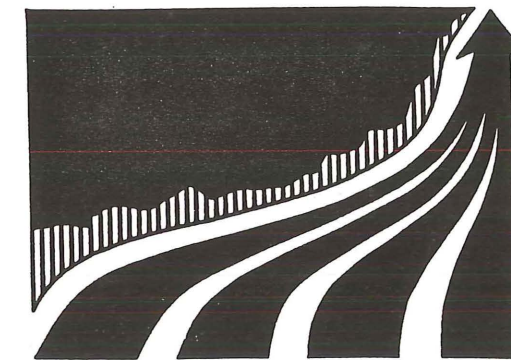


Government Library  
NOV 25 1992  
Gov. ... S.M.V.T.  
Yor. ... N.A.T.

# WORKING TOWARD A COMMON FUTURE



COMMISSION FOR  
CONSTITUTIONAL DEVELOPMENT



NWT GOVERNMENT LIBRARY



3 1936 00019 732 5

**COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**

**PHASE I REPORT:**

**WORKING TOWARD A COMMON FUTURE**

**April 1992**

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 Sachs Harbour businessman and the former Mayor of that community. For many years he was an announcer with CBC Radio. He was also the first Chairman and President of the Inuvialuit Regional Corporation. Mr. Carpenter now serves as Chairman of Umayot and as Canadian Vice-President of the Inuit Circumpolar Council. He was nominated to the Commission 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 Morrow's 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. He has also served as Government of the Northwest Territories Deputy Minister of Intergovernmental Affairs. Mr. Braden was nominated by the Government of the N.W.T.

## COMMISSION FOR CONSTITUTIONAL DEVELOPMENT

### 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.

#### 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.



April 1992

### FOREWORD


The Committee of Political Leaders of the western Northwest Territories established the Commission in June, 1991 with instructions to complete Phase I before the boundary plebiscite.

This report represents the fulfilment of those instructions. We have examined the constitutional constraints and opportunities that are available in the current Canadian context. We have consulted the public, who will be the citizens of the New Western Territory, in two sets of public hearings, and considered all the information presented to us.


The principles and recommendations in this report are the best effort that we can produce in the time available. The research done for us by legal counsel and consultants was important in arriving at this point but did not influence the report as much as the people who shared their visions for the future with us.

The result of these efforts is a combination of recommendations that is not the ideal that any one of us or the public may wish. It is, however, a valuable starting point for the next phase, which must give serious and detailed attention to the principles and recommendations made here. It is important that the New Western Territory be governed by a workable constitution which ensures that the wealth of our land is shared equitably and that our citizens have opportunities to achieve their full potential.

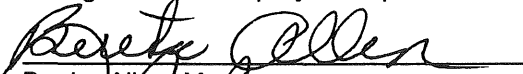
We thank the members of the Committee of Political Leaders for the confidence they placed in us. We also thank the people who shared their vision of the New Western Territory with us. You have made our work challenging and exciting.


  
J. W. Bourque, Chairperson

  
Francois Paulette, Member

  
Les L. Carpenter, Member

  
George Braden, Deputy Chairperson

  
Bertha Allen, Member

  
Richard I. Hardy, Member

## **COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**

### **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.
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.

## COMMISSION FOR CONSTITUTIONAL DEVELOPMENT

### 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.

### 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.

## TABLE OF CONTENTS

	Page
I INTRODUCTION	1
1. Creation of the Commission	1
2. The Work of the Commission in Phase I	2
3. What Is a Constitution and Will It Solve All Our Problems?	4
II PRINCIPLES FOR A NEW CONSTITUTION	8
1. Introduction and Definitions	8
2. Name and Geographic Area for the New Western Territory	9
3. Foundations of the New Western Territory	10
i) The Peoples	
ii) Common Values	
iii) Fundamental Responsibilities	
4. Special Rights	12
i) Fundamental Rights	
ii) New Rights	
a) Women's Rights	
b) Right to Refuse Medical Treatment	
c) Human Rights	
d) Workers' Rights	
e) Environmental Rights	
f) Social Rights	
5. First Peoples' Rights	18
i) Inherent Right of Self-Government	
ii) Section 35 of the Canadian Constitution	
iii) Rights of Treaty First Nations	
iv) Rights of Metis First Nations	
v) Rights of Gwich'in First Nations	
vi) Rights of Inuvialuit First Nations	
vii) Future Rights of Aboriginal First Nations	
6. Orders of Government	24
i) Fundamental Principles	
ii) The District Order of Government	
a) Rationale	
b) Forms of District Government	
c) Geographic Area of Districts	
iii) The Central Order of Government	
iv) Distribution of Powers and Responsibilities	
v) Powers of Taxation	
vi) Territorial-District Fiscal Relations	
vii) Implementation of District Government	
7. List of Possible Districts in the New Western Territory	28

TERMS OF REFERENCE

	Page
8. Institutions of Government	35
i) For District Governments	
ii) For the Central Government	
iii) The Judiciary	
iv) Chief Executive Officer	
v) Ombudsperson	
9. The Right to Vote and Stand for Office	38
i) The Charter Provisions	
ii) Guaranteed Representation in the Central Government	
iii) Proportional Representation in the Central Government	
10. Amending the New Western Territory Constitution	40
III DRAFT CONSTITUTION FOR A NEW WESTERN TERRITORY	42
IV DEVELOPING, APPROVING AND ENTRENCHING THE NEW CONSTITUTION	52
1. The Next Stage	52
2. Ratifying the New Western Territory Constitution	53
3. Entrenchment of the New Western Territory Constitution	53
4. Conclusion	54

APPENDICES:

- Appendix 1 List of Individuals Appearing before the Commission
- Appendix 2 Written Submissions received by the Commission
- Appendix 3 Canadian Charter of Rights and Freedoms
- Appendix 4 Terms of Reference
- Appendix 5 Members of the Commission

**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.



## Appendix III

**GENERAL**

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 or 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. 26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada. 27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. 28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons. 29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools. 30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be. 31. Nothing in this Charter extends the legislative powers of any body or authority.

**APPLICATION OF CHARTER**

- 32.(1) This Charter applies (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and (b) to the legislature and government of each province in respect to all matters within the authority of the legislature of each province. (2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force. 33.(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 25 of this Charter. (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operations as it would have but for the provision of this Charter referred to in the declaration. (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration. (4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

**CITATION**

34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

**I INTRODUCTION****1. Creation of the Commission**

The people of the Northwest Territories are blessed -- or cursed, as some would have it -- to live in interesting times. Ten years ago a majority of them voted "yes" to dividing the territory.

Eight years ago the Inuvialuit became the first aboriginal group in the territory to conclude a modern land rights agreement with the Government of Canada. Five years ago the leaders of the Inuit of the eastern part of the territory, the Dene, the Metis and the Legislative Assembly signed the Iqaluit Agreement. This agreement was not signed by the Inuvialuit and was rejected by some of the Dene chiefs. Two years ago the Dene/Metis and the government of Canada terminated 20 years of comprehensive claim negotiations.

Most recently the Gwich'in have ratified and signed their own modern land rights agreement which includes an undertaking by the governments of Canada and the Northwest Territories to negotiate self government agreements with them.

In the eastern part of the territory the Inuit have also negotiated a modern land rights agreement. If that agreement is ratified it will lead to the division of the territory into two new territories: Nunavut and the yet unnamed western portion which is referred to as the New Western Territory in this report.

At the national level, discussions on constitutional renewal have created a momentum by which First Peoples may achieve recognition of their inherent right of self government. At the territorial level, this could be expressed in forms of government and decision making which reflect the systems that were in place before the current form of government was imposed on First Peoples.

Political leaders in the western Northwest Territories recognized all of these developments as an opportunity to develop a people-driven process to draft a constitution for the New Western Territory. Representatives from the major aboriginal organizations and from the government of the Northwest Territories came together in an informal group of political leaders known as the Committee of Political Leaders. They established a commission made up of individuals who have the trust and confidence of the distinct elements of society in the New Western Territory.

Members of the Commission for Constitutional Development include individuals nominated by the Inuvialuit Regional Corporation, the Dene Nation, the Metis Nation, the Sahtu Tribal Council, the Government of the Northwest Territories and western members of the Legislative Assembly. All members were endorsed by the

Committee of Political Leaders. The chairperson of the Commission was chosen by consensus of the political leaders.

## 2. The Work of the Commission in Phase I

One of the Commission's tasks was to give the public basic information about options for constitutional development in a New Western Territory before the May 4, 1992, boundary plebiscite.

To that end, they reviewed the principles and proposals set forth over the years for constitutional development by all groups in the Northwest Territories. They distributed a paper, "How Can We Live Together?", that posed questions and presented ideas for consideration and discussion. To help the public respond, the Commission funded municipal governments, First Peoples' organizations and other public interest groups. Public hearings were held in 12 communities in November and December.

In all, a total of 123 persons appeared before the Commission to express their views in the first round of hearings. The Commission received 39 written submissions in public hearings and six people submitted written briefs that were received by mail.

An interim report, produced in February, 1992, summarized the results of this effort and the work done for the Commission by a team of legal and constitutional advisors. The purpose of that report was to present the views of the people on the principles that should guide constitutional development, and to integrate these views into preliminary statements of principle for public discussion.

The interim report also proposed, as a mechanism to permit the varied governmental structures and responsibilities desired by residents, a new district order of government.

Individual Commission members held information sessions throughout the western Northwest Territories in February and March. Public hearings were held in another nine communities in March and April. The purpose of these meetings was to fill in gaps and to make sure that the Commission had heard people well, and reflected their thinking in the interim report.

