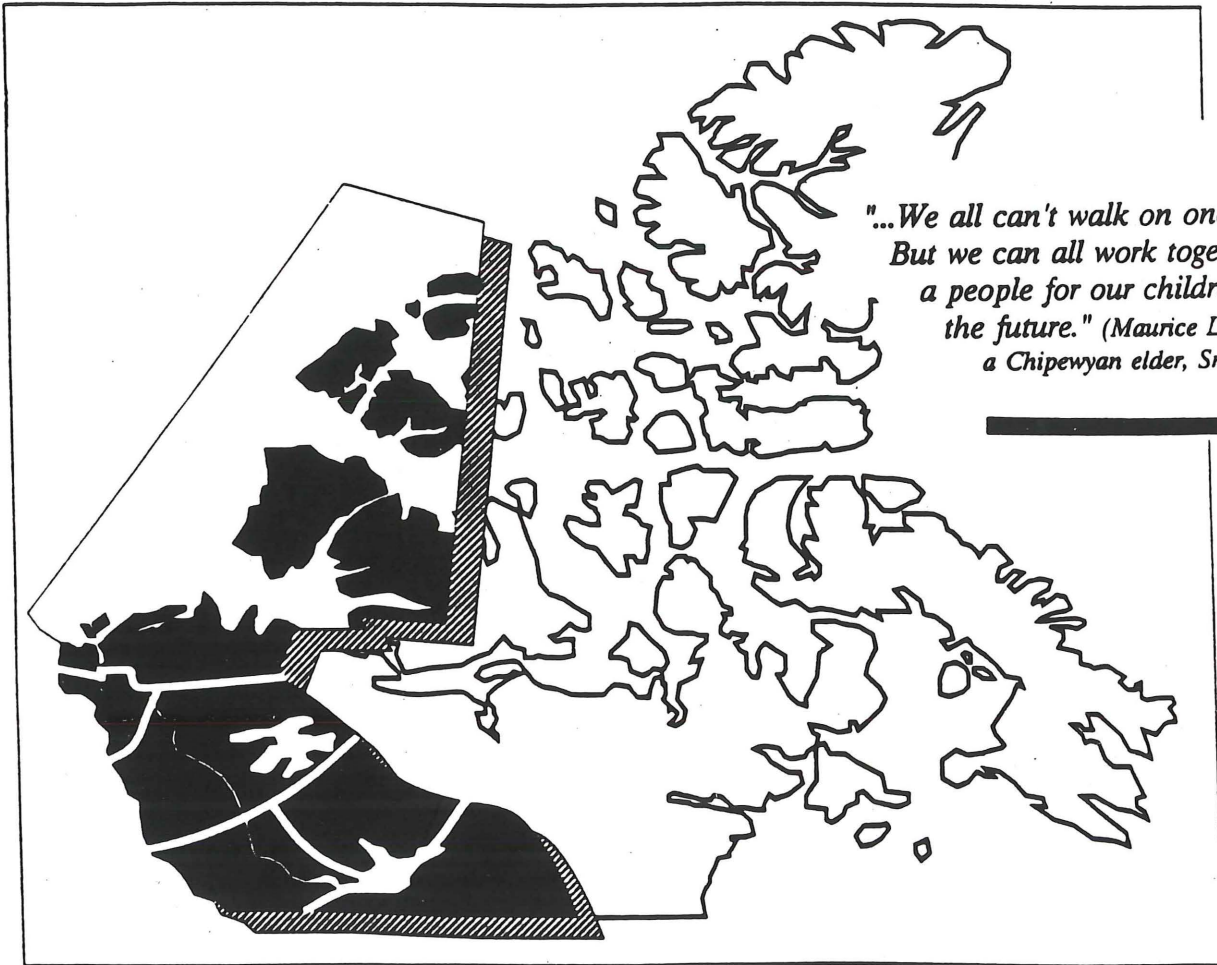


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# INTERIM REPORT



**COMMISSION  
for  
CONSTITUTIONAL DEVELOPMENT**





**COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**

**INTERIM REPORT**

**February 1992**

**We all can't walk on one path.  
But we can all work together  
as a people for our children  
and the future. (Maurice Lockhart,  
a Chipewyan elder, Snowdrift)**





COMMISSION FOR  
CONSTITUTIONAL  
DEVELOPMENT

February 1992

FOREWORD


This report is about the creation of a constitution for a new territory that we refer to as the New Western Territory. The peoples living in the New Western Territory are aboriginal and non-aboriginal northerners.

The aboriginal people are the Inuvialuit, the Gwich'in, the Hare, the Slavey, the Tli Cho, the Chipewyan, the Cree and the Metis. They have organized themselves into four national groups: the Inuvialuit, the Gwich'in, the Dene and the Metis and we refer to these four groups as the First Nations. Each First Nation has its own values governing relationships within their nation and the natural order. Each also has values governing relationships with other peoples and nations, the rest of Canada and the world.

The non-aboriginal northerners have been and will continue to be an essential element of the fabric of our society. Their population reflects the rich cultural and ethnic diversity of Canada and the world. They are also committed to our collective future.

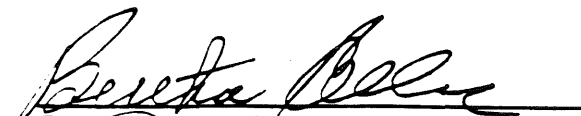
In the words of Maurice Lockhart, we cannot all walk on the same path, but we can work together to build a better future for the New Western Territory. The Commission believes that there is an unprecedented opportunity which exists to create a new relationship between the First Nations and non-aboriginal northerners who choose this land to be their home.

The Commission thanks all the people who have given us their vision of the future. This work would be impossible without their contribution.

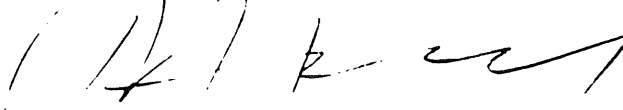
  
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## I. INTRODUCTION

The recent history of constitutional development in the Northwest Territories is closely connected to the federal policy to settle land claims, and the demands for self-government by First Nations. The Inuvialuit were the first to settle a land claim in the Northwest Territories in 1984. Since then the Gwich'in have ratified an agreement that will soon be approved by the Parliament of Canada. No self-government agreements with First Nations have been reached thus far.

The Inuit of the eastern and high arctic have negotiated an agreement that includes a provision to divide the present Northwest Territories so a government can be established for the Inuit Homeland. This has been accepted in principle by the governments of Canada and the Northwest Territories. This means that the western portion of the present Northwest Territories also would become a new territory. This development is consistent with the last 120 years, in which the geographical boundaries of the Northwest Territories changed numerous times in response to constitutional and geographic evolution of the provinces and Yukon.

At the national level, discussions on constitutional reform have produced proposals which could affect the evolution of both public government and aboriginal self-government in the north. This has created a momentum by which First Nations may achieve the recognition of their inherent right to self-government. At the territorial level, this could be expressed in forms of government and decision-making which reflect the traditional leadership that existed before the arrival of a foreign system of government.

These developments and the ongoing need to develop constitutionally-based government in the Northwest Territories, provide an opportunity for constitutional reform that may achieve aspirations of both First Nations and non-aboriginal northerners. Recognizing this opportunity, the political leadership of what will become the New Western Territory decided that a constitutional proposal should be developed in a public process led by a Commission of individuals who have the trust and confidence of the distinct elements of New Western Territory society.

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*"I welcome the opportunity to see a government formed for the Northwest Territories, and I support a good deal of what I hear by the aboriginal people asking for self-government. I don't oppose that. But I think it's got to be a two-way street. I think we all got to participate."*

*<R. McBryan, Hay River>*

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*"There is little doubt that the Northwest Territories is facing tremendous changes which include changes to government."* *<Donald Patterson, Mayor, Inuvik>*

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*"...the core of...constitutional development...is how people live together and how we protect what we have."*  
*<Dennis Bevington, Mayor, Ft. Smith>*

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Membership on the Commission includes individuals nominated by the Inuvialuit, the Dene Nation, the Metis Nation, the Government of The Northwest Territories, and the western members of the Legislative Assembly. All members were endorsed by the political leaders. The chairperson to the Commission was chosen by consensus of the political leaders. (See Appendix One for membership).

In establishing the Commission, the political leaders assigned several tasks. The first was to review the work done by others, including the Western Constitutional Forum, to identify what could be useful today. A public discussion paper was to be prepared which reviewed previous efforts at constitutional reform for the New Western Territory, posed questions and presented ideas for consideration and discussion.

The Commission was also charged with consulting the public during its work. To assist the public response, the Commission provided funds to public interest groups that represent constituencies of interests and governments. The paper, "How Can We Live Together" was prepared and circulated widely. This paper was discussed and reviewed by First Nations, local governments and community, regional and Territorial interest groups in preparation for public hearings. Hearings were held in 12 communities. (Appendix Two).

Hearings were held in most high schools in the New Western Territory to hear from those most likely to be affected by results of constitutional reform. The Commission also heard from the physically disabled, senior citizens, organized labour, francophones, environmentalists, womens' groups, chambers of commerce, a political party and many private individuals. In all, a total of 123 persons appeared before the Commission to express their views. The Commission received 39 written submissions in public hearings and 6 people submitted written briefs that were received by mail.

This interim report summarizes the results of this effort and the work done for the Commission by a team of legal and constitutional advisors. The purpose of this report is to confirm the views of

the people on the principles that should guide constitutional development, and to integrate these views into statements of principle for public discussion.

After another round of public consultations and hearings in February, March and April the Commission will present its findings and recommendations in a report to the political leaders in late April 1992.

That report will conclude Phase I as described in the Commission's Terms of Reference (Appendix Three). The principles proposed must then be developed into a detailed proposal which is described in the Terms of Reference as Phase II. It is not known at this time whether or when Phase II will proceed.



## II WHAT WE HEARD

### 1. INTRODUCTION

While the Commission's mandate directed serious consideration be given to recommendations from groups such as the Western Constitutional Forum and technical advice from experts, the primary source of our ideas, advice and inspiration has been the people of the New Western Territory and the governments and organizations which represent their current interests and future aspirations.