Further funding was provided to municipal governments, First Peoples' organizations and other public interest groups, to respond to the Commission's interim report. In all, 75 people made presentations and 44 written submissions were received in this second round of public consultation.

and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative. (2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative. 19.(1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament; (2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick. 20.(1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where (a) there is a significant demand for communications with and services from that office in such language; or (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French. (2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French. 21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. 22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

## OFFICIAL LANGUAGES OF CANADA

- 23.(1) Citizens of Canada (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province. (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language. (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instructions; and (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

## ENFORCEMENT

- 24.(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

## Appendix III

**LEGAL RIGHTS**

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. 8. Everyone has the right to be secure against unreasonable search or seizure. 9. Everyone has the right not to be arbitrarily detained or imprisoned. 10. Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefore; (b) to retain and instruct counsel without delay and to be informed of that right; and (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful. 11. Any person charged with an offence has the right (a) to be informed without reasonable delay of the specific offence; (b) to be tried within a reasonable time; (c) not to be compelled to be a witness in proceedings against that person in respect of offence; (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; (e) not to be denied reasonable bail without just cause; (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of a trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment; (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations; (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment. 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. 13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence. 14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

**EQUALITY RIGHTS**

- 15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

**OFFICIAL LANGUAGES OF CANADA**

- 16.(1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick. (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French. 17.(1) Everyone has the right to use English or French in any debates and other proceedings of Parliament. (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick. 18.(1) The statutes, records

Commission members were deeply impressed by the work that some people put into their presentations, even without funding. They would especially like to thank the many individuals who took the time to make presentations on their own.

The members of the Commission want to make a special acknowledgement of the work done by the Town of Hay River. This municipality conducted an extensive public consultation process on its own. As a result, participation by the residents of Hay River in the Commission's second round of hearings was exceptional. While all of the people of Hay River may not agree on all of the issues, they have embarked upon a dialogue that will lead to a better understanding of those issues.

Many of the people who made presentations to the Commission stressed the importance of understanding the unique history and cultural heritage of the Northwest Territories. The Commission would like to encourage all residents to learn about this history and heritage, by talking to elders in their communities as well as by reading and discussing important source documents in First Peoples, Canadian and Northwest Territories history.

This report cannot provide a detailed examination of all the ideas and recommendations received by the Commission. Those seeking more information are encouraged to consult the Northwest Territories Archives, where copies of all the submissions received by the Commission, as well as transcripts of both rounds of public hearings, are housed.

Public response to the ideas presented in the interim report was generally favourable. This final Phase I report therefore includes principles and ideas similar to those in the interim report, with some refinements. To show people what a constitution for a New Western Territory might look like, a first draft, based on the principles in this report, is included as chapter three.

The members of the Commission have now gone as far as their mandate permits them to go in developing constitutional principles and recommendations in Phase I. It is now up to the Committee of Political Leaders and the people of the New Western Territory to take the next steps.

The principles proposed in this report must be developed into a detailed proposal. This process is described in the Commission's Terms of Reference as Phase II. It is not known at this time whether or when Phase II will proceed, but recommendations for the further development and ratification of a New Western Territory constitution are included in this report. One of the Commission's major recommendations is that further development of a constitution should take place through representative and constituent assemblies over the next two years.

While the Commission's mandate directed that serious consideration be given to recommendations from groups such as the Western Constitutional Forum and technical advice from experts, the main source of their ideas, advice and inspiration has been the people of the New Western Territory.

### 3. What Is a Constitution and Will It Solve All Our Problems?

Before reviewing what the Commission heard, it is worth stating again what the basic elements of a formal constitution are.

The basic elements of a formal constitution are:

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

It was the Commission's job to provide principles, under each of these headings, to guide the development of a New Western Territory constitution. That is what they have done in this report.

The members of the Commission want to stress that the residents of the New Western Territory are not making their constitution in a vacuum. Everyone is constrained by a variety of present and future legal instruments, which set limits on what they can and cannot do. Among these are Treaties 8 and 11; modern land rights agreements; and the Canadian Constitution itself, which is now in a process of change.

Will a new constitution solve all of the long-standing problems of the western Northwest Territories? Will it bring about an era of respect for all, sharing, caring,

## CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

### GUARANTEE OF RIGHTS AND FREEDOMS

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### FUNDAMENTAL FREEDOMS

2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association.

### DEMOCRATIC RIGHTS

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein. 4.(1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members. (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be. 5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

### MOBILITY RIGHTS

- 6.(1) Every citizen of Canada has the right to enter, remain in and leave Canada. (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province. (3) The rights specified in subsection (2) are subject to (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services. (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

**WRITTEN SUBMISSIONS**  
**received by the**  
**COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**  
**(Second Round of Public Hearings)**

Submission by	Community/Organization
Ballantyne, Mike	Yellowknife
Beaver, Henry	Chief, Fort Smith Band
Bevington, Dennis	Mayor, Town of Fort Smith
Bohnet, Gary	President, Metis Nation
Cardinal, Rudy	Sub-Chief, Inuvik Band
Community of Inuvik	
Crook, Abbey	Soaring Eagle Friendship Centre, Fort Smith
Dent, Charles	Yellowknife
Diebold, Kevin	Mayor, Norman Wells
Duesterhus, Adolf	Yellowknife
Erasmus, Bill	Dene Nation
Evoy, Jim	N.W.T. Federation of Labour
Fraser-MacKay, Winnie	Status of Women Council
Gargan, Sam	M.L.A.
Gruben, Roger	Inuvialuit Regional Corporation
Hagen, Willard	Gwich'in Tribal Council
Hamer, Ter	Reform Party of Canada
Holmes, Sandy	Yellowknife
Jumbo, Alison	Deh Cho Tribal Council
Kutz, Ben/Carolyn Lyon	Hay River
La Federation Franco-TeNOise	
Lamb, Fred	Hay River
Latour, Vicky/Evelyn Tregidge	Hay River
MacQuarrie, Bob	Yellowknife
Marie-Jewell, Jeannie	M.L.A. Thebacha
McMahon, Pat	Mayor, City of Yellowknife
Metis Local #53	
Michaud, Raymond	Village of Fort Simpson
Miller, Dusty	N.W.T. Seniors' Society
Murray, John	Yellowknife
N.W.T. Chamber of Commerce	
O'Brien, Chris	Yellowknife
Patterson, Don	Mayor, Town of Inuvik
Pascal, Eugene	Chief, Aklavik Band
Robinson, Dale	N.W.T. Council for Disabled Persons
Ross, Robert	Hay River
Sahtu Regional Council	
Sayine, Robert	Mayor of Fort Resolution
Scarborough, Charlie	Town of Hay River
Sumter-Freitag, Adena	Yellowknife
Teed, Trevor	Yellowknife
Unka, Bernadette	Fort Resolution
Unka, Dorothy	South Slave Regional Council
Zoe, Henry	Tli Cho Regional Council

and harmony? Will it lead to a time when people of the New Western Territory will be able to pay their own way?

Unfortunately the answer to all of these questions is no. The Commission has more modest hopes for the document that will be the final product of the process begun a year ago by the Committee of Political Leaders.

The Commission's hearings and community visits gave people a chance to be heard on a wide range of issues, not all of which are constitutional in the formal sense noted above. Some had high expectations for a new constitution. Many expressed hope for a new, different and better way of life in a New Western Territory. The Commission heard the voices of many peoples during community visits and hearings. Representatives of the First Peoples, francophones, black Canadians, and non-aboriginal Canadians of European descent, among others, spoke before the Commission.

First Peoples and francophones want constitutional guarantees of their special collective rights. All peoples want to be respected and recognized as distinct, just as it is the deepest desire of individuals to be respected and loved for themselves within their families and communities.

In the communities they visited, the Commission heard about Treaty First Nations and their chosen governments being ignored and treated as unimportant by other governments. They heard people express the frustration of years of economic inequality between the small communities and the larger ones. They heard from women who are tired of violence and who spoke for others too frightened to speak for themselves.

They heard from youth, the disabled, senior citizens, organized labour, environmentalists, women's groups, chambers of commerce, municipalities, a political party and many individuals. Some of these people wanted to see their individual rights to equal treatment under the law affirmed in the new constitution. What others wanted was not so much equality as equity, or fairness in sharing the wealth of our society.

That means, for example, equality of opportunity, pay equity or affirmative action for disadvantaged groups. It means human rights, and rights for workers. It means regional equalization payments and the responsible use of our land in the creation of wealth.

They also heard strongly felt pleas for a healing process for families and communities to be completed, before these people can govern themselves. Alcoholism and family violence have taken a toll in too many homes in the New Western Territory.



There were contradictory views about many issues. Can a constitution reconcile these conflicting views?

Others suggested that, in a broader sense, the peoples of this territory need to heal the divisions among themselves. Some people felt that some minimum standards for the basic necessities of life should be guaranteed to all citizens.

Finally, there was a wide variety of views on governmental structures, powers and political processes. People wanted everything from exclusive Treaty First Nations governments, to mixed public and aboriginal community governments, to public or aboriginal regional governments, to a strong central government, with everything from municipal to provincial or greater powers. Representation was an especially difficult issue.

Can a constitution make peoples of different governmental traditions live in harmony with each other and the land?

A New Western Territory constitution cannot, and need not, be all things to all people. Some of the guarantees people were seeking are now to be found in the national constitution, in the Canadian Charter of Rights and Freedoms and in existing constitutional protection of aboriginal and treaty rights. Others, such as the First Peoples' inherent aboriginal right of self-government, may soon come about through national constitutional renewal.

The Commission's work served in some cases to raise people's awareness of rights they already have. They recognize that even when people know their rights, going to court to enforce those rights can be difficult and costly. New territorial statutes, improved enforcement of existing laws, and social programs may offer better and more immediate solutions to problems of equity and caring than constitutional proposals.

A law, even the supreme law of a particular land, is only a piece of paper. If the people want a sharing, caring, harmonious and respectful society, it is up to them to practise these values in their daily lives and to demand that their governments live up to them.

**WRITTEN SUBMISSIONS  
received by the  
COMMISSION FOR CONSTITUTIONAL DEVELOPMENT  
(First Round of Public Hearings)**

Submission by	Community/Organization
Anonymous	Unauthored submission of our discussion paper
Buracas, Ted	Ecology North
Brooks, Lynn	Status of Women Council
Cleary, George	Sahtu Tribal Council
Deh Cho Regional Council	
Dene Nation	
Donovan, Margaret	Gwich'in Tribal Council
Dupont, Tyler	Student, Inuvik
Edwards, Phillip	Student, Inuvik
Evoy, Jim	N.W.T. Federation of Labour
Firth, Larry	Fort McPherson
Fort Good Hope Community Council	
Fort Smith Native Band	
Gruben, Roger	Inuvialuit Regional Corporation
Hamer, Ter	Yellowknife
Hawkins, Ron	Yellowknife
Holmes, Sandy	Yellowknife
Huston, Baxter and Ann	Fort Smith
Itsi, John	President, H.T.A. Tetlit Gwich'in Band
Koe, William	Band Council, Fort McPherson
Lee, Tim	Reform Party of Canada
MacQuarrie, Bob	Self, Yellowknife
McMahon, Pat	Mayor of Yellowknife
Mercredi, Joe	
Miller, Dusty	N.W.T. Seniors' Society
Murray, John	Yellowknife
N.W.T. Council for Disabled Persons	
O'Brien, Chris	Yellowknife
Patterson, Don	Mayor of Inuvik
Prior, Scott	Norman Wells
Snowshoe, Charlie	Mayor of Fort McPherson
South Slave Tribal Council	
Status of Women Council	
Stilwell, Mike	Yellowknife
Vanetsi, Kim	Student, Fort McPherson
Vanetsi, Wanda	Tetlit Gwich'in Band
Yellowknife Chamber of Commerce	
Y. W. C. A.	

The new constitution will not come into effect until 1999 at the earliest, according to the Commission's understanding of the proposed schedule for the creation of Nunavut.

---

Do the people of the New Western Territory want to wait until 1999, or longer, for human rights legislation, or to begin a healing process?

---

When the constitutional development process is finished, the people of the New Western Territory will know a little better who they are and who their neighbours in this territory are. The people will have said what they think they can reasonably expect from each other and their governments. The members of the Commission for Constitutional Development believe this process will lead to a workable, and lasting, constitution for the New Western Territory.

In the next phase, they hope to see two different ideas of a constitution come together. One is the idea of a constitution as a written law, covering the topics outlined above. The other is an older vision of a constitution, common to many New Western Territory residents, as a set of customs that cannot be separated from a people's way of life.

**II PRINCIPLES FOR A NEW CONSTITUTION**

**1. Introduction and Definitions**

The Commission's Terms of Reference require that their Phase I report recommend principles which should form the foundation of a constitution. The purpose of this chapter is to make a number of recommendations, which are based upon presentations made by members of the public, 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.

The words used to refer to different aboriginal peoples, smaller groups of them, and their governing bodies, are often vague or confusing. The terms used in the remainder of this chapter are defined below.

Readers are asked to note the following definitions:

- \* "First Peoples" means the Inuvialuit, the Gwich'in, the Hare, the Slavey, the Tli Cho, the Chipewyan, the Cree and the Metis;
- \* "Treaty First Nations" means the Indian band governments located in the New Western Territory except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik;
- \* "Metis First Nations" means the Metis Nation-Northwest Territories affiliated locals, except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik;
- \* "Gwich'in First Nations" means Gwich'in First Nation Authorities as defined in Appendix "B" to the Gwich'in Comprehensive Land Claim Agreement;
- \* "Inuvialuit First Nations" means Inuvialuit community corporations established pursuant to chapter 6 of the Inuvialuit Final Agreement;
- \* "Aboriginal First Nations" means Treaty First Nations, Metis First Nations, Gwich'in First Nations and Inuvialuit First Nations.

Date	Name	Location
Mar. 31, 1992	Ms. Carolyn Lyon, Executive Director, Hay River Women's Assn. Mr. Rocky Simpson Chief Jerry Antoine Mr. Robert Ross Ms. Alice Horsnel, President, Metis Local #51 Mr. John Thomas Mr. Eric Braathen Chief Henry Beaver	Hay River
April 1, 1992	Chief Bernadette Unka Mr. Robert Sayine, Mayor Ms. Violet Beaulieu Mr. Don Balsillie Ms. Dorothy Unka, Deninoo Community Council	Fort Resolution
April 2, 1992	Chief Joseph Judas Mr. Henry Zoe, M.L.A. North Slave Mr. Alexi Arrowmaker, Elder Mr. Felix Dryneck, Elder Chief Eddie Erasmus Mr. Dan Marion Mr. John B. Zoe Chief Isadore Zoe Chief Jonas Sangris Chief Darrel Beaulieu Mr. Joe Mantla, Elder Mr. Harry Simpson, Elder	Snare Lake
Apr. 3, 1992	Ms. Dianne Mahoney, Franco TeNOise Fed. Mr. Jim Evoy, Fed. of Labour Mr. Bob MacQuarrie Ms. Dale Robinson, Council for Disabled Persons Mr. Charles Dent Mr. Ter Hamer, President, Reform Party of Canada Mr. Trevor Teed Mr. Chris O'Brien Mr. Sandy Holmes Chief Bill Erasmus, Dene Nation	Yellowknife
Apr. 4, 1992	Mr. Gary Bohnet, President, Metis Nation Ms. Pat McMahan, Mayor Mr. Dave Lovell Mr. Joe Auge, Yellowknife Chamber of Commerce Ms. Winnie Fraser-MacKay, Status of Women Council Ms. Reanna Erasmus, Status of Women Council Ms. Adde Sumter-Freitag Mr. Michael Ballantyne, M.L.A. Ms. Barb O'Neill	



Date	Name	Location
Mar. 13, 1992	Mr. Don Patterson, Mayor of Inuvik Mr. Rudy Cardinal, Sub-Chief Inuvik Gwich'in Council Ms. Paula Van Buskirk Mr. Bob Simpson Mr. Peter Clarkson	Inuvik
Mar. 24, 1992	Chief Eugene Pascal Ms. Barbara Allen Mr. Roger Gruben, Chairman, Inuvialuit Regional Corporation Ms. Rita Furlong-Arey, President, Status of Women Council Ms. Mary Kendi Ms. Marjorie Elanik	Aklavik
Mar. 25, 1992	Mr. George Cleary, President, Sahtu Tribal Council Mr. Doug Bruce, Administration Officer, Village of Norman Wells Mr. Roger Odgaard, President, Metis Local #59 Chief Richard Kochon, Colville Lake Mr. Jonas Neyelle, Mayor	Fort Norman
Mar. 26, 1992	Chief Jerry Antoine Ms. Christina Holman Mr. Bill Lafferty Ms. Ethel Lamonthé	Fort Simpson
Mar. 30, 1992	Mr. Dennis Bevington, Mayor Chief Henry Beaver Mr. George Kurszewski Ms. Vicky St. Nation Madame Dube	Fort Smith
Mar. 31, 1992	Mr. Dave Gray, Town of Hay River Mr. A. Fred Lamb Mr. Ben Kutz Mr. Alec Goodzeck Ms. Abbey Crook, Soaring Eagle Friendship Centre Mr. George Blondin, Elder	Hay River

## 2. Name and Geographic Area for the New Western Territory

The 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, all First Peoples have a word or name, such as Denendeh or Nahendeh, describing their homeland.

---

The Commission recommends that the name for the New Western Territory be taken from a First People's language.

---

This idea met with universal approval in the second round of hearings. Some people had suggestions for a process to select the name, including a referendum.

---

The Commission recommends that a selection process for the New Western Territory name be decided upon in Phase II.

---

The exact geographic area of a New Western Territory may not be known for some time. However, every constitution must state the geographic area over which it applies.

---

The Commission recommends that the description of the geographic area of the New Western Territory be addressed in Phase II.

---

### 3. Foundations of the New Western Territory

#### i) The Peoples

One objective of the 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 Canadian Constitution. Commission members believe that a New Western Territory constitution requires a preamble which captures the spirit and vision of our land and peoples.

Most people at the second round of hearings agreed with the intent and substance of the specimen preamble provided in the Commission's interim report, although many had comments on the wording. This clause is the best place to recognize and celebrate the distinct peoples and unique history of the New Western Territory, as well as stating the values and aspirations we have in common. First Peoples should be recognized in this section as founding peoples of the New Western Territory. All peoples should be celebrated for their unique history, and for their contribution to the rich mixture of cultures that makes up New Western Territory society.

---

The Commission recommends that description of the peoples of the New Western Territory, similar to the following, be included in a preamble:

"The New Western Territory is home to many peoples.

"Among these are the First Peoples who have lived and continue to live in harmony with the land and in accordance with their own laws and customs, in societies that have sovereign relations with each other. The First Peoples are recognized as founding peoples of the New Western Territory.

"In addition to the First Peoples, many other groups and individuals have chosen to make the New Western Territory their home. They or their ancestors have come from all parts of the world. These groups and individuals are recognized as an integral part of the society of the New Western Territory."