For three weeks in November and December, the Commission held public hearings in the capital city, regional centres and communities like Snowdrift, Tuktoyaktuk, Fort Good Hope, Fort McPherson and Rae. Band Chiefs, Metis Presidents, Mayors, Members of the Legislative Assembly, presidents of aboriginal, regional and tribal councils, and representatives promoting environmental, business, social, labour, senior's, and women's issues appeared before the Commission. Most important, elders youth and concerned men and women from all the communities and regions and representing a wide range of perspectives took the time to prepare presentations and offer their views on the constitutional future of the New Western Territory.

The hearings were assisted by the discussion paper which the Commission distributed in October, 1991. Even though the subject of a constitution is complex and hard for some people to understand, all presentations addressed, in some way, the basic elements which are common to constitutions in Canada and other countries.

Very briefly, these include:

- a definition of the jurisdiction and people to be governed by a constitution;
- a statement of their unique and shared experiences, values, interests and aspirations;
- the kinds of institutions which will make laws, decisions and settle disputes;
- the ways authority and responsibility are divided among these institutions;
- how people are appointed or elected to

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*"... constitutional development is an issue that goes beyond culture and society into your relationship with the land; and, I think, in the north that must be a large part of the constitutional development;" <Dennis Bevington, Mayor, Ft. Smith>*

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*"We should remember what our ancestors have done for us to get us where we are today. Our people used to walk this land with only their legs and they worked hard. We know our trails, our past, good hunting and fishing areas." <Alexie Arrowmaker, Rae>*

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*"Finally on the question: How do we live together? I would like to say that we have compromises by all parties. The other note here I have is a fair and equitable chance to participate in any governing body, and that no other group should have an advantage over another..." <Jean Lafferty, President, Metis Local, Ft. Simpson>*

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- serve in these governing institutions; and
- the way a constitution is changed or amended.

This chapter provides a brief overview of what the Commission heard from the general public and representatives from bands, Metis locals, municipal governments, women, aboriginal organizations and special interest groups. While this report cannot provide a detailed examination of all the ideas and recommendations received by the Commission, a summary has been prepared and is available on request.

## 2. WHO ARE THE PEOPLE OF THE NEW WESTERN TERRITORY?

We heard many different views on what is both unique and common to the people who, under a new Constitution, will come together to establish a new territory. It should come as no surprise that the need to recognize the diversity of people in the New Western Territory was one of the most prominent themes, particularly among First Nations.

### First Nations

It was made very clear in all hearings that while First Nations recognize the need to work collectively at the national and territorial levels, they primarily see themselves as distinct nations whose history, values and traditions have been shaped by a number of different experiences, both historical and contemporary.

The Dene Nation cannot be simply defined or described as the Treaty Dene who have inhabited lands around the Mackenzie Valley and Great Bear and Great Slave Lakes. The Dene describe themselves, their history and experience as originating from their being Cree, Chipewyan, Dogrib, Hare or Slavey, who have collectively owned and occupied distinct tribal regions of the New Western Territory.

The Gwich'in define themselves as a nation of people from the Peel River and Mackenzie Delta and adjacent lands who have a distinct language and culture.

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*"I say that you are the wrong people at the wrong time and using the wrong approach. And I don't blame you for this. In other words, you're doing what you were asked to do. If there's blame, I blame the people who sent you, because there's a serious question of mandate." <Bob MacQuarrie, Yellowknife>*

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*"...we're talking about the future here, the future of the Northwest Territories and of Canada, and I mean the youth are the future, yet I see no youth on the council." <Bob Taylor, Yellowknife>*

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*"...the western Northwest Territories is made up of many different societies, "distinct societies," to use a phrase which has become very familiar over the past few years, and these societies believe strongly in their right to remain distinct...Furthermore, the question of what it means to live with one government is the key to the problem of reconciling aboriginal and Eurocanadian traditions. In any case, for us there is no question about continuing to live together. The aboriginal nations of Canada have lived together for many thousands of years, and we will continue to do so. We have nowhere else to live. This is our home. So the best answer we can give is, yes, we do want to live together: but as a cooperative federation of societies with strong and self-governing communities who have reached a common understanding. Reaching that understanding is what we understand the constitutional development process to be." <Henry Zoe, MLA, North Slave>*

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Similarly, the Inuvialuit, who express a strong regional affiliation with the Beaufort Sea and the Mackenzie Delta, acknowledge differences in culture and experience between themselves and the Inuit of Nunavut. The Inuvialuit also bring to the New Western Territory the one land claim which has been settled and implemented.

The Metis Nation also sees itself as unique and distinct, although regional allegiances are not as pronounced in this community of New Western Territory residents. Metis still face many challenges in having their aboriginal rights to a land base recognized and in achieving recognition and status similar to the Dene.

Given their status as the peoples who first inhabited the New Western Territory and the historical and contemporary experiences which have shaped their cultures, values and aspirations, it should be expected that First Nations will be accorded special recognition when developing the New Western Territory Constitution.

#### Non-Aboriginal Northerners

The New Western Territory is also home to a large number of residents who are not of aboriginal background, but who have been, and will continue to be, an essential part of the human fabric of our new territory.

In some presentations, what the Commission heard from these residents represented cultures, traditions and experiences different from those of First Nations. For example, we heard that in a New Western Territory Constitution all residents should be treated equally, with no special recognition given to First Nations.

On the other hand, we heard from many non-aboriginal northerners who encouraged recognition of First Nations in our Constitution along with other Canadians who have been part of our history and who will continue to be part of our new territory. The Francophone community made a strong representation to this effect.

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*"The Metis people in this community are a minority. All I would like to say is that we are asking for a level playing field where all rights are respected. We would also like to get the majority to recognize Metis rights are equivalent to theirs." <Jean Lafferty, Metis Local, Ft. Simpson >*

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*"It's not only Treaty persons that are looked on as First Nations. Non-status and Metis people are aboriginal people as well, and are part of the history of this country, and are recognized in the Canadian Constitution as aboriginal people. So in terms of developing the constitution that we are looking at in the western Territory, I think we have to recognize that there are aboriginal people of different classifications that have to be respected. So historical fact has to be respected. Not just the Treaties, but that there were people here originally that have inherent rights. Inherent rights are not just applicable to Treaty people. They're applicable to all native people ... " <George Kurszewski, Ft. Smith >*

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*"...the government must also give guarantees that the aboriginal people and the francophone people will be able to establish and administer their own educational institutions and community institutions." <Dianne Mahoney, President, Federation Franco TeNouse >*

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*"Persons with disabilities must be included in the social, political and economic mainstream through the removal of barriers. These barriers can be physical, attitudinal or systemic." <Dale Robinson, Executive Director, NWT Council for Disabled Persons >*

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It was apparent from many presentations by non-aboriginal northerners that they shared with aboriginal witnesses many common goals and concerns about the environment, the work place, the family, the disabled, the economy, gender equality, social welfare, health and housing -- to name but a few topics.

While it may not be accurate to describe non-aboriginal northerners as a "nation", they clearly demonstrated to the Commission that they have a stake in the future of the New Western Territory and a strong commitment to compromise and consensus with the First Nations in this constitutional development exercise.

These founding nations, including non-aboriginal northerners, have different historical experiences, cultures and traditions. Although defining "who we are" involves looking at all the factors which make us different and distinct, presentations to the Commission suggested that there is also a common desire to build a New Western Territory based upon respect, tolerance and common goals and aspirations.

We heard that it is fundamental to define the people of the New Western Territory; from this flows the history, values and aspirations which a constitution must reflect back to the society it represents. These characteristics form the foundations of the framework for the rules that make it possible to live together in harmony and to pursue common aspirations.

### 3. WHAT DO WE HAVE IN COMMON WITH EACH OTHER?

This section identifies the major themes and issues which are important to all residents of the New Western Territory, whatever their racial or cultural background or specific interest in our Constitution.

#### Recognition and Respect

The Commission heard that a community of people as diverse as we have in the New Western Territory can only coexist and prosper on the basis of recognition of our differences and respect for how these unique characteristics will be reflected in our Constitution, laws and government institutions.

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*"...and let us remember that we are all part of a larger whole - a larger dream. I know more than most that we - The Metis - have suffered by rejection from Canada. But the Metis believe in a higher Canada. Our Canada is one that is Metis - a new nation that accepts, embraces and enjoys its birth from Indian hearts, French voices, English ways and immigrant dreams."* <Gary Bohnet, President, Metis Nation>

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*"The most beautiful words in the English language, one which Martin Luther King often was quoted, are what I would strongly suggest you incorporate into your proposed constitution: "We hold these truths to be self evident...that all men are created equal..."* <Ter Hamer, Yellowknife>

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*"The project, this new constitutional development project, must insist on harmony between the different peoples of the Territories and between the different linguistic communities. A new constitution for the western Arctic will also have to insist on the distinct characters of the different communities and people found in the north, and it will have, also, to include for those communities-the French, English, and native communities."* <Dianne Mahoney, President, Federation Franco TeNoise>

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*"We believe it is for the aboriginal people to put forward the correct definition of self-government for the aboriginal people."* <Dianne Mahoney, President, Federation Franco TeNoise>

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### Interdependence

We also heard that our small population and the common challenges we face means all residents of the New Western Territory must recognize they have a common purpose in promoting the sharing and equality of opportunities and access to resources, including provision of programs and services to meet our population's basic needs. With few exceptions, presentations which focused on this issue emphasized the importance of the mental, physical, social, economic and material well-being of all residents of the New Western Territory.

### Elders, Youth and the Family

Another theme which surfaced in community hearings was the significance of elders, youth and the family to the social fabric of a New Western Territory. Elders must be respected for their wisdom and experience and ensured a prominent role in our institutions of government. The youth who will live with the results of our decisions must be encouraged to remain active in the constitutional building process as well as preparing themselves for future leadership roles. The family remains as the most basic and fundamental unit where values, traditions and experiences are nurtured and passed on to the next generation.