---

#### ii) Common Values

The Commission's interim report proposed a statement of common values, which remains in the draft constitution in chapter III. Based on what people said in the

Date	Name	Location
Dec. 2, 1991	Chief Antoine Michel Ms. Liza Enzo Ms. Bernadette Lockhart Ms. Alizette Abel Mr. Pierre Marlow Mr. John Catholique Mr. Maurice Lockhart	Snowdrift
Dec. 3, 1991	Mr. Rocky Simpson Mr. Chris Brodeur Ms. Winnie Fraser-Mackay Ms. Carolyn Lyon Ms. Wendy MacDonald	Hay River
Dec. 4, 1991	Mr. Francis Jenkins, Mayor Mr. Joachim Bonnetrouge Mr. James Christie Mr. Mansell Grey Mr. Sam Gargan, M.L.A. Mr. Jim Thom	Ft. Providence
Dec. 5, 1991	Mr. Raymond Michaud, Mayor Ms. Jean Lafferty Mr. Andy Norweigan Chief Stanley Sanguéz Ms. Rita Cazon Mr. Rene Lamothe Ms. Betty Hardisty Mr. Nolan Swartzentruber Mr. Ernest Cazon Ms. Ethel Lamothe Mr. Jerry Antoine Ms. Bertha Norweigan	Fort Simpson
Dec. 5, 1991	Chief Eddy Erasmus Mayor Dan Marion Ms. Winnie Fraser-Mackay Ms. Bertha Rabesca Mr. Henry Zoe, M.L.A. Mr. Nick Black Ms. Adena Sumter-Freitag Mr. John B. Zoe	Ft. Rae

Date	Name	Location
Nov. 21, 1991	Chief Eddy Erasmus Chief Bill Erasmus Mr. Antoine Mountain Mr. Alexi Arrowmaker Chief Jim Antoine Mr. Alex Beaulieu Chief Isadore Zoe Mr. Jerry Antoine Chief Henry Beaver Ms. Betty Hardisty Mr. Irvin Norn	Rae
Nov. 25, 1991	Mr. Don Patterson, Mayor Ms. Margaret Donovan, Gwich'in Tribal Council Mr. Willard Hagen Mr. Bob Simpson Ms. Eileen Gour Mr. Paul Komaromi	Inuvik
Nov. 26, 1991	Mr. Ross MacCallum Students of Samuel Hearne High School	
	Mr. Roger Gruben, Chairman, Inuvialuit Regional Corp. Mr. Vince Teddy Ms. Sheila Nasogaluak, Sachs Harbour Mr. Robert Kuptana, Holman Island Mr. Fred Bennett, Paulatuk Mr. Russell Newmark Mr. Knut Hansen, Aklavik	Tuktoyaktuk
Nov. 27, 1991	Mr. Charlie Snowshoe, Mayor Chief James Ross Mr. John Itsi Ms. Wanda Vaneltsi Mr. Ernest Firth Mr. William Koe Mr. Larry Firth	Fort McPherson
Nov. 28, 1991	Chief Everett Kakfwi Mr. George Barnaby Mr. Joe Grandjambe Mr. Henry Tobac Mr. Jim Pierrot Mr. Ron Pierrot	Ft. Good Hope
	Mr. Roger Odgaard, President, Metis Local #59 Mr. George Barnaby Mr. Kevin Diebold, Mayor Mr. Scott Prior Mr. Frank Pope Mr. Rick Muires	Norman Wells

second round of hearings, this statement needs a rewrite. The people of the New Western Territory need to recognize the common themes that bring them together. Some proposed themes for the preamble to a constitution are noted below.

---

The Commission recommends that the following common values of New Western Territories residents be stated in a constitutional preamble:

- \* recognition of the land itself as the source of our spiritual, emotional, mental and physical well-being;
  - \* a commitment to live in balance with the land;
  - \* the desire to restore good feelings, balance and harmony among all New Western Territories peoples;
  - \* the belief that all authority to govern belongs to the people and flows from them to their institutions of government;
  - \* respect for our distinct cultures, traditions and languages;
  - \* the desire to create a balance between the rights of the individual and the collective rights of peoples.
- 

### iii) Fundamental Responsibilities

The Commission also heard reference, in our second round of hearings, to a desire for a statement of responsibilities to balance the constitution's statements of residents' rights.

---

The Commission recommends that the issue of whether or not to include in the constitution a statement of the basic responsibilities of residents of the New Western Territory be examined in Phase II.

---

**4. Special Rights**

**i) Fundamental Rights**

An important element of any constitution in a modern democratic society is the definition of the fundamental rights and freedoms of all residents. In developing a definition, the Commission noted in its interim report, a balance must be struck between a constitution which is for people as opposed to governments, and the reasonable limits which government can put on the rights and freedoms of individuals.

The Commission summarized the main rights defined in the Canadian Charter of Rights and Freedoms in their interim report. This created more confusion than clarity, in that some groups, such as the disabled, for whom rights are spelled out in the Charter, worried that this summary left them out of a New Western Territory constitution. This was not the Commission's intent. The full text of the Charter has been reproduced as an appendix to this report, and some of the sections which are most relevant to the New Western Territory constitution are quoted in full below.

The Commission received some opposition to reaffirming the Charter, as unnecessary. But the Charter, as part of the Canadian Constitution, is one of the elements of the framework within which a New Western Territory constitution must operate.

The Commission recommends that the New Western Territory constitution should reaffirm the rights and freedoms that are set out in the Canadian Charter of Rights and Freedoms.

The Charter guarantees rights and freedoms "subject only to such reasonable limits as prescribed by law in a free and democratic society." It provides a basic guarantee to all citizens of rights for participation in the democratic process, 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, including the rights of minority official language groups to education, and, in some cases, services.

More specifically, s. 2 states: "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association."

**LIST OF INDIVIDUALS APPEARING BEFORE THE COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**

Date	Name	Location
Nov. 4, 1991	Mr. Irvin Norn, Chair, South Slave Tribal Council Ms. Alice Horsnel, President, Metis Local #51 Ms. Mary Temple Mr. R. McBryan Ms. Georgina Rolt Mr. Chuck Davidge Mr. Eric Braathen	Hay River
Nov. 5, 1991	Mr. Jack Cooper Mr. Norm Hill, Mayor Mr. David Harrison Students of Diamond Jenness High School	
Nov. 18, 1991	Mr. Dennis Bevington, Mayor Ms. Dale Robinson, Council for Disabled Persons Mr. Irvin Norn, Chair, South Slave Tribal Council Mr. Clayton Burke Mr. George Kurszewski Ms. Vina Champagne Mr. Larry Poitras	Fort Smith
Nov. 19, 1991	Students of P.W. Kaiser High School	
Nov. 19, 1991	Mr. Dusty Miller, N.W.T. Seniors' Society Mr. Tim Lee, Reform Party of Canada Mr. Len Jason Mr. Ter Hamer Ms. Dianne Mahoney, Federation Franco TeNOise Mr. Richard Barrett Mr. Daniel Mathieu Mr. Chris O'Brien Mr. Ted Buracas, Ecology North	Yellowknife
Nov. 20, 1991	Mr. Gary Bohnet, President, Metis Nation Mr. Gordon Lennie Ms. Beatrice Daniels Ms. Pamela Bohnet Mr. Sandy Holmes Ms. Pat McMahon, Mayor, City of Yellowknife Mr. Jim Evoy, N.W.T. Federation of Labour Mr. Peter Atamenenko Students of Sir John Franklin High School Mr. Bob MacQuarrie Ms. Winnie Fraser-Mackay, Status of Womens' Council Ms. Lynn Brooks Mr. Michael Stilwell Ms. M. Helene Laraque	
Nov. 21, 1991	Mr. Joe Auge, Yellowknife Chamber of Commerce Students of St. Patrick High School	

Further, s. 15 states, "(1) Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

S.25 of the Charter states that Charter guarantees of rights and freedoms cannot be used to take away any aboriginal, treaty or other rights or freedoms of the aboriginal peoples of Canada. It states: "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 or 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."

The Charter applies to Parliament and the government of Canada for all matters related to the Northwest Territories, including a New Western Territory Constitution Act passed by Parliament.

#### **ii) New Rights**

The Commission has recommended the reaffirmation of the Canadian Charter of Rights and Freedoms in a New Western Territory constitution. Some people in the second round of hearings told the Commission that Charter rights should not only be reaffirmed, but strengthened and added to. What follows is a summary of conclusions in the main subject areas where people wanted the recognition of new rights.

#### **a) Women's Rights**

Women's organizations wanted to entrench constitutional protection for women and children against violence. The Commission members believe that a statement of respect for women in the constitution, perhaps in the preamble to a Social Charter, will help to create a climate of opinion in the New Western Territory in which violence against women and children will not be tolerated.

Women also requested recognition of their right to reproductive freedom. Most Commission members believe that this is a matter more appropriately dealt with at the national level.

Control of the birthing process, including the right of midwives to practice, and of women to use their services, on the other hand, can immediately be provided for in territorial statutes.

The Commission recommends that the Northwest Territories government and Legislative Assembly immediately consider creating legislation to ensure the freedom to practise midwifery, and the right to use the services of a midwife.

The Commission has included provisions for safe, non-violent homes and communities in a proposed Social Charter (see below). However, it may be that more than this can and should be done.

The Commission recommends that the matter of additional constitutionally entrenched rights for women be revisited in Phase II.

#### **b) Right to Refuse Medical Treatment**

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

The Commission recommends that a New Western Territory constitution should establish the right of a competent person of majority age to refuse medical treatment to prolong life, for themselves or their minor children.

#### **c) Human Rights**

A number of groups and individuals proposed that a Human Rights Code be developed and entrenched. Such codes in the provinces and Yukon provide recourse for the violation of individual human rights through investigations, hearings and judgements, usually by a tribunal set up for the purpose.

There is nothing preventing the Northwest Territories Legislative Assembly from enacting such a code now, rather than waiting for the coming into force of the New Western Territory constitution in 1999.

The Commission strongly recommends that the fiscal implications of New Western Territory constitutional development be examined in depth in Phase II.

The members of the Commission are conscious that their proposals represent the start of what may be the last effort to accommodate public government combined with aboriginal governments in a New Western Territory.

No resident of the present western Northwest Territories should be under any illusions about maintaining the status quo. If something similar to the district government concept cannot be made to work, public government on a territory-wide basis may be a thing of the past. Instead, there may be a set of separate and exclusive aboriginal jurisdictions, with some residual areas administered by the federal and territorial governments.

The members of the Commission are confident, however, that the next phase in the public process of constitutional development, based on the work accomplished so far, will provide the people of the New Western Territory with a workable, affordable and acceptable constitution. They are honoured to have been part of the first phase of this process.



Territory constitution could be protected from unilateral amendment by the federal government.

A review of the legal options showed that the prospects for creating a province out of the New Western Territory are fairly slim. Funding and the federal responsibility with respect to First Peoples were two major obstacles noted in the Commission's interim report.

On the matter of entrenching the new constitution, a review of the legal options 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 members of the Commission believe that the status of the New Western Territory constitution, and measures which can be taken to protect it from unilateral change by Parliament, are important issues to pursue.

---

The Commission recommends that territorial jurisdictions and territorial orders of government be recognized and entrenched in the Constitution of Canada, with the New Western Territory constitution becoming a schedule to the Constitution of Canada.

---

#### 4. Conclusion

The Commission heard consistently that there is an urgent need for constitutional reform in the New Western Territory. They have attempted to show that reform is possible and practical. The proposals made are preliminary and are presented for further discussion.

Throughout the hearings, the Commission heard concerns about the high cost of governments. They did not have the means or the time to look into the cost implications of putting these draft recommendations into effect.

In the Commission's interim report, the government of the Northwest Territories was asked to give the Commission some comments on this issue. The Commission received no comments on this issue from the government of the Northwest Territories. The Commission again encourages the government to come forward with comments on the cost implications of these recommendations.

---

The Commission recommends that the government of the Northwest Territories, in consultation with other leaders, consider the development and enactment of a Human Rights Code prior to the coming into force of the New Western Territory constitution.

---

The code could be viewed as an experiment, whose suitability for inclusion in the constitution will be judged at a later date.

#### d) Workers' Rights

The Northwest Territories Federation of Labour proposed a separate and enforceable charter of workers' rights, including: the right to decent working conditions, fair hours and pay, and a safe and healthy workplace; the right to establish and join unions; the right to bargain collectively and to strike; the right to equal pay for work of equal value; and the right of disadvantaged groups to affirmative action.

Commission members agree with the Federation's statement that "we need the jobs, but the people who get the jobs need to be treated fairly," as a statement of principle, and have included it in the preamble to a Social Charter. However, expert legal advice in the field of labour and employment law, including the relation of workers' rights to aboriginal and treaty rights, is needed in order to make more specific recommendations in Phase II.

---

The Commission recommends that the issue of workers' rights be revisited in the next phase of New Western Territory constitutional development.

---

#### e) Environmental Rights

The Commission received strong representations for a separate and enforceable charter of environmental rights. There is nothing that brings all people of the New Western Territory together so much as appreciation for the land. The Commission has recommended a strengthened environmental theme for the proposed preamble of a New Western Territory constitution. (See page 11.)

Despite some interesting proposals, however, a complete environmental charter raises legal and jurisdictional issues that will have to be resolved before more concrete recommendations can be made. Such a charter could give people the right to clean air and water. It could create an obligation to take action to maintain

and enhance the links between human health, the economy and local and territorial ecosystems. Commission members are also aware that an Environmental Bill of Rights already exists at the level of territorial statute.

---

In the area of environmental rights, the Commission recommends that the issue of a separate and enforceable environmental charter be revisited in Phase II.

---

Commission members are conscious that the extensive practical knowledge of indigenous people-- aboriginal and non-aboriginal-- has often been ignored by distant governments in framing laws regulating the land, waters, flora and fauna of the north. Yet no-one has more of an interest in conservation and environmental protection than the people who live in a place and derive sustenance from it.

---

The Commission recommends that traditional indigenous knowledge of the environment and western science be recognized as equally valuable, in a charter of environmental rights or other environmental laws.

---

#### f) Social Rights

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. 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.

The Commission proposes that the New Western Territory constitution should identify in a Social Charter the basic necessities required for the spiritual, emotional, mental, physical and economic well-being of all members of New Western Territory society.

participate, provide a statement of purpose and set out the negotiating process for a constituent assembly.

### 2. Ratifying a New Western Territory Constitution

Ratification is one of the most fundamental aspects of constitutional change. It is the process by which the people who are to be governed under a constitution signify that they accept the proposed rules.

The problems and possibilities that go along with amending a constitution for the most part apply also to its ratification. For example, the First Peoples' veto, if established for amendment, is also established for ratification.

The Treaty First Nations insist upon such a veto. They foresee attending a constituent assembly after their own ratification process has taken place, followed by a territory-wide plebiscite. The constitution will be a form of treaty, to which all Treaty First Nations are party, and which they will sign as equals with the central government, Ottawa and other Aboriginal First Nations.

---

The Commission recommends that the ratification process for the New Western Territory constitution provide for the consent of Aboriginal First Nations.

---

The Commission also received a number of suggestions for public ratification of the New Western Territory constitution by plebiscite or referendum.

---

The Commission recommends that:

- \* the ratification process guarantee a public information and consultation process; and,
  - \* the constitution be ratified by New Western Territory residents in a plebiscite or referendum, subject to further development of a ratification process in Phase II.
- 

### 3. Entrenchment of the New Western Territory Constitution

The Commission raised the issue of provincial status for the New Western Territory early in its work. Such status was seen as one way in which the New Western



## IV DEVELOPING, APPROVING AND ENTRENCHING THE NEW CONSTITUTION

### 1. The Next Stage

Other sections of this report have reviewed the way in which the Commission completed Phase I of its mandate. The Commission has made a large number of proposals for further work in a second phase. While decisions have yet to be made on an approach to completing and approving the New Western Territory 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 governments and convening a constituent assembly to write the constitution.

---

The Commission recommends that:

- \* the Committee of Political Leaders ensure that New Western Territory constitutional development issues will be addressed at upcoming assemblies of the Aboriginal First Nations and the Legislative Assembly;
  - \* the Committee of Political Leaders seek the agreement of their parent bodies to hold a representative assembly of constitutional stakeholders in the fall of 1992;
  - \* this representative assembly be composed of two representatives from each Aboriginal First Nation (bands, Metis locals and Inuvialuit community corporations), the mayor and one councillor from each tax-based municipality, western MLAs, the public interest organizations recognized and funded to date in this process, Northwest Territories Members of Parliament and observers from the federal government;
  - \* the objectives of the representative assembly should be:
    - to review this report
    - to recommend to the Committee of Political Leaders how the process of New Western Territory constitutional development, including a duly mandated constituent assembly, should best continue, and
    - to reach consensus on certain issues.
- 

As an alternative, a process for finalizing a new constitution could be set out in enabling legislation. The legislation would identify the parties who have the right to

---

The Commission recommends that a Social Charter be introduced with a statement of social principles. These include:

- \* respect for the elders of all peoples, and their traditional knowledge;
  - \* respect for women as equal participants in the social, political and economic mainstream of society;
  - \* respect and care for children;
  - \* recognition of the dignity and importance of the family in the nurturance and support of individuals;
  - \* recognition of the dignity and importance of labour, and the obligation of employers to treat workers fairly; and,
  - \* recognition of the right of all people, but especially women, children and elders, to a life free from violence.
- 

They also wish to make it clear that they believe individuals, regardless of whether they reside within a family, are entitled to these necessities of life. Individuals are simply members of the larger "family" of New Western Territory citizens.

---

The Commission recommends that the Social Charter state that governments have a responsibility to make sure residents have access to:

- \* health and social services;
  - \* education and training opportunities;
  - \* child care;
  - \* adequate shelter;
  - \* a safe work place;
  - \* a safe home and community;
  - \* economic equality;
  - \* affirmative action programs to eliminate systemic barriers to education and employment for disadvantaged groups;
  - \* positive programs to eliminate drug and alcohol abuse, physical and sexual abuse and family violence.
- 

In considering these proposals for a Social Charter, it is important to remember that in some constitutions, such provisions are enforceable by the courts. Commission members originally felt that this should not be the case with the provisions of a Social Charter in the New Western Territory Constitution. Other means could be developed to monitor government's performance in responding to these objectives

and encouraging greater compliance if required. Governments can be encouraged to make fulfilment of basic necessities the first priority for government spending. However, this is a matter that deserves further consideration.

The Commission recommends that the issue of enforceability of a Social Charter be revisited in Phase II of the New Western Territory constitutional development process.

The members of the Commission also do not think it is necessary to wait until the coming into force of this constitution, which may be in 1999 or later, to implement some of the measures called for in this charter. In fact, they believe it is urgent that the recommended positive programs, or healing process, for alcohol abuse and violence get under way immediately if families, communities and districts in the New Western Territory are to govern themselves.

The Commission recommends that the government and Legislative Assembly of the Northwest Territories, in consultation with other leaders, consider funding those communities requesting help for the immediate implementation of a healing process composed of positive programs to combat alcohol and substance abuse, physical and sexual abuse and family violence.

**5. First Peoples' Rights**

**i) Inherent Right of Self-Government**

The First Peoples have an inherent right to self-government. Upon the arrival of the Europeans in Canada, First Peoples entered into nation to nation relationships with the newcomers. That the relationship was seen in this manner by the British Crown as well as the First Peoples is shown in the language of the Royal Proclamation of 1763 and of numbered treaties, including Treaties 8 and 11.

- treat workers fairly; and
- (f) recognition of the right of all people to a life free from violence.

*Responsibilities of Governments*

Responsibilities of governments

34. It is the responsibility of governments to make certain that residents of the New Western Territory have access to
- (a) health and social services;
  - (b) education and training opportunities;
  - (c) child care;
  - (d) adequate shelter;
  - (e) a safe work place;
  - (f) a safe home and community;
  - (g) economic equality;
  - (h) affirmative action programs to eliminate systemic barriers to education and employment for disadvantaged groups; and
  - (i) programs to eliminate drug and alcohol abuse, physical and sexual abuse and family violence.

*Enforcement*

Rights not enforceable

35. The responsibilities of governments set out in section 34 may not be enforced by any court.

PART V

AMENDMENT

Constitutional amendment

36. The Legislature of the New Western Territory may exclusively make laws amending the Constitution of the New Western Territory.