### The Land and Indigenous Knowledge

Residents of the New Western Territory also demonstrated a common attachment to and respect for "the land", which is understood to include the oceans of the Beaufort, the onshore lakes, rivers, lands and all of their resources. Whether aboriginal

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*"The first question your Commission has asked is whether we can live together. The one answer we get in unanimous terms is that we not only can but we must live together in consent and in respect for each other's rights and needs. So our answer is, yes, we can live together. But more, our answer from a Metis perspective is that we have no choice; we are defined by each other. We have no alternative but to live with and through each other." <Gary Bohnet, President, Metis Nation>*

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*"Further, we call for increased education concerning issue of violence against women, increased training for medical, legal, judicial and educational professionals, and public education initiatives across the community as a whole. Education will be a critical part of raising awareness and changing attitudes, and thus moving us in the direction of ending violence against women in all its manifestations. Violence continues to be the number one concern of many women in the New Western Territory." <Winnie Fraser, Status of Women Council>*

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*"And most of us here, we're environmentalists, and the environment is high on our list, be it the Japanese dumpsters pouring their garbage into our rivers flowing up here, or be it...The Chernobyl accident in the Soviet Union, the radiation fell here. It's that type of environmental concerns that we have...Can we be assured that, no matter which environmental problem may arise in the next hundred years, that the upcoming constitution will deal with that effectively?" <Student, Ft. Smith>*

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*"...the right to a healthy environment be identified as a statement of principle, and be entrenched in a Charter of Rights for the western Northwest Territories." <Ted Buracas, Ecology North>*

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or non-aboriginal, residents of the New Western Territory identified "the land" as something we have in common. From this shared relationship with our natural environment flows the importance of the knowledge which living close to nature brings. Indigenous knowledge -- the experience and respect we develop from our day-by-day association with the land -- is a feature we all share as residents of the New Western Territory. Historically, the relationship between First Nations and the land was that of caring, sharing respect and acceptance. From time immemorial, living harmoniously with creation has sustained First Nations in spirit, mind and body.

#### Democratic Traditions

The Commission also heard about the importance of democracy, particularly in terms of the need to ensure that our institutions of government, whether local, regional, territorial, or aboriginal, reflect the law-making traditions and experiences of the New Western Territory population. In different ways, witnesses stressed the importance of community and First Nations' involvement in decision-making, the need to develop consensus as part of the decision-making process, and the role which both individuals and groups have in determining how decisions are made.

#### Source of Government Authority

The final common theme which the Commission heard relates to where governments in the New Western Territory obtain their authority to govern. Without exception, witnesses stressed that the authority of existing governing institutions, including band councils, Metis locals, municipal governments and the territorial government is granted by the people for whom they govern.

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*"The overwhelming majority of seniors in the Northwest Territories have incomes that are below the poverty level. Although this is not a mandate of this Commission, I believe it is still clear to us that an overhaul of the current income security system in Canada and in the Northwest Territories is long overdue."* <Dusty Miller, NWT Seniors Society>

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*"We believe that elders in the native communities provide a rich testament to the culture and social values of their people. In addition, seniors who have come north to contribute to the development of the Northwest Territories have also provided a foundation of historical importance to the development of northern society. Their contributions are the cement upon which nation-building is constructed."* <Dusty Miller, NWT Seniors Society>

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*"As aboriginal peoples, the role of the woman has been a very important role. The woman is the lifeline of the family, the community, and therefore the Nation."* <Bertha Rabesca, Youth Group, Rae>

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*"Woman is the centre of the wheel of life. She is the heartbeat of the people. She is not just the home, but she is the community. She is the nation, one of our grandmothers. The woman is the foundation on which nations are built. She is the heart of her nation. If that heart is weak, the people are weak. If that heart is strong, and her mind is clear, then the nation is strong and knows its purpose. The woman is the centre of everything."* <Addena Freitag, Rae>

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*"...We within our Inuvialuit system right now have taken into account a lot of the wishes of our elders. In other words, we get some guidance as to what it is we should be doing...If it wasn't for our elders, some of whom are sitting here today, laying claim to our land by way of hunting, trapping, and fishing, we wouldn't have a land claim settlement today. So we respect their rights. We also respect their judgment in certain areas, but I wouldn't go so far as to say that they will be an all-governing body in the western Territory and be the final approval authority on issues regarding the western Territory. In other words, there is a certain place for them within the workings of the government. If that place be in a constitution, let's put in there and let's recognize it, but there is a place." <Roger Gruben, Chairman, Inuvialuit Regional Corporation >*

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#### 4. RECOGNITION OF ABORIGINAL AND TREATY RIGHTS

In their presentations to the Commission, First Nations described how their rights come from one fundamental source and how they made Treaties and entered into agreements with governments to establish and protect these rights.

The fundamental historical source is that First Nations collectively owned and occupied their lands and were self-governing before the arrival of the Europeans.

##### The Royal Proclamation, Treaties and Claims Settlements

Over the past 300 years, governments have attempted with some degree of success to define their relationships with, and the rights of the First Nations. For example, the Royal Proclamation of 1763 is understood as a document which clearly recognizes the "nation" status of the aboriginal inhabitants of what is now Canada. Treaties signed with the Government of Canada by the Dene in 1899 and the Dene and Gwich'in in 1921 are understood to be nation-to-nation agreements of peace, friendship and a desire to share the land and its resources.

More recently, some First Nations have further defined and protected some of their rights through land claims agreements with the Government of

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*"A senate of elders could give advice and ensure that an aboriginal model is adhered to, should be established. The make-up number of elders would be dependent upon a community, group of communities, or regions, and what model they choose to incorporate." <Bertha Rabesca, Rae >*

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Canada. Aboriginal and treaty rights are recognized in the Constitution of Canada. Other rights, particularly those which relate to the inherent right of aboriginal people to self-government are currently being pursued through the national constitutional reform process.

#### Aboriginal and Treaty Rights in a New Western Territory Constitution

Given these circumstances, the Commission heard that a New Western Territory Constitution must recognize existing aboriginal and treaty rights and make allowances for the recognition of additional rights which may be realized in future claims agreements, court rulings and recognition of Treaties.

Particular emphasis was given to:

- \* the right to a collective land base;
- \* the right to hunt, fish, trap;
- \* protection of aboriginal languages and culture;
- \* aboriginal institutions and ways of making laws; and
- \* guaranteed representation in law making institutions.

There was nearly unanimous agreement from both aboriginal and non-aboriginal witnesses that the inherent right to aboriginal self-government must be recognized in a New Western Territory Constitution, whatever the outcome of national constitutional reform.

The general view of First Nations that traditions of both aboriginal and public government institutions could be combined to create a unique form of government was of particular interest to the Commission.

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*"The Indian Government in a way, I guess, up here, the Federal Government has to recognize again that there already is a government here. There is a system of government. Through the treaties you know there is a recognition. You know there is a nation, but somehow the government has to define that, that there is a nation up here." <John Catholique, Snowdrift>*

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*"...a social charter must be incorporated into a new constitution. It must contain several types of guaranteed rights. First, it was felt there must be the right to quality childcare and eldercare...Health care should be guaranteed under the constitution." <Bertha Rabesca, Rae>*

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*"...although the Inuvialuit Regional Corporation supports the recognition in Canada's Constitution of the inherent right to aboriginal self-government, at the same time we are continuing to pursue the achievement of self-government in the Western Arctic through a restructuring of public government." <Roger Gruben, Chairman, Inuvialuit Regional Corp.>*

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*"I believe that aboriginal people should have guaranteed representation in all government bodies, and a level of representation must be determined by the requirement to protect our aboriginal rights." <James Christie, Metis Local, Ft. Providence>*

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## 5. INDIVIDUAL AND COLLECTIVE RIGHTS

The Commission also heard from a diverse cross section of witnesses about basic rights which should apply to all residents of the New Western Territory. Some of their recommendations identified rights that should be legally enforceable by the courts. Other proposals focused on what is necessary to maintain our northern lifestyle or quality of life.

### Rights of All New Western Territory Residents

The Canadian Constitution's Charter of Rights and Freedoms was the source for a number of rights and freedoms which residents felt should be reaffirmed in a New Western Territory Constitution. These include:

- equality of women and men;
- the right to vote in elections;
- the right to run for office;
- the right to live and gain a livelihood in any part of the New Western Territory;
- the right to life, liberty and security;
- legal rights respecting treatment by the law and the courts;
- the right to equality before the law;
- freedom of speech and association;
- the use of the French language;
- freedom from discrimination.

### Other Individual or Group Rights and Values

The Commission also heard recommendations on a number of important rights and values which could represent both legally enforceable rights, or values and objectives that should guide our governments in their decision making.

For example, some individuals and organizations advocated that a New Western Territory Constitution should include a "Social Charter" which focuses on the mental, physical and material well-being of our residents. While there is no consensus on whether the provisions of a Social Charter would be legally enforceable rights, there was general agreement that a Social Charter should address the following:

- education and training;
- health care;
- social services;

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*"...Collective rights for aboriginal peoples can be extended beyond the present limited scope to include some means of safeguarding identity, some means for effectively voicing collective interests, and some means of limited collective actions. But the end result will be, and must be, considerably less than what might be claimed under a general and theoretical 'right to self-determination'...The result must not exceed what the country can bear in terms of costs, of proliferating institutions, of duplication of programs...of erosion of public government authority, of erosion of the principle of individual equity, of strains on social relationships..." <Bob MacQuarrie, Yellowknife>*

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*"Individual rights are the most fundamental of rights. Collective rights can have no meaning unless individual rights are first acknowledged." <Bob MacQuarrie, Yellowknife>*

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*"We propose that a Social Charter recognize that persons have the right to accept or refuse services that may prolong life." <Dusty Miller, President, NWT Seniors Society>*

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*"The YWCA endorses the right of women to social, political and economic equality. This includes the recognition of work performed by women in the home. As a way of guaranteeing greater economic equality of women, the YWCA supports the right of women to an adequate level of support in their retirement years. Women often work in part-time jobs, have breaks in employment, work as homemakers, or work in jobs which do not have pension benefits. Women face a double burden as they spend hours in the household and on the land...These factors create a need for greater support of women in their retirement years." <YWCA, Yellowknife>*

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- \* equality for economic opportunity;
- \* housing;
- \* safety at the work place;
- \* support for elders;
- \* sobriety;
- \* freedom from violence;
- \* support for the family;
- \* cultural and linguistic development;
- \* love, happiness and romance.

The need to recognize the significance of our natural environment was also emphasized. A recommendation was made that an environmental charter or code may be the best means to address this issue in our Constitution.

## 6. GOVERNMENT STRUCTURES AND POWERS

If a group of people are to live and develop together, there must be a way in which the group can decide on what needs to be done, a way to turn the decision into action, and a reasonable and fair way of preventing or resolving disagreement. These mechanisms existed for thousands of years among First Nations.

The public had many comments about the current system of government in the Northwest Territories - what they like and do not like. They also had suggestions for what could be done to make it work more effectively.

### Community and Band Government

A common theme with some Mayors, Band Chiefs and Metis Presidents was the need for greater decision making and control over the delivery of programs at the local level, recognizing that the powers may vary from community to community because of differing priorities and the ability of residents to deliver these programs.