Amendment respecting district governments

37. An amendment to the Constitution of the New Western Territory in relation to district governments may only be made where so authorized by resolutions of at least two-thirds of the district governments representing at least fifty per cent of the population of the Territory and by resolution of the Legislative Assembly of the Territory.

Consent of First Nations

38. An amendment referred to in sections 36 and 37 is of no effect until the Aboriginal First Nations have consented to the amendment.

PART VI

CITATION

Constitution Act 1992

39. This Act may be cited as the *Constitution Act, 1992* and the Constitution Acts 1867 to 1982 and this Act may be cited together as the *Constitution Acts, 1867 to 1992*.

SCHEDULE

District

Legal Description  
(to be completed when determined)

Form of Government

DRAFT BILL FOR DISCUSSION

*Revenues*

Distribution of revenues 27. The Government of the New Western Territory shall ensure that revenues received from the Government of Canada and from direct taxation within the Territory are distributed equitably between the government of the Territory and district governments in order that each order of government may deliver the programs and services for which it is responsible. 5

DIVISION B

ADMINISTRATION OF JUSTICE 10

*Judicature*

Appointment of judges 28. The Governor in Council shall appoint the judges of such superior and district courts as are now or may hereafter be constituted in the Territory. 15

Tenure of office of judges 29. The judges of the superior and district courts in the Territory shall hold office during good behaviour but are removable by the Governor in Council on address of the Senate and House of Commons and shall cease to hold office on attaining the age of seventy-five years. 20

*Supreme Court*

Deputy judges 30. (1) The Governor in Council may appoint any person who is or has been a judge of a superior or district court of any of the provinces or a barrister or advocate of at least ten years standing at the bar of any province to be a deputy judge of the Court and fix his or her remuneration and allowances. 25

Duration of appointment (2) A deputy judge may be appointed pursuant to subsection (1) for any particular case or cases or for any specified period. 30

Tenure of office (3) A deputy judge holds office during good behaviour, but is removable by the Governor General on address of the Senate and House of Commons. 35

Residence 31. The senior judge of the Court shall reside in the city of Yellowknife or within forty kilometres thereof. 40

Exercise of powers of stipendiary magistrate 32. Where in any Act of Parliament or other law in force in the Territory it is expressed that a power or authority is to be exercised or a thing is to be done by a stipendiary magistrate of the Territory, the power or authority shall be exercised or the thing shall be done by a judge of the Court or, where the power, authority or thing is within the jurisdiction given to him or her pursuant to this Act, by a police magistrate. 45

PART IV

SOCIAL CHARTER 45

*Principles*

Social Charter 33. The Social Charter set out in section 34 is founded on the following principles: 50  
 (a) respect for the elders of all our peoples, and their traditional knowledge;  
 (b) respect for women as equal participants in the social, political and economic mainstream of society;  
 (c) respect and care for children;  
 (d) recognition of the dignity and importance of the family and its role in the nurturing and support of individuals; 55  
 (e) recognition of the dignity and importance of labour, and the obligation of employers to

The Commission recommends that the New Western Territory constitution recognize, uphold and protect the First Peoples' inherent right of self-government.

First Peoples' languages are now recognized by territorial statute as official languages in the Northwest Territories. The members of the Commission believe that the First Peoples' inherent right to self-government includes the right to use their own languages.

The Commission recommends that the New Western Territory constitution recognize First Peoples' languages as official languages that will be used in public, central, district and aboriginal government institutions.

The First Peoples' inherent right to self-government also means that Aboriginal First Nations have the right to opt out of the New Western Territory constitutional process completely and seek a direct link with the federal government.

The Commission recommends that the New Western Territory constitution recognize that Aboriginal First Nations may opt out of the New Western Territory constitutional process and seek a direct link with the federal government.

The Commission found in the second round of hearings that the inherent right of aboriginal self-government was well-accepted, though some residents would prefer to see it defined. Some people thought the Commission should wait until national constitutional renewal is complete before making statements in this area.

There are a number of outstanding issues in this area, in part because the definition of aboriginal rights is still in process at the national level. These include the application of the Charter of Rights and Freedoms to aboriginal governments, and the obligation of aboriginal governments to defend and protect the rights of non-aboriginal people.

**ii) Section 35 of the Canadian Constitution**

Section 35 of the Constitution of Canada recognizes and affirms existing aboriginal and treaty rights. This means that Treaties 8 and 11, the Inuvialuit Final Agreement, the Gwich'in Final Agreement and other modern land rights agreements signed in the future will all have protection under the Constitution of Canada. It must be recognized that different First Peoples now have somewhat different rights and aspirations.

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 Peoples.

The Commission recommends that any provisions respecting aboriginal and treaty rights in the New Western Territory constitution be consistent with the agreements and treaties now protected by s. 35 of the Canadian Constitution.

**iii) Rights of Treaty First Nations**

A New Western Territory Constitution should also include commitments to Treaty First Nations. Through Treaties 8 (1899) and 11 (1921), the government of Canada recognized the right of Treaty First Nations to their accustomed hunting, fishing and gathering mode of life, their prior use and occupancy of the land, and their status as sovereign self-determining Treaty First Nations with their own governments (chiefs, headmen and councillors). Treaty First Nations want their treaty and aboriginal rights upheld to restore good feelings and balance with non-aboriginal people.

- (i) education standards and post-secondary education facilities;
- (j) health standards and territorial health facilities;
- (k) standards for and regulation of building, construction and fire safety codes;
- (l) regulation of securities and incorporation of companies and societies with territorial objects; 5
- (m) tribal and territorial police services and administration of justice including the constitution, maintenance and organization of Territorial Courts, both of civil and criminal jurisdiction and including procedure in civil matters in those courts;
- (n) the imposition of fines, penalties, imprisonment or other punishments in respect of the contravention of the provisions of any Act; 10
- (o) standards for correction services and territorial correction facilities;
- (p) standards for and regulation of land use;
- (q) environmental protection standards and regulations;
- (r) forest management and suppression of forest fires;
- (s) standards for wildlife and marine mammal management; 15
- (t) standards for industrial and non-renewable resource development;
- (u) standards for and regulation of professions;
- (v) standards for and regulation of trade within the Territory;
- (w) property and civil rights to the extent that they are not included within the powers of district government; and 20
- (x) such other matters as require standards and regulation for the entire Territory or that may be managed jointly with another government.

Review of appointments (2) The Legislative Assembly may review, before an appointment is effective, any appointment to any territorial court and to any administrative or quasi-judicial body established by an Act of the Legislature. 25

Agreements with Government of Canada 22. The Legislature may authorize the Chief Executive Officer to enter into an agreement with the Government of Canada under and for the purposes of any Act of Parliament that authorizes the Government of Canada to enter into agreements with the provinces. 30

Borrowing and lending 23. The Legislature may authorize (a) the borrowing of money on behalf of the Territory for territorial, district, municipal or local purposes; 35 (b) the lending of money by the Government of the New Western Territory to any person in the Territory; and (c) the investing by the Government of the New Western Territory of surplus money.

*Laws Applicable to the Territory* 40

Laws of Northwest Territories 24. Subject to this Act, the laws in force in the Northwest Territories on the day this Act comes into force are in force in the Territory, in so far as they are applicable in the Territory until they are repealed, altered, varied or modified by any Act of the Legislature or of the legislative branch of a district government established under Part II. 45

Offices continued 25. All courts of civil and criminal jurisdiction and all commissions, powers, authorities and functions, and all officers and functionaries, judicial, administrative and ministerial existing immediately before the coming into force of this Act in the Territory continue as if this Act had not been enacted until repealed, abolished, altered or terminated by Parliament or by or under an Act of the Legislature. 50

Recommendation of Chief Executive Officer 26. It is not lawful for the Legislative Assembly to adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue of the Territory, or of any tax or impost, to any purpose that has not been first recommended to the Legislative Assembly by message of the Chief Executive Officer, in the session in which the vote, resolution, address or bill is proposed. 55

DRAFT BILL FOR DISCUSSION

First members of Legislative Assembly	16. (1) The Legislative Assembly shall be first composed of those members of the Legislative Assembly of the Northwest Territories who represent ridings that are situated within the New Western Territory on the day on which this Act comes into force.	
Tenure of first members	(2) The first members of the Legislative Assembly continue in office until the first election of members to represent the electoral divisions into which the Territory may be divided by Act of the Legislature or for one year from the day on which this Act comes into force, whichever is the earlier.	5
Duration of Assembly	(3) Subject to subsection (2), every Legislative Assembly shall continue for four years from the date of the return of the writs for the general election and no longer, but the Chief Executive Officer may, at any time, after consultation with each of the members of the Legislative Assembly with whom consultation can then be effected, dissolve the Legislative Assembly and cause a new Legislative Assembly to be elected.	10
Writs	(4) Writs for the election of members of the Legislative Assembly shall be issued on the instructions of the Chief Executive Officer.	15
Sessions of Assembly	(5) The Chief Executive Officer shall convene at least one session of the Legislative Assembly in every calendar year so that 12 months shall not intervene between the last sitting of the Legislative Assembly in one session and the first sitting of its next session.	20
Oaths of office	17. Each member of the Legislative Assembly shall, before assuming the duties of his or her office, take and subscribe before the Chief Executive Officer such oaths of office and allegiance as the Chief Executive Officer may prescribe.	25
Speaker	18. (1) The Legislative Assembly shall elect one of its members to be Speaker.	
Speaker to preside	(2) The Speaker shall preside over the Legislative Assembly when it is in session.	30
Quorum	19. A majority of the Legislative Assembly, including the Speaker, constitutes a quorum.	
Qualifications of electors and candidates	20. The Legislature may establish (a) the qualifications of persons as electors and the qualifications of electors to vote at an election of members of the Legislative Assembly; (b) the qualifications of persons as candidates for election as members of the Legislative Assembly; and (c) the reasons for which a member of the Legislative Assembly may be or become disqualified from being or sitting as a member of the Legislative Assembly.	35 40
<i>Legislative Powers</i>		
Legislative powers	21. (1) Subject to the other provisions of this Act, the Legislature may make laws in relation to matters coming within the following classes of subjects: (a) fiscal policy and relations, including direct taxation within the Territory in order to raise revenue for territorial purposes; (b) the establishment and tenure of territorial offices and the appointment and payment of territorial officers; (c) election of members of the Legislative Assembly and controverted elections; (d) annual indemnities of members of the Legislative Assembly and travel and living expenses for each session of the Assembly and for meetings of Committees thereof; (e) international, federal, provincial, territorial and First Nations relations; (f) standards for and regulation of transportation infrastructure; (g) standards for and regulation of utilities; (h) labour standards and regulation of labour standards and worker safety;	45 50 55

The Commission recommends that the spirit, and the meaning and intent of Treaties 8 and 11 be recognized, upheld and protected.