The Commission also heard about the ongoing importance of the Chiefs and Bands Councils. Even though municipal government has been in place in communities for almost two decades, some community members still look to the local Chief and Band Council as the legitimate governing body. Some communities such as Fort Good Hope have developed new approaches which effectively incorporate both the municipal and band government structures.

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*"At a minimum the equality rights granted to women in the Charter of Rights and Freedoms should be protected." <Winnie Fraser, Status of Women Council >*

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*"It is emphasized that this guaranteed representation in the Constitution would be based on a geographical and not a racial or cultural basis." <Roger Gruben, Chairman, Inuvialuit Regional Corp. >*

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*"The new territory should accommodate equal rights of all citizens and distinct rights of aboriginal peoples in all levels of government; central, regional, and local. Yes, this means some form of guaranteed representation. What this form of guaranteed representation would look like would naturally depend on the form of government that is established in the new western Territory. There are multiple considerations that must be reviewed in order to properly outline what form of guaranteed representation aboriginal people will have in the new government. Our position, however, is that the term "guaranteed representation" means "Metis representation"." <Gary Bohnet, President, Metis Nation >*

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*"Because of the impact on aboriginal peoples, rights, and cultures of potential immigration, guaranteed representation in all levels of government is mandatory." <Gordon Lennie, Vice President, Metis Nation >*

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*"As a high point, we agree that aboriginal people must have guaranteed representation in all governing bodies in the western Northwest Territories." <Alice Horsnel, Metis Local, Hay River >*

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*"...we propose a simple test for government, the 3-C Test...A government's interaction with its citizens must*

Some Mayors and Chiefs recommend that municipal and band governments should be recognized and entrenched in a New Western Territory Constitution and that their powers should be defined as well.

### Regional Government

Given historical and demographic realities and the current approach toward regional claims, the Commission heard about the increasing trend toward regionalism in the New Western Territory.

The Inuvialuit, Tli Cho Regional Council, Town of Inuvik, and Hay River Metis Local all expressed a desire for more decision-making and program delivery at the regional level. While proposals vary from region to region, the most advanced recommended that a New Western Territory Constitution recognize the existence of a regional level of government. This proposal, presented by the Inuvialuit, included a list of powers which the region could exercise.

*be consistent, coordinated, and culturally relevant; and the structure of government should reflect these principles." <Henry Zoe, MLA, North Slave >*

*"The powers of the communities should be entrenched in a northern constitution." <Student, Inuvik >*

*"At one time, the community was totally operated by the Chief and Band Council which called meetings to discuss issues and seek consensus on the solutions to community problems. The Band Council and the Metis Local are looked upon at the moment and still looked upon and respected by the community membership. In fact, these bodies are fully conscious of the membership's voice and account for their actions on a regular basis." <Ernest Firth, Metis Local, Ft. McPherson >*

*"The Town of Inuvik agrees in principle with the Inuvialuit proposal for a regional government...the Town of Inuvik will work with the Inuvialuit to develop legislation and policies for a regional government." <Donald Patterson, Mayor, Inuvik >*

*"We have proposed that self-government in the Western Arctic be achieved through public government institutions. Our preference for public government lies in the belief that all residents of the region can work together more beneficially and cost efficiently as a regional community. However, if necessary, we will exercise our constitutional right to aboriginal self-government in the future." <Roger Gruben, Chairman, Inuvialuit Regional Corp. >*

*"In brief, a public government for the Western Arctic region would be more efficient, simpler, more equitable, and ultimately better government for all residents." <Roger Gruben, Chairman, Inuvialuit Regional Corp. >*

*"What we want is our form of government that we understood before, where there was respect, and the leaders were chosen not because they were popular, because they were sensitive towards the needs of its people." <J.B. Zoe, Rae >*

### Central Level of Government

The ideas and recommendations outlined above reflect the view of many witnesses that the authority and responsibility of governments flows from First Nations and the community level. This is the reverse of our current system where the central level establishes and defines the powers of other levels of government.

Nevertheless, the Commission heard that an effective central level of government is necessary, although opinions varied on its structure, composition and powers. Many First Nations focused on the need for some form of guaranteed representation in the central law-making institutions of government. Women proposed guaranteed representation on boards and agencies. Recommendations also were made on the establishment of an upper chamber, composed of elected or appointed representatives, with an absolute or suspensive veto over some of the laws made by the central legislative body.

### Aboriginal Self-Government Structures

Some First Nations made it clear that if interdependence between aboriginal and public government could not be achieved, they would pursue separate agreements with the Government of Canada.

## 7. APPROVING AND AMENDING THE NEW WESTERN TERRITORY CONSTITUTION

We have learned from events at the national level, that the process of approving and amending a constitution is almost as important as the contents of a constitution. Indeed, if special attention is not given to these matters at the outset, differences of opinion about process could sidetrack us even though there may be general agreement on the Constitution itself. Procedures for approving and amending the New Western Territory Constitution must ensure that the final product has the general support of the public.

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*"We don't want to give anything up that we had before, but basically to change what is existing now to reflect what is in the past." <Alexie Arrowmaker, Rae>*

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*Implementing the self-government proposal in Fort Good Hope could possibly be done without major obstacles as the Dene Community Council is the major governing body whereas in Fort Norman one has to take into consideration three (3) political bodies -- the Hamlet Council, Band Council and the Local Metis Association which currently operate independently of each other. <Sahu Tribal Council>*

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*"I guess we're, bottom line, talking self-government, if you want to call it that. But locally, I think that we should take over more government programs. I don't say we can do it overnight, but I so say we can handle a justice system. We can handle social services. We can have a bigger say in education. We definitely could take over the management of the housing situation on a local level." <Ernest Firth, Metis Local, Ft. McPherson>*

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*"It is all right to say that we are going to have self-government in two years or ten years down the line, but we have to develop our people in terms of training, or education; because what good is a government, if we don't have any people to run it." <Jim Thom, Ft. Providence>*

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*"It may seem impractical to give the Metis self-government at the community level where they have a small population at the present time, but that option must exist for the future." <James Christie, Metis Local, Ft. Providence>*

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*"...instead of always answering to the government in Yellowknife, I think it would be better if they worked towards being a self-government." <Bernadette Lockhart, Snowdrift>*

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While the Commission did not receive a large number of submissions on issues of process, a number of witnesses identified the need to use either referenda or plebiscites for approving and amending a New Western Territory Constitution, with certain reasonable limits and safeguards. Other proposals said that approving and amending the Constitution should require First Nations' consent.

The Commission was urged to consider the important role that a constituent assembly or constitutional convention could play in further developing a comprehensive constitutional package and recommending it for approval by the general public, as is contemplated in Phase II of the Commission's Terms of Reference.

## 8. PROVINCEHOOD

With a few exceptions, the issue of provincehood was not addressed in presentations to the Commission. Some witnesses recommended that political and constitutional development of the New Western Territory should be similar to that of the provinces and that eventually, the New Western Territory should be formally recognized as another province within the Canadian Confederation.

Others presented a strong case to continue developing our own unique Constitution and system of government and settling and implementing land claims and treaties before addressing the issue of provincehood. They suggested that provincehood could change the fiscal relationship between a new province and the Government of Canada and that this might affect the level of programs and services provided to its residents.

Overall, the Commission heard that a cautious approach should be taken on provincehood, and that other options should be explored in terms of enhancing our territorial status in Confederation and making sure that our governments have sufficient resources to operate and provide programs and services to New Western Territory residents.

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*"It is a policy of the national Party to allow the Northwest Territories self-determination with respect to provincehood." <Len Jason, Reform Party of Canada>*

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## 9. NAMING THE NEW WESTERN TERRITORY

In its discussion paper released last fall, the Commission asked residents of the New Western Territory to think about a name for the new jurisdiction. During our hearings, some witnesses recommended that the new territory be named "Denendeh", a Slavey word meaning "the land of the people". Another suggestion was that it should be called "Nahendeh", a Slavey word meaning "our land". Others did not even address the question, simply and consistently referring to it as Denendeh.

However, given the cultural make up of the New Western Territory, it should not be surprising that some First Nations, like the Inuvialuit, had reservations about a name that does not reflect their culture and linguistic traditions. We also heard that these traditions must be represented in other symbols of the New Western Territory, including its flag.

Overall, most residents of the New Western Territory seem to favour a name which reflects the language and cultures of First Nations.

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*"...I prefer the word "Nahendeh" for the western Territory because it's the Dene equivalent for Nunavut. It sounds similar and it means the same, "our land", generally. And the reason that I kind of like it is because it is a Dene word, but at the same time it means "our land" and can be used to apply to Inuvialuit, and Metis, and non-native people as well rather than just Denendeh." <Bob MacQuarrie, Yellowknife>*

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## 10. DIVISION OF THE NORTHWEST TERRITORIES

At each public hearing, the Commission reviewed its Terms of Reference with particular emphasis on the assumption that the existing Northwest Territories will be divided into two new territories. Our audience was told our work is directed toward a Constitution for a New Western Territory. Nevertheless, the Commission heard from some witnesses who clearly opposed division because of its timing and costs, or were very concerned about the impact division could have on the quality of life and provision of government programs and services in a New Western Territory.

For example, we heard that the current Northwest Territories faces major challenges in developing its economy, labour force, transportation and municipal infrastructure, settling and implementing aboriginal claims and treaties; and addressing residents' social, health and housing needs. It is felt that,

given these challenges, expenditures which must be made to establish the machinery of government in Nunavut are simply misdirected. In a variation of this argument, other witnesses noted that while Nunavut should eventually be established, these important issues deserved priority at this time.

We also heard deeply-felt concerns about how division could reduce overall operating revenues for western governments and thus affect the level of programs and services provided to our residents. High school students especially wanted assurances that future opportunities and programs and services for themselves and their children would not be undermined in a new jurisdiction.

Finally, we heard from residents who expressed a profound sense of loss over the departure of the Inuit First Nation from the unique population mix of our current territory. They also spoke of their feelings and attachment toward the land and physical environment of Nunavut which, following division, would no longer form part of a pan-Northern jurisdiction.

While it is not the Commission's mandate to make recommendations on the issue of division, we felt it was important to include these views because this was a subject in every public meeting.

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*"...it saddens me that it looks like the eastern and western Arctic are going to be dividing. Because since 1989, I have just finally discovered the uniqueness of the eastern Arctic, and I really appreciate and marvel at the Inuit people living in the areas that they are living in and for the knowledge that they have of their land... Their culture is just as rich as ours, you know. As I said, I discovered that over the last three years, and surely with division we wouldn't have as much access to the eastern Arctic." <Ethel Lamothe, Ft. Simpson>*

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### III OUTLINE OF THE LEGAL LANDSCAPE

#### 1. INTRODUCTION

The Commission sought advice on the legal restrictions and opportunities presented by the process of creating a new constitution.

For example, a New Western Territory Constitution will have to fit in with the Constitution and laws of Canada. Changing the Constitution of Canada would be expensive and time consuming, with modest chances of success. While some people talk about "sovereignty" and working outside Canadian law or the Canadian Constitution, this is not an option within the mandate of this Commission.

Many important landmarks in this constitutional process are changing even as we try to understand them. Land claims agreements are being negotiated and completed as we work. New proposals for changes to the Constitution of Canada, including recognition of the inherent right to aboriginal self-government, are being debated.

At the same time, court cases about aboriginal and other charter rights are continuing across Canada, and are helping to give a clearer picture of what can or cannot be done in our new territory. While our legal advisors provided extensive advice on many topics, the size of this interim report allows us to paint only a general picture of the legal scene.

#### 2. ABORIGINAL RIGHTS

Section 35 of the Constitution Act, 1982, recognizes and affirms; the existing aboriginal and treaty rights of aboriginal peoples and states that rights acquired in land claims agreements also will be considered treaty rights. The Constitution of Canada extends this safeguard of rights to the "Indian, Inuit and Metis peoples of Canada".

Some of the key documents which recognize and define the rights of the First Nations are:

##### The Royal Proclamation of 1763

This document, referred to in section 25 of the Charter of Rights, was the first legal document to set out special relationships with Indian peoples. It established the purchase of Indian lands by treaty,

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*35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.*

*(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.*

*(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.*

*(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally for male and female persons. <Constitutional Act, 1982>*

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recognized "Indian Nations" and set out the basic rules of fairness in treaty dealings.

#### Treaties 8 and 11 and the Half-Breed Commissions

Treaties between the Dene and Gwich'in and the Government of Canada have always been described by the federal government as being a surrender of lands in return for reserve lands, social benefits and hunting, fishing and trapping rights. The Half-Breed Commissions were described as being a one-time land purchases with the Metis people.

The Dene and the Gwich'in disagree and state that there was no surrender of land and that they still hold their traditional lands. The Metis point to the many abuses of the scrip process and the general misunderstanding of the Half-Breed Commissions and state they are still in full possession of aboriginal title.

No matter whose definition prevails, it is clear that there are outstanding obligations on the part of the Government of Canada which form the basis for land claims agreements.

#### Land Claims Agreements

As modern treaties, these agreements deal with lands and resources in the Inuvialuit and Gwich'in regions. A claim is actively being negotiated in the Sahtu. In return for a release of rights over land on the part of both Dene and Metis of the area, surrender of certain treaty rights by the Dene and the surrender of scrip rights by the Metis, they receive land, money, some management authority and rights to negotiate self-government.

The Inuvialuit also released their aboriginal land rights but their agreement includes a clause which reserves the right to establish self-government institutions.

#### The Indian Act

The Indian Act is used today to govern reserve lands, recognize Indian Bands, and describe the responsibilities of the Minister of Indian Affairs. However, most federal programs delivered to Indians or through Bands are based on federal laws and policies outside the Indian Act. It should be possible to withdraw application of the Act within the New Western Territory, with very little effect on

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*25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights of freedoms that pertain to the aboriginal peoples of Canada including:*

*(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and*

*(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.*  
*< Constitution Act, 1982 >*

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*"And whereas it is just and reasonable, and essential to our Interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of them, as their Hunting Grounds - We do therefore... declare... that no Governor or Commander in Chief in any of our Colonies... do presume, upon my Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments... which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them..."*

*And Whereas Great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the Great Prejudice of our Interests, and to the Great Dissatisfaction of the said Indians; In Order, therefore, to prevent such Irregularities for the future... if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name..."*

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*< The Royal Proclamation of 1763 >*

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daily life, other than at the Hay River Reserve.

### Supreme Court Decisions

Recent decisions by the Supreme Court of Canada have given guidance on how laws over hunting and fishing affect aboriginal rights. It seems clear that laws may not restrict aboriginal people hunting for food as long as there are sufficient stocks to justify hunting or fishing by the public at large. Further, if fish and/or game is in short supply, hunting by aboriginal peoples takes priority.

Any New Western Territory Constitution must be designed in a way which supports these rights. This creates complications in designing a new system of government for the New Western Territory.

Land claims agreements can, and do, contain self-government provisions that are protected as treaty rights by Canada's Constitution. Many of these rights remain to be defined. As a result, we must attempt to build a Constitution that can accept and accommodate land claims and self-government structures as they are negotiated, while still providing the necessary structure for a common, public government.

If the structure cannot accommodate them, First Nations have the option of "opting out" of a territorial constitutional process and seeking a direct link with Ottawa.

### 3. THE CANADIAN CONSTITUTION

Although Canada became a country in 1867, it did not take control of its own constitution until the passage of the Constitution Act, 1982. The Act includes long-standing Acts and Orders (including the 1870 Ruperts Land Order making the Northwest Territories part of Canada); the division of powers between provinces and the federal government, as well as new provisions such as the Charter of Rights and Freedoms, the recognition of aboriginal and treaty rights; and the amending formula.

Changing any of these constitutional documents requires the consent of provinces and the federal government. The Northwest Territories Act is not part of the Canadian Constitution; it is simply an Act of Parliament, and it could be amended as and when Parliament chooses.

### Charter of Rights and Freedoms

The Canadian Constitution includes the Charter of Rights and Freedoms (the "Charter"), which guarantees rights and freedoms, "subject only to such reasonable limits as may be (found in) law in a free and democratic society." For example, these rights and freedoms include voting and equality rights: everyone has the right to vote and to be treated without discrimination.

However, the Charter states that its guarantees cannot be used to take away any aboriginal, treaty or other rights or freedoms of aboriginal peoples.

The Charter provides a basic guarantee to all citizens of rights for participation in the government process.

The Charter limits the terms of legislatures and governments, and grants; assurances of freedom of speech, religion, assembly and association; rights in relation to criminal processes; and language and interpretation rights.

The Charter applies to Parliament and the Government of Canada for all matters related to the Northwest Territories, and this would include a new Territorial Constitution Act passed by Parliament, except insofar as such an Act was fulfilling a land claims agreement or treaty.

### Division of Powers

One of the fundamental roles of Canada's Constitution is to divide federal from provincial legislative powers. The Constitution Act, 1867, uses Section 91 to describe the responsibilities of the federal government and Section 92 to describe the responsibilities of provinces. There is no division of powers for territorial or municipal governments.

### Federal Responsibility for Indians, Inuit and Metis

One provision that particularly affects the Northwest Territories is Section 91(24) which gives Parliament exclusive legislative authority with respect to "Indians" and "Inuit". It may also include "Metis", although the matter has never been decided by the courts.

This means that, as a territory, there is no constitutional division of powers in relation to aboriginal peoples. However, if the New Western Territory became a province, that would change as noted below.

## 4. THE PROVINCEHOOD OPTION

The prospects for creating a province out of the New Western Territory currently seem fairly slim. If the New Western Territory achieved "provincial" authority today, the federal government would still have powers with respect to Indians and their reserve lands, Inuit and probably the Metis.

Because of our large First Nations population, this federal authority would extend to most of the people in the New Western Territory. In other words, if the New Western Territory became a province, the new government would not have the powers to meet the needs of First Nations. Many powers the old territory had exercised as the delegate of the federal government would no longer be effective; many of those powers would return, or stay in Ottawa.

There could also be a problem with money if the New Western Territory were to become a province. Canada's Constitution requires the federal government to make equalization payments to the provinces. A complicated formula sets out

how much each province gets. The amount paid to the New Western Territory under the formula would not come close to meeting the New Western Territory's needs because its costs are, and probably always will be, much higher than those of any province.

Some people support provincehood as a constitutional option because it is simple and there would be no need to develop a whole new system of government. They also want the assurance that the New Western Territory would be at the table with other provinces and federal government when matters of national importance are discussed.

In balancing these two arguments, it remains questionable whether provincehood is the best constitutional approach for the New Western Territory because it just does not seem to provide the right powers, flexibility, or financing.

**5. LEAVE MATTERS AS THEY ARE**

Given the time and effort required to produce a Constitution for the New Western Territory, it is fair to ask why matters cannot be left as they are. Aside from the obvious argument that the current government was not designed by or for the people, there are a variety of reasons why reform is needed.

- The Northwest Territories Act contains three major legislative restrictions: the limitation in section 17 that the Territories will not have law-making authority beyond what a province has; the provision in section 16 that all territorial laws are "Subject to...any other Act of Parliament"; and the federal veto over territorial laws;
- By stating that the English Law of July 15, 1870, forms the basis of the laws of the Northwest Territories, the Northwest Territories Act may place an unnecessary limitation on what could be seen as founding law;
- The current government's borrowing and lending powers are limited, which is a benefit in restricting government debt but a real problem in acquiring capital assets, which could sensibly be paid back over time;
- The complex land ownership regime created by the Northwest Territories Act and the Territorial Lands Act hampers effective administration, protection and development of lands, and protection of the environment;
- Parliament could change or repeal the Northwest Territories Act without consulting or getting the agreement of the New Western Territory; and
- The Commissioner, who is appointed by the federal government, could use powers as in the past and make decisions without the Assembly and Cabinet.

In short, under the existing legislation, a New Western Territory would continue to have difficulty working within the current system, and would have no security against unilateral change by Ottawa.

**6. OPPORTUNITIES OF A NEW CONSTITUTION**

Many of today's problems of inflexibility, inadequacy and insecurity could be removed by the creation of a new Constitution. It could:

- expand the jurisdiction of the Legislative Assembly, or other forms of government in the New Western Territory;
- recognize aboriginal rights and create mechanisms to protect and enhance them;
- recognize or create appropriate forms of government;
- seek to protect the Constitution from unilateral change.

A system of government in the New Western Territory could be designed to reflect the values of its founding peoples more accurately and to be more effective in identifying and bridging individual and collective goals.