In considering the spirit, meaning and intent of the treaties, the Commission recommends that the constitution state that:

- \* the treaties deal with education, housing, health, economic development and state that taxes would not be imposed;
- \* the treaties guarantee their adherents rights to hunt, fish and trap, as they always have, on their ancestral lands, without interference;
- \* the treaties, according to Dene oral history, were not land surrenders, but agreements to share the land, air and water, with the consent of Treaty First Nations;
- \* the treaties established band councils as Treaty First Nations governments, and these governments are recognized as such;
- \* Treaty First Nations have the right to establish a justice system and a code of ethics that embodies their traditions, cultures, values, customs, laws and institutions; and,
- \* Treaty First Nations will determine their own membership, that may include non-Dene.

**iv) Rights of Metis First Nations**

The New Western Territory constitution should also include commitments to Metis First Nations. The government of Canada recognized the aboriginal rights of the Metis in the New Western Territory through the establishment of the Athabasca District Half-breed Commission in 1899 and the Mackenzie River District Half-breed Commission in 1921. These rights were further recognized by the acceptance of the claims of the Metis in the Dene-Metis comprehensive claim negotiation process of the 1973-1991 era.



The Commission recommends that the aboriginal rights of the Metis First Nations and their citizens be recognized, upheld and protected.

In considering the aboriginal rights of Metis First Nations, the Commission recommends that the following interpretation be stated in the New Western Territory constitution:

- \* citizens of the Metis First Nations will have the same rights to hunt, fish, trap and gather as those of the Treaty First Nations;
- \* Metis First Nations will have the right to a land base within the New Western Territory and the size of these land bases will be equivalent to the amount of land that was offered under the failed Dene/Metis agreement which means that each Metis First Nation will receive five square miles for each of their citizens;
- \* each Metis First Nation will have the right to exercise its inherent right of self government on their land base and to provide services to its citizens not living on the land base;
- \* each Metis First Nation will have the right to set the rules under which citizenship will be granted;
- \* citizens of the Metis First Nations will be entitled to receive the same program benefits that Indians and Inuit receive from the government of Canada and these program benefits will be administered by the governments of the Metis First Nations.

**iv) Rights of Gwich'in First Nations**

The Gwich'in ratified a modern land agreement with Canada in 1991. This agreement was officially signed April 22, 1992, and will soon be ratified by the Parliament of Canada. The Gwich'in also retain many rights under Treaty 11.

The objectives of the Gwich'in agreement included the recognition and encouragement of the Gwich'in way of life, which is based on the cultural and economic relationship between the Gwich'in and the land; encouragement of their self-sufficiency and enhancement of their ability to participate fully in all aspects of the economy; and the protection and conservation of the wildlife and environment of the settlement area for present and future generations.

Grant of request	(8) Where the Chief Executive Officer in Executive Council receives a request referred to in subsection (7), the Chief Executive Officer in Executive Council shall, by order, grant the request.	
Deemed amendment	(9) Where a request is granted under subsection (8), the legislative branch of that district government may no longer make laws under that power in relation to that district until such time as the district government revokes the request referred to in subsection (7).	5
Agreements	8. A district government may enter into agreements with the Government of Canada, the Government of the New Western Territory and another district government for the purpose of better carrying out any of its duties and functions.	10
	<i>Seat of Government</i>	
Seat of government	9. The seat of government for a district government shall be at such place as is determined by the legislative branch of the district.	15
	<i>Amalgamation</i>	
Amalgamation	10. (1) Two or more contiguous districts may amalgamate and continue as one district where a majority of the residents in each district proposing to amalgamate approves, in a referendum, the amalgamation.	20
Form of government on amalgamation	(2) Where an amalgamation is proposed and a referendum is to be held, the residents of the districts that may amalgamate shall also be asked to determine the form of government for the district that is to result from the amalgamation.	25
	PART III	
	DIVISION A	30
	CENTRAL GOVERNMENT	
	<i>Chief Executive Officer</i>	
Appointment	11. The Governor in Council may appoint for the Territory a Chief Executive Officer.	35
Administrator	12. (1) The Governor in Council may appoint an Administrator of the Territory.	
Powers of Administrator	(2) If the Chief Executive Officer is absent, ill or unable to act or the office of the Chief Executive Officer is vacant, the Administrator has and may exercise all the powers and perform all the functions of the Chief Executive Officer.	40
	<i>Seat of Government</i>	
Location	13. The seat of government of the Territory shall be at the City of Yellowknife.	45
	<i>Executive Council</i>	
Executive Council	14. The Executive Council of the Territory shall be composed of such persons, and under such designations, as the Chief Executive Officer thinks fit.	50
	<i>Legislature</i>	
Legislature established	15. There shall be a Legislature for the Territory consisting of the Chief Executive Officer and the Legislative Assembly of the New Western Territory.	55

DRAFT BILL FOR DISCUSSION

	(iii) Fort Norman's traditional lands lying within the Sahtu Settlement Region, (iv) Fort Franklin's traditional lands lying within the Sahtu Settlement Region;	
	(c) within the Deh Cho Region	
	(i) the Town of Hay River, the Hay River Corridor and Enterprise, (ii) the Village of Fort Simpson, (iii) the remainder of the Deh Cho Region lying within the New Western Territory;	5
	(d) within the North Slave Region	
	(i) the City of Yellowknife and the Ingraham Trail area, (ii) the remainder of the Tli Cho Region lying within the New Western Territory;	10
	(e) within the South Slave Region	
	(i) the Town of Fort Smith, (ii) the remainder of the Treaty 8 area including Ndilo and Dettah and unsurrendered lands East of the Treaty 8 area lying within the New Western Territory.	
Form of government	(3) The form of government for each district shall be the form set out in respect of that district in the Schedule.	15
Legislative powers	(4) In each district, the legislative branch may make laws in relation to matters coming within the following classes of subjects:	
	(a) culture, recreation and language;	20
	(b) pre-school, primary and secondary education;	
	(c) training and upgrading;	
	(d) public housing and housing support programs;	
	(e) delivery of health care and social services, including child welfare;	
	(f) tribal or municipal infrastructure;	25
	(g) economic development;	
	(h) regulation and management of socio-economic development agreements;	
	(i) tribal and municipal administration of justice and delivery of police and corrections services;	
	(j) renewable resource management including migratory birds and marine mammals;	30
	(k) ownership of lands, including surface and subsurface title;	
	(l) management and administration of lands and waters;	
	(m) ownership and administration of district parks;	
	(n) taxation of property;	35
	(o) agriculture;	
	(p) management of wills and estates;	
	(q) intoxicants;	
	(r) lotteries;	
	(s) official languages, in addition to the English and French languages;	
	(t) fiscal policy and relations, including direct taxation, other than personal and corporate income tax, within the district in order to raise money for district purposes; and	40
	(u) solemnization of marriage.	
Limitation	(5) No law may be made pursuant to paragraph (4)(s) that reduces rights in respect of the English and French languages or reduces services provided in English and French as those rights or services existed on the day this Act comes into force.	45
Additional authority	(6) In each district, the authority of the legislative branch of district government extends to those classes of subjects that are assigned exclusively to the Legislatures of the Provinces and that are not expressly enumerated as a class within the classes of subjects over which the Legislature of the Territory has exclusive authority and to such other classes of subjects as may be transferred to the legislative branch of district government by the Parliament of Canada.	50
Transfer of powers	(7) After the establishment of a district government, it may request the Chief Executive Officer in Executive Council to accept a grant of the right to exercise any of the powers set out in subsection (4) to the Government of the New Western Territory or to the Legislature.	55

The Commission recommends that the Gwich'in Comprehensive Claim Agreement with Canada, and any future self-government agreements negotiated by Gwich'in First Nations with Canada, be recognized, upheld and protected in the New Western Territory constitution.

In considering the rights of Gwich'in First Nations, the Commission recommends that it be noted that:

- \* the Comprehensive Claim Agreement does not prejudice the rights of Gwich'in as Canadian citizens nor as aboriginal people within the Canadian constitution;
- \* Gwich'in shall continue to be eligible for all the rights and benefits received by all other citizens and native peoples, and those deriving from the Constitution applicable to native citizens;
- \* the Agreement recognizes the right of Gwich'in First Nations to negotiate self-government agreements with Canada, which may address, among other matters: the establishment of Gwich'in First Nations Authorities as Gwich'in First Nations governments, establishment of a justice system, and language and culture; and,
- \* Gwich'in First Nations continue to hold many rights under Treaty 11.

**v) Rights of Inuvialuit First Nations**

The Inuvialuit (western Arctic Inuit) made a separate land claim agreement or modern treaty with the Canadian government in 1984. The Inuvialuit Final Agreement recognized that the three basic goals of the Inuvialuit Land Rights Settlement are: to preserve the culture and values of the Inuvialuit within a changing northern society; to enable them to be equal and meaningful participants in both the northern and national economy and society; and to protect and preserve the Arctic wildlife, environment and biological productivity.