Being a territory and thus outside of usual constitutional requirements for various types and levels of courts offers opportunities to build a system of courts appropriate to the people of the New Western Territory. Indeed, any number of changes could be possible as a result of territorial status which would take the New Western Territory away from the usual federal/provincial split in courts and judicial authorities. For example, it is possible that a unified, local or aboriginal court system could be established through the mechanism of a new Constitution.

## 7. ENTRENCHMENT OF A NEW CONSTITUTION

The status of our new Constitution and the way it is recognized in Canada is almost as important as what it contains. The process and product of achieving both status and recognition is called entrenchment. Currently, there are five ways to entrench a Constitution.

Provincehood would give our Constitution the same status and recognition as those of the other provinces. However, there are some disadvantages to pursuing this option, which is not supported at this time by New Western Territory residents. Creating a new province will require the approval of all provincial governments and Parliament.

It may be possible to establish, within the Canadian Constitution, a territorial order of government which has powers and institutions suited to the three territories. Each territory would have its own Constitution which would be part of the Constitution of Canada. These changes would require the approval of seven provinces and Parliament.

A variation would involve entrenching territorial governments and their Constitutions under Section 44 of the Constitution Act, 1982 which allows Parliament to deal exclusively with changes to some "federal institutions." This approach may not be acceptable to the federal government and could be challenged by the provinces.

It may also be possible to entrench our Constitution as a right to self-government under section 35 of the Canadian Constitution, which recognizes and affirms aboriginal and treaty rights. Self-government agreements will be entrenched under this section of the Constitution. Provincial support would not be required with this approach.

Finally, if entrenchment of our Constitution in the Canadian Constitution is not possible, our Constitution could be recognized in an Act of Parliament that would restrict Parliament's ability to change our Constitution without the support of the residents and government or Legislature of the New Western Territory. Support of the provinces would not be necessary under this option.

## IV PRINCIPLES FOR A NEW CONSTITUTION

### 1. INTRODUCTION

The Commission's Terms of Reference require that its Phase I report recommend principles which should form the foundation of our Constitution. The purpose of this chapter in our Interim Report is to outline a number of ideas, proposals and draft principles which are based upon presentations made at our public hearings, legal and technical advice, and the views of Commission Members. The discussion which follows is organized in the general order of subjects that might appear in a New Western Territory Constitution.

In evaluating these ideas, proposals and draft principles, the reader is encouraged to test them by asking two questions:

- \* Are they an improvement over what exists today?
- \* Do I want my children to grow up in a society which will be governed by these principles and government structures?

### 2. NAME FOR THE NEW WESTERN TERRITORY

Our Constitution must include a name for the New Western Territory. As is the case with other provinces and territories in Canada, the name of each geographic and political entity is symbolic of its residents and their language, history, environment and future aspirations. In the New Western Territory, each First Nation has a word or name, such as Denendeh or Nahendeh describing their homeland.

The Commission is not prepared to recommend a specific name for the New Western Territory. However, we do believe that the name should be taken from a First Nations language.

### 3. FOUNDATION OF THE NEW WESTERN TERRITORY

One objective of the current national constitutional reform process is the development of a Canada Clause that would affirm Canadians' identity and aspirations and convey a sense of how values, traditions, culture and experience are interpreted and reflected in the rules of the Constitution.

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*"When we look at a constitution, we are looking at a statement of principles that should reflect who we are, our fundamental beliefs and values and the nature and quality of life we support. It should have the power to endure despite changing governments and economies."*  
*<Dale Robinson, Executive Director, NWT Council for Disabled Persons>*

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*"...constitutional development is an issue that goes beyond cultural and society into your relationship with the land; and I think, in the north that must be a large part of the constitutional development."*  
*<Dennis Bevington, Mayor, Ft. Smith>*

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*"...The Land of the Great Northern Spirit...it must be greatness that we strive for. A spirit of greatness that unites all people toward harmony, prosperity and happiness. It must be a spirit that allows every person to develop to their maximum potential and banishes petty differences between us."* *<Sandy Holmes, Yellowknife>*

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*"...We do not live in a perfect world. To me a constitution is to be the framework for a perfect world that we should all aspire to."* *<Mike Stilwell, Yellowknife>*

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*"Canada First means a commitment by all regions to the political, economic, social and cultural integrity of a united, prosperous country. One Country which is populated by Canadians - not hyphenated special interest groups each pursuing their own self destiny."*  
*<Tim Lee, Reform Party of Canada>*

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*"We must have a constitution that encourages individual development, growth and prosperity. It is only through the generation of wealth that people can fund the social objectives of a government."* *<Sandy Holmes, Yellowknife>*

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The Commission believes that a New Western Territory Constitution requires a clause or section which captures the spirit and vision of our land and its residents similar to the following:

The New Western Territory is the home to First Nations and non-aboriginal northerners who recognize The Creator who made this land and agree:

- to respect their distinct cultures, traditions, and languages;
- to work together to respect their individual and collective rights;
- to ensure their individual and collective growth;
- to meet their mutual needs;
- to live in balance with the land and its resources;
- to welcome to this land those who share these visions

#### 4. RIGHTS OF ALL NEW WESTERN TERRITORY RESIDENTS

An important element of any constitution in a modern democratic society is the definition of the fundamental rights and freedoms of all citizens and the relationship between citizens and their governing institutions. In developing a definition, a balance must be struck between a constitution which is for people as opposed to governments, as well as the reasonable limits which government can put on the rights and freedoms of individual citizens. These rights and freedoms are enforceable by the courts.

The Commission believes that the New Western Territory Constitution should reaffirm the Rights and Freedoms that are set out in the Canadian Constitution insofar as they apply to New Western Territory residents as citizens of Canada and New Western Territory government institutions. In summary form, these rights and freedoms include the following:

- freedom of religion, thought and expression, peaceful assembly and association;
- freedom from discrimination;
- the right to vote and stand for office;
- the right to take up residence in any part of the New Western Territory and gain a livelihood;
- the right to life, liberty and security;
- the right to equality under the law without

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*"First and foremost, there must be a recognition of the fact that the current system does not work for aboriginal people...Many of the problems faced by the aboriginal people are not legal problems, but rather social problems...Our family structures have been eroded. We have alcohol addiction. We have lost the ability to parent after generations in residential school, and we have lost the values upon which our culture is based...We must move away from a narrow, rigid punitive model of justice to a preventative holistic healing model. We must include families and victims in the healing model and emphasize the rehabilitation of an offender back into the community as a healthy participating member...Sentencing alternatives are important, as holistic healing has to be a component of justice. Aboriginal justice systems must be recognized in the constitution, and every community must be given the opportunity to develop and utilize this system...The choice of the model must be left up to the community, and it may incorporate non-aboriginal parts into the system." <Bertha Rabesca, Rae>*

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discrimination; and

- \* the right to use both official languages of Canada.

The Commission also feels it is important to take into consideration a major recommendation of the Northwest Territories Seniors Society which dealt with one of the most basic and fundamental individual rights.

**The New Western Territory Constitution should establish the right of a person of majority age to refuse medical treatment to prolong life.**

Finally, it is important to recognize that constitutions and governments should have the authority to impose reasonable limits or safeguards to ensure that the rights of both individuals and collectives are balanced and protected. The Commission recommends that:

**First Nations will defend and protect the rights of non-aboriginal northerners in areas which may be governed by aboriginal or tribal institutions.**

Further, and in order to be consistent with the Canadian Constitution, the New Western Territory Constitution must state that in reaffirming the Canadian Charter of Rights and Freedoms, these provisions cannot take away from any aboriginal, treaty or other rights that belong to First Nations.

## 5. SOCIAL AND ENVIRONMENTAL CHARTER

Constitutions are not just about government institutions and powers, or the rights of individuals. 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, as well as the environment which they occupy.

The Constitution of Canada, for example, includes a clause which commits federal and provincial governments to promote equal opportunities, reduce regional economic disparities and providing essential services for all Canadians. Further, the Northwest Territories Assembly has passed an Environmental Bill of Rights.

In recognizing that the family is the fundamental unit of our society, the Commission is proposing

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*"There must be a mechanism to force the government to give up its control over the communities and allow for the community to determine its own governing structure which is appropriate to each individual community. There's definite waste of funds. There's a definite waste of human resources with so many different organizations and duplications, as we'd like to streamline this...I guess we're, bottom line, talking self-government...But locally, I think that we should take over more government programs. I don't say we can do it overnight, but I do say we can handle a justice system. We can handle social services. We can have a bigger say in education. We definitely could take over the management of the housing situation on a local level." < Ernest Firth, Metis Local, Ft. McPherson >*

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*"Within a Social Charter, it is our position that every child in the North shall have the fundamental right to food, clean air and water, housing, health care, child care, education and safety of body, mind, heart and spirit." < YWCA, Yellowknife >*

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*"The YWCA condemns all forms of violence against women and children. It is women and children in particular who suffer from the effects of racism and sexism in situations of economic and political injustice. Human dignity and fulfilled lives are things which must be protected." < YWCA, Yellowknife >*



that the New Western Territory Constitution should identify the basic necessities required for the physical, mental, economic and environmental well-being of all members of the family unit and where they live. These include, but are not restricted, to the following:

- \* health and social services;
- \* education and training opportunities;
- \* adequate shelter;
- \* a safe work place;
- \* a safe home and community; and
- \* a clean environment.

In considering these proposals, it is important to remember that in some constitutions, there are provisions which are enforceable by the courts. This would be the case with some of the individual and aboriginal rights which are described in this chapter.

The Commission believes that this should not be the case with the provisions of a Social and Environmental Charter in the New Western Territory Constitution. Other means should be developed to monitor government's performance in responding to these objectives and encouraging greater compliance if required.

## 6. ABORIGINAL AND TREATY RIGHTS

Section 35 of the Constitution of Canada recognizes and affirms existing aboriginal and treaty rights of First Nations. This means that Treaties 8 and 11, the Inuvialuit Final Agreement, the Gwich'in Final Agreement and other regional claims agreements signed in the future will all have protection under the Constitution of Canada. Moreover, it is likely that the Canadian Constitution will be amended to recognize the inherent right of aboriginal self-government.

A New Western Territory Constitution will have to be consistent with these aboriginal and treaty rights provisions of the Constitution of Canada and should recognize the significance of these agreements to the First Nations. For greater certainty, a New Western Territory Constitution should recognize and uphold:

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*"We believe that a Social Charter should include a provision that there be no mandatory retirement age in the western Northwest Territories." <Dusty Miller, NWT Seniors Society>*

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*"... Over 80% of all seniors in the Northwest Territories have no income besides their old age pension and the New Western Territory supplementary benefit. By all standards of measurement, the majority of seniors in the Northwest Territories have incomes below the poverty line." <Dusty Miller, NWT Seniors Society>*

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*"... Like the last frontier of clean environment we have, our constitutional development can too be deemed to be a last frontier, a chance to get it right." <Mike Stilwell, Yellowknife>*

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*"... a western constitution acknowledged that residents of a western territory bear a personal and collective responsibility to protect the local, national and global environment." <Ted Buracas, Ecology North>*

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*"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." <Ted Buracas, Ecology North>*

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- \* the First Nations' inherent right to self-government which will not be diminished by the New Western Territory Constitution;
- \* the Inuvialuit Final Agreement and any agreement for self-government the Inuvialuit may reach with Canada;
- \* the Gwich'in Final Agreement and any agreement for self-government the Gwich'in may reach with Canada;
- \* all future agreements between First Nations and Canada on land and resources and self-government; and
- \* the spirit, and the meaning and intent of Treaties 8 and 11.

Section 35 of the Canadian Constitution defines aboriginal peoples of Canada to include the Indian, Inuit and Metis peoples of Canada. While there is some certainty with respect to rights and benefits flowing to Indian and Inuit under section 91(24) of the Constitution, there is some question about the status and eligibility of Metis in Canada.

For greater certainty within the New Western Territory, the Commission recommends that there will be no distinctions with respect to programs and services provided to First Nations and therefore the New Western Territory governments will ensure that Metis are provided with the same services that are provided for Indians and Inuit by the federal government pursuant to section 91(24) of the Constitution of Canada.

First Nations also have an interest in how a New Western Territory Constitution will address their relationship to the land and their rights to harvest its resources. To some extent, rights to collective ownership of land and resource harvesting are addressed in land claims agreements and Treaties.

The New Western Territory Constitution should reaffirm the First Nations rights to hunt, fish, trap and gather for their livelihood and to the extent that such rights are not addressed, as with the Metis who are not beneficiaries of land claims agreements or Treaties, they should be recognized.

On a related matter which is also of significance to the Metis Nation, the Commission recommends:

That all First Nations have a right to establish an economic foundation based on ownership of land and natural resources, including those Metis who are not beneficiaries of land claims agreements or Treaties.

During the past two decades, First Nations have made some progress in developing their own institutions of government and encouraging innovations in public government which reflect their traditions, languages, cultures, customs and approaches to self-government.

In order that the direction of this change can be affirmed and its direction accelerated, a New Western Territory Constitution should include commitments to First Nations that:

- \* First Nations' languages can be used in public and aboriginal government institutions;
- \* First Nations' traditions, cultures, values, customs, laws and institutions can be established and practised; and
- \* Band Councils, Metis Locals and Inuvialuit Community Corporations will be recognized where such First Nations' governments exist.

## 7. ORDERS OF GOVERNMENT AND THE DIVISION OF POWERS

The Commission heard many views on how government should be structured and, in particular, conflicting views on the question of guaranteed representation in law making institutions based upon race or ethnicity and gender. The Commission also heard differing views on the division of powers between levels or orders of government in the New Western Territory. Some stressed the need for a strong central government, while others favoured strong regional and community governments.

The Commission has weighed all of these views and is proposing that the following principles form the basis for governments which will be established by the New Western Territory Constitution.

### Foundations of Government Authority and Orders of Government

While many New Western Territory residents live under and work for a system of government where authority to govern flows down from the federal to the territorial to local levels of government, many believe that the ultimate authority of any government rests with the people. The Commission supports this belief and recommends our Constitution should affirm that:

**All authority to govern belongs to the people and flows from them to their institutions of government.**

Following from this recommendation, many New Western Territory residents naturally aspire to have more authority vested in governments which are closer to them, and to have the status of these governments recognized and their powers protected in a New Western Territory Constitution. The Commission also supports these aspirations and recommends that:

**A New Western Territory Constitution should recognize different orders, as opposed to, levels of government including the powers of these orders of government. Authorities not identified in the Constitution as being the exclusive responsibility of the central order of government, are assumed to be vested in other orders of government.**

### Central Order of Government

There was near unanimous agreement at the Commission's hearings on the need for a central government. The Commission supports this conclusion and recommends the following:

**The New Western Territory Constitution should establish a central order of government composed of a legislature, an executive and a judiciary.**

**The legislature should be representative of the residents of the New Western Territory and be structured to ensure that First Nations representatives and non-aboriginal northerners are elected as members.**

**The legislature of the central government should also be representative of men and women.**

The authority of the central order of government should be restricted to the following broad responsibilities:

- \* fiscal policy and relations, including personal and corporate income taxes;
- \* international-federal-provincial-territorial-First Nations relations;
- \* standards for and regulation of transportation infrastructure;
- \* standards for and regulation of utilities;
- \* standards for and regulation of labour standards and worker safety;
- \* education standards and post-secondary education facilities;
- \* health standards and territorial health facilities;
- \* standards for and regulation of building, construction and fire safety codes;
- \* regulation of securities and incorporation of companies;
- \* territorial police services and administration of justice;
- \* standards for correction services and territorial correction facilities;
- \* standards for and regulation of land use;
- \* environmental protection standards and regulation;
- \* forest fire management and suppression;
- \* standards for wildlife and marine mammal management;
- \* standards for industrial and non-renewable resource development;
- \* standards for and regulation of professions;
- \* such other matters which require territorial wide standards and regulation or that will be managed jointly with other orders of government.

### District Order of Government

The debate over municipal versus band and local versus regional government has been going on in the New Western Territory for the last two decades. Witnesses told the Commission that while modest attempts have been made to transfer more authority to the local or regional levels, the central government in Yellowknife has continued to grow unchecked.

In an attempt to present some alternatives to aspirations for more First Nations', community and regional government control and decision making, the Commission suggests that consideration be given to establishing a District order of government in the New Western Territory Constitution.

The District approach would provide more flexibility in allowing some communities like Yellowknife or Norman Wells to remain municipalities or municipal districts. Others, such as the Inuvialuit communities, may choose to amalgamate into a regional district. A third variation would allow smaller individual First Nations communities, or groupings of them, to create an aboriginal district government.

The Commission applauds the efforts of the current government to transfer more authority directly to the community level; however, there may also be a need to introduce additional options which are suggested in the District approach. Given this background, the Commission recommends the following:

The New Western Territory Constitution should establish a District order of government which may be public, aboriginal or a combination of both and structured in accordance with the wishes of residents living within their boundaries.

The geographic area of District governments may include one or more established communities or municipalities within its boundaries. District governments should together encompass the entire geographic region of the New Western Territory.

Representation in the law making branches of District governments should be in accordance with the wishes of the residents living within their boundaries.

District governments should be responsible for those matters which most directly affect the daily lives of residents, including:

- \* culture, recreation and language;
- \* primary and secondary education;
- \* training and upgrading;
- \* public housing and housing support programs;

- \* delivery of health care and social services, including child welfare;
- \* tribal or municipal infrastructure;
- \* economic development
- \* regulation and management of socio-economic development agreements;
- \* administration of justice and delivery of police and corrections services;
- \* renewable resource management;
- \* ownership, management and administration of lands, including authority to tax property improvements;
- \* management of wills and estates; and
- \* such other matters where authority may be shared with the central government, or where no provision has been made for the central government to exercise its authority.

#### Territorial-District Fiscal Relations

Given the current financial dependence of all levels of government on federal transfer payments and their limited ability to raise significant revenues in the foreseeable future, provision will also have to be made for the conditions they face today, but also for the sharing of financial resources in the future.

The Constitution should contain a provision stating that each order of government will be assured an equitable distribution of financial resources in order that they can properly deliver programs and services for which it is responsible.

### Implementation of District Government

The Commission acknowledges that once the District orders of government have been created, each will move at a different pace in assuming powers that are available to them. It is possible that one District government will have assumed the full range of authorities available to it, while another may take a more cautious approach.

Therefore, it will be important for the New Western Territory Constitution to provide the flexibility that will allow Districts to gradually assume increased powers while ensuring that the central order of government has the constitutional authority to deliver programs and services until the transition is complete.

### 8. AMENDING THE NEW WESTERN TERRITORY CONSTITUTION

The procedure for amendment or change is the final constitutional component which will be addressed in this report. The Commission's first recommendation is that:

**Amending the New Western Territory Constitution should be the exclusive authority of the people of our territory and subject to amending procedures established in their Constitution.**

A second important element to consider is how an amendment can be initiated and who can start the process of change. In the provinces, the government and legislature usually start the process; however, public hearings and debate may precede any decision to proceed with an amendment. Section 45 of the Canadian Constitution says that provincial legislatures may exclusively make laws for amending the constitution of the province. This section may not apply to the constitution of the New Western Territory.

Therefore we have some latitude in designing an amending formula for the constitution of the New Western Territory. We could allow the central legislature to have exclusive authority in this area or we could build in a series of checks and balances that would involve the people, the District governments, First Nations and the Central government.

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*"The relationship between municipal government or local government, the territorial government, and aboriginal self-government is one that is going to be a critical element in constitutional development. Just as across the country there's becoming more and more recognition that there must be an inherent right of self-government among native people, so, that will happen in the north and will happen in all our communities. But it won't happen in all our communities in the same way, obviously. And that, I think, is one of the key elements of constitutional development. We're going to live in different circumstances in different places, or different relationships are going to be struck for different communities...I think one of the things that perhaps the constitutional commission should look at is models, community-based models, specifically based on communities, particular communities. Looking at them seeing how your general framework will fit into a specific community. <Dennis Bevington, Mayor, Ft. Smith >*

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The Commission recommends that:

The New Western Territory central legislature should be the final authority for passing laws which amend the New Western Territory Constitution.

The New Western Territory Constitution should contain provisions which allow First Nations, the central legislature and District governments to initiate the constitutional amendment process.

The New Western Territory Constitution should also identify those amendments which will require the consent of First Nations, District governments and the central legislature before an amendment can be approved and enshrined in our Constitution.

The New Western Territory 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.

## 9. FURTHER DEVELOPING, APPROVING AND ENTRENCHING OUR NEW CONSTITUTION

Other sections of this report have reviewed the way in which the Commission will complete Phase I of its mandate and proposals for further work in a second phase. While decisions have yet to be made on an approach to completing and approving our new Constitution, presentations to the Commission made it clear that residents, organizations and other levels of government in the New Western Territory expect to participate in the process.