The Commission recommends that the Inuvialuit Final Agreement and any agreement for self-government the Inuvialuit may reach with Canada will be recognized, upheld and protected in the New Western Territory constitution.

In considering the rights of the Inuvialuit First Nations, the Commission recommends that it be noted that:

- \* the Final Agreement does not prejudice the rights of Inuvialuit as Canadian citizens nor as aboriginal people within the Canadian constitution;
- \* Inuvialuit shall continue to be eligible for all the rights and benefits received by all other citizens and native peoples (including federal and territorial programs) and those deriving from the Constitution applicable to native citizens; and,
- \* the agreement also preserved the right of the Inuvialuit to establish self-government institutions.

**vi) Future Rights of Aboriginal First Nations**

It is possible that First Peoples, other than the Gwich'in and Inuvialuit, will reach modern land agreements with Canada in the future, or choose to have their governments recognized by Canada through agreements. The members of the Commission believe the New Western Territory constitution should recognize these legitimate aspirations.

The Commission recommends that all future agreements between Aboriginal First Nations and Canada on land and resources and self-government be recognized, upheld and protected in the New Western Territory constitution.

**6. Orders of Government**

**i) Fundamental Principles**

The Commission heard many views on how government should be structured. The Commission also heard differing views on which government should exercise which powers in the New Western Territory. Some stressed the need for a strong central government, while others favoured strong regional and community governments. In their interim report, the Commission proposed the creation of two distinct orders of

*Metis Rights*

- Metis rights 4. The following aboriginal rights of the Metis First Nations and their citizens are recognized and shall be upheld and protected:
- (a) citizens of the Metis First Nations have the same rights to hunt, fish, trap and gather as those of the members of the Treaty First Nations; 5
  - (b) Metis First Nations have the right to a land base within the New Western Territory and the size of those land bases shall be equivalent to the amount of land offered under the proposed Dene/Metis agreement, that is, each Metis First Nation will receive five square miles for each of their citizens; 10
  - (c) each Metis First Nation has the right to exercise its inherent right of self government on their land base and to provide services to its citizens not living on the base;
  - (d) each Metis First Nation has the right to set the rules under which Metis citizenship will be granted; and
  - (e) citizens of the Metis First Nations are entitled to receive the same program benefits that Indians and Inuit receive from the Government of Canada and those program benefits shall be administered by the governments of the Metis First Nations. 15

*Traditions*

- Declaration re traditions 5. The traditions, cultures, values, customs, laws and institutions of the First Peoples are hereby recognized and the right to practise those customs and enforce those laws is recognized and affirmed. 20

*Medical Treatment*

- Right to refuse 6. (1) Competent persons who have attained the age of majority have the right to refuse any medical treatment for themselves and their children who have not attained the age of majority 25
- Where right may not be exercised (2) A person may not refuse treatment for themselves or their children who have not attained the age of majority where the refusal constitutes a danger to public health. 30

PART II

DISTRICT GOVERNMENT 35

- Establishment of district government 7. (1) An order of government known as district government is hereby established for each of the districts established by subsection (2). 40

- Establishment of districts (2) Each of the following districts, with boundaries as set out in the Schedule, are hereby established:
- (a) within the Inuvialuit and Gwich'in Settlement Regions
    - (i) all that part of the Inuvialuit Settlement Region lying within the New Western Territory excepting the lands lying within the municipal boundaries of the Hamlet of Aklavik and the Town of Inuvik, 45
    - (ii) the Hamlet of Aklavik,
    - (iii) the Town of Inuvik,
    - (iv) the remainder of the Gwich'in Settlement Region lying within the New Western Territory; 50
  - (b) within the Sahtu Settlement Region
    - (i) all that part of the Fort Good Hope/Colville Lake Group Trapping Area lying within the New Western Territory except those lands lying within the Gwich'in Settlement Region, 55
    - (ii) the Town of Norman Wells,



DRAFT BILL FOR DISCUSSION

"Gwich'in First Nations"	"Gwich'in First Nations" means Gwich'in First Nation Authorities as defined in Appendix "B" to the Gwich'in Comprehensive Land Claim Agreement referred to in paragraph 3(1)(d);	
"Inuvialuit First Nations"	"Inuvialuit First Nations" means Inuvialuit community corporations established pursuant to chapter 6 of the Inuvialuit Final Agreement referred to in paragraph 3(1)(c);	5
"Metis First Nations"	"Metis First Nations" means the Metis Nation-Northwest Territories affiliated locals, except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik;	
"Territory"	"Territory" means the New Western Territory which comprises all that part of Canada north of the 60th parallel of north latitude, except the portions thereof that are within Nunavut, the Yukon Territory, the Province of Quebec or the Province of Newfoundland;	10
"Treaty First Nations"	"Treaty First Nations" means the Indian band governments located in the New Western Territory except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik.	15

PART I

CLAIMS AGREEMENTS, TREATIES, AND RIGHTS

Interpretation

Interpretation not to affect certain rights	2. For greater certainty, it is hereby declared that nothing in this Act shall be interpreted as affecting	
	(a) the inherent right of the First Peoples to self-government;	25
	(b) the existing aboriginal rights and treaty rights of the First Peoples;	
	(c) the agreement between the Committee for Original Peoples' Entitlement, representing the Inuvialuit of the Inuvialuit Settlement Region and the Government of Canada, dated June 5, 1984 and tabled in the House of Commons of Canada on June 19, 1984, and recorded as document number 322-7/20;	30
	(d) the comprehensive claim agreement dated April 22, 1992, between Her Majesty the Queen in Right of Canada and The Gwich'in as represented by The Gwich'in Tribal Council; and	
	(e) any other agreement of a like nature to the agreements referred to in paragraphs (c) and (d) when approved, given effect to and declared valid by the Parliament of Canada.	35
Treaties 8 and 11	3. (1) For greater certainty, it is hereby declared that, in interpreting this Act, the spirit, meaning and intent of Treaties 8 and 11 shall be recognized, upheld and protected.	
Spirit, meaning and intent of Treaties 8 and 11	(2) In considering the spirit, meaning and intent of Treaties 8 and 11, this Act recognizes that	40
	(a) the Treaties deal with economic development, education, housing and health;	
	(b) taxes shall not be imposed on the adherents to the Treaties;	
	(c) the Treaties guarantee Treaty Dene rights to hunt, fish and trap, as they always have, on their ancestral lands;	45
	(d) the Treaties, according to Dene oral history, were not land surrenders but agreements to share the land, air and water with the consent of First Nations;	
	(e) the Treaties established band councils as First Nations governments and these governments are recognized as such;	
	(f) Treaty First Nations have the right to establish a justice system and a code of ethics that embodies their traditions, cultures, values, customs, laws and institutions; and	50
	(g) Treaty First Nations may determine their membership that may include persons who are not Dene.	

government, a district order, and a central order, to meet the need for flexibility in different areas of the New Western Territory.

An inherent right of self-government may be constitutionally entrenched at the national level. The Commission has recommended that the New Western Territory constitution uphold and protect this right. This means that Aboriginal First Nations could exercise the right to establish an exclusive order of government in a New Western Territory. Flexible arrangements will then not be an option, but the only option, if the people of the New Western Territory want to stay together under one government, in one territory.

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.

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 recommends that the New Western Territory constitution affirm that all authority to govern belongs to the people, collectively, and flows, collectively, from them to their institutions of government.

---

This principle has been included in the preamble to the constitution. We want to make it clear that the members of the Commission do not regard this as a "motherhood" statement, but as a principle which does have fundamental implications for the form and process of government in a New Western Territory.

---

The Commission recommends that the definition and ratification procedure for governing authority flowing from the people be developed in Phase II. This process should make sure the people of the New Western Territory have input into defining the flow of authority and approving what that flow is.

---

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 recommends that a New Western Territory constitution recognize different orders of government and the powers of each of those orders.

An order of government does not exercise powers delegated from a superior level of government. Rather, each order exercises its own powers, which are recognized and enshrined in a constitution, although some, by agreement, may be shared.

The Commission recommends that authorities not identified in the Constitution as being the exclusive responsibility of the central order of government, be assumed to be vested in other orders of government.

Thus, the central government does not delegate powers in this concept, but rather the reverse.

ii) District Order of Government

a) Rationale

The debate over municipal versus band governments, 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 order to meet aspirations for more Aboriginal First Nations, community and regional government control and decision-making, the Commission recommends that consideration be given to establishing a district order of government in the New Western Territory Constitution.

The Commission recommends that the New Western Territory constitution establish a district order of government which may be public, exclusively aboriginal or a combination of both.

BILL

AN ACT TO ESTABLISH AND PROVIDE FOR THE GOVERNMENT OF THE NEW WESTERN TERRITORY

Whereas the New Western Territory is home to many peoples among whom are the Inuvialuit, the Gwich'in, the Hare, the Slavey, the Tli Cho, the Chipewyan, the Cree and the Metis, the First Peoples of the New Western Territory, who have lived and continue to live in harmony with the land and in accordance with their laws and customs in societies that had sovereign relationships with each other and are recognized as founding peoples of the New Western Territory;

And whereas many other groups and individuals whose ancestors are from all parts of the world and who have chosen to make the New Western Territory their home and are recognized as an integral part of the society of the New Western Territory;

And whereas all the previously mentioned peoples share the following common values:

- (a) recognition of the land itself as the source of spiritual, emotional, mental and physical well-being,
(b) a commitment to live in balance with the land,
(c) a desire to restore good feelings, balance and harmony among all New Western Territory peoples,
(d) a belief that all authority to govern belongs to the people and flows from them to their institutions of government,
(e) a respect for our distinct cultures, traditions and languages, and
(f) a desire to create a balance between the rights of the individual and the collective rights of peoples;

And the people of the New Western