A variety of suggestions were made to the Commission involving further consultation, funding ongoing participation by organizations and other governments, convening a constituent assembly to write our Constitution, and public ratification of the Constitution by plebiscite or referendum. These ideas will be given further consideration by the Commission and more detailed process recommendations will be made in our final report.

For the purposes of this Interim Report and further discussion in our next round of public consultations, the Commission recommends that:

Following completion of the Commission's Phase I report, the Political Leaders should be encouraged to ensure that New Western Territory constitutional development issues will be addressed at upcoming assemblies of the First Nations and the Legislature.

Moreover, the Political Leaders should be encouraged to establish a follow-up process which will involve the public, regional and territorial interest groups and governments through consultation and participation in a duly mandated constituent assembly.

Finally, as recommended in the Commission's Terms of Reference, the final Constitutional product should be ratified by New Western Territory residents in a plebiscite or referendum.

On the matter of entrenching our new Constitution, the review of options in Chapter III clearly indicates that this is a matter over which the residents and governments of the New Western Territory have little direct influence or control, especially if provincial approval is required. Nevertheless, the Commission believes that the status of our Constitution and measures which can be taken to protect it from unilateral change by Parliament are important issues to pursue. The Commission recommends that:

Given the problems associated with provincehood for the New Western Territory, our objective should be to have territorial jurisdictions and territorial orders of government recognized and entrenched in the Constitution of Canada. The New Western Territory Constitution should become a schedule to the Constitution of Canada.

**V. CONCLUSION**

The Commission heard consistently that there is an urgent need for constitutional reform in the New Western Territory. We have attempted to show that reform is possible and practical. The proposals made are preliminary and are presented for further discussion. This report is a summary of the Commissions work to date.

Throughout the hearings, the Commission heard concerns about the high cost of governments. We did not have the means or the time to look into the cost implications of putting these draft recommendations into effect. We encourage the Government of the Northwest Territories to give us some comments on this issue.

A final report on Phase I will be prepared and presented to the political leadership after the public has had an opportunity to discuss and debate the merits of these draft recommendations.

The Commission believes that the wisdom and vision of the political leadership will ensure that constitutional development in the New Western Territory will continue and be a public process.

**MEMBERS OF THE COMMISSION**

**J. W. Bourque (Chairperson)** - Mr. Bourque was formerly Deputy Minister of the Government of the Northwest Territories, Department of Renewable Resources. He is a former President of the Metis Association of the Northwest Territories.

**Bertha Allen** - Mrs. Allen was the founding President of the Native Womens' Association of the Northwest Territories and the founding President of the Advisory Council on the Status of Women of the Northwest Territories. She was nominated by the Western Members of the Legislative Assembly.

**Les L. Carpenter** - Mr. Carpenter is a businessman in Sachs Harbour and the former Mayor of that community. For many years he was an announcer with CBC Radio in Inuvik. He was nominated by the Inuvialuit Regional Corporation.

**Richard I. Hardy** - Mr. Hardy is a Yellowknife lawyer. He is a former President of the Metis Association of the Northwest Territories and was one of the originators of a Metis land claim. Mr. Hardy was nominated by the Metis Nation.

**Francois Paulette** - Mr. Paulette is a former Chief of the Fitz/Smith Dene Band and a past Regional Vice-Chief of the Dene Nation. He was one of the originators of the 1972/73 caveat of Judge Morrows N.W.T. Supreme Court Ruling (The Paulette Case). He was nominated to the Commission by the Dene Nation.

**George Braden** - Mr. Braden is a former Member of the Legislative Assembly and Government Leader of the Northwest Territories. He was the Pavilion Commissioner for the Northwest Territories at Expo '86. Mr. Braden was nominated by the Government of the N.W.T.



HEARING SCHEDULE

November 4 Hay River  
November 5 Diamond Jenness High School, Hay River

November 18 Fort Smith  
November 19 P.W. Kaeser High School, Fort Smith,  
Yellowknife  
November 20 Yellowknife  
Sir John Franklin Territorial High School, Yellowknife  
November 21 St. Patrick High School, Yellowknife  
Rae

November 25 Inuvik  
November 26 Samuel Hearne Secondary School, Inuvik  
Tuktoyaktuk  
November 27 Fort McPherson  
November 28 Fort Good Hope  
Norman Wells  
November 29 Norman Wells

December 2 Snowdrift  
December 3 Hay River  
December 4 Fort Providence  
December 5 Fort Simpson  
December 6 Rae

## TERMS OF REFERENCE

### COMMISSION FOR CONSTITUTIONAL DEVELOPMENT

#### PREAMBLE

People of the Northwest Territories have a strong interest in the development of their institutions of self-government and in securing their democratic rights in a public government. They have stressed the importance of collective aboriginal rights and self-government jurisdictions, individual rights, and community/regional government. They also want a redistribution of power between the federal, territorial and community level.

Given these circumstances, it is imperative for the Government of the Northwest Territories and other aboriginal groups to be prepared to describe in detail to their constituencies the possible shape of governmental structures in the Northwest Territories.

Recent meetings between representatives of the Government of the Northwest Territories, the Inuvialuit Regional Corporation, the Dene Nation, the Metis Association of the Northwest Territories, the Sahtu Dene/Metis Council and the Gwich'in Tribal Council to discuss the constitutional development process in the Northwest Territories has resulted in an agreement to create an independent commission. The commission will develop a comprehensive constitutional proposal for those regions of the Northwest Territories remaining after the creation of Nunavut.

#### DEFINITIONS

**Commission for Constitutional Development:**

A commission with the following terms of reference as prepared by the Committee of Political Leaders and funded by the Government of the Northwest Territories.

**Committee of Political Leaders:**

An informal group of political leaders including representatives from the Government of the Northwest Territories and from the major aboriginal organizations in the western Northwest Territories.

#### MEMBERSHIP OF THE COMMISSION

The Commission is comprised of six members. Four members and the Chairperson of the Commission are appointed by the Committee of Political Leaders and one Member to be appointed by the Western Members of the Legislative Assembly of the Northwest Territories.

## COMMISSION FOR CONSTITUTIONAL DEVELOPMENT

### MANDATE AND OBJECTIVE

The ultimate objective of the Commission is to develop a comprehensive constitutional proposal for those regions of the Northwest Territories remaining after the creation of Nunavut for consideration by way of a plebiscite.

The Commission shall engage in a variety of activities to reach this objective including:

- researching a wide variety of existing documents relevant to the topic,
- public consultation including community visits and the convening of one or more constituent constitutional conferences if deemed necessary by the Commission,
- receiving formal submissions from aboriginal organizations and from other interested parties,
- hiring staff and consultants as required,
- consulting with but maintaining an independent status from the Committee of Political Leaders, and
- reviewing its draft reports with the Committee of political leaders,
- submitting its final proposal to the public by way of a plebiscite.

The project will be divided into two phases:

Phase I will run from July 1991 to early 1992 and its primary purpose will be to provide the public with clear, basic information about constitutional development and the potential options available for the public to consider in preparation for the boundary plebiscite in 1992.

Phase II will entail the completion of a comprehensive constitutional proposal for the public to consider and ratify.

### PHASE I

Phase I will include the following elements:

1. The preparation of a budget and workplan, for submission to the Executive Council, for the fiscal year 1991-92 which includes all of Phase I and the very early stages of Phase II.
2. Establishment of a Commission including the hiring of staff, setting up offices and setting general fiscal and other operating policies.
3. Research and review the principles and proposals set forth over the years for constitutional development by all groups in the Northwest Territories with an interest in the topic of political development in the North. The Canadian Constitution, the Iqaluit Agreement, and documents produced by the Western Constitutional Forum, aboriginal, regional and community organizations will form the central focus of the review.

## COMMISSION FOR CONSTITUTIONAL DEVELOPMENT

4. Based upon the above review, prepare a discussion paper and other instruments for public communication, including a possible set of principles to guide the development of a Constitution.
5. Ensure that the appropriate, independent parties with a major stake in the project have obtained funding consistent with predetermined criteria to enable them to prepare indepth positions on constitutional development. The Commission will set the criteria for funding and set the appropriate levels of funding for each interested party.
6. Hold public meetings/workshops in as many communities as is practicable in the western Northwest Territories as well as utilizing other available avenues to communicate with and engage the public in the discussion about constitutional development.
7. The completion of a preliminary report by early 1992. Without limiting what the Commission might choose to include, the report should summarize the responses the Commission obtained from its community meetings and the starting principles and constitutional options should be reviewed with those responses in mind.

#### **STRUCTURE OF THE COMMISSION**

The Commission shall be incorporated under the Societies Act. It shall receive its budget from the Government of the Northwest Territories by way of a standard contribution agreement. The Commission will hire its own staff, consultants, etc. and be responsible for its own financial policies, records and audits.

#### **RELATIONSHIP WITH OTHER BODIES**

Although Independent, the Commission will be affected by other groups and it is therefore useful to clarify its relationship with these groups:

##### **Legislative Assembly of the Northwest Territories**

It will be necessary for the Legislative Assembly to pass a motion endorsing the Commission and directing the Government to assist in its establishment. It will also be necessary for the Assembly to pass a motion approving in principle the early 1992 date for a boundary plebiscite.

##### **Government of the Northwest Territories**

The primary role of the Government of the Northwest Territories will be to identify funds for the Commission for 1991/92 and for the plebiscite, and to establish budgets for both during the current fiscal year.

##### **Individual Aboriginal Organizations**

Aboriginal organizations will participate directly in the constitutional development process as members of the Committee of Leaders and as groups receiving funds to prepare indepth positions on constitutional development.

#### **COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**

### **Non-Aboriginal Community**

While having a right to participate fully in the process, the non-aboriginal community does not have an organization created specifically to represent their interests. The caucus of western non-aboriginal Members' of the Legislative Assembly continue to be the most appropriate vehicle to represent generally the views and interests of non-aboriginal residents. In addition, non-aboriginal residents will be fully involved in the community meetings and in the constitutional conferences, and certain groups may be able to access some funds for independent research.

### **Communities and Regions**

The communities and the regions will be full and equal participants in constitutional development process and will be assured of at least two visits by the Commission for public meetings during its lifetime. Regions in particular may be eligible for some funds for research.

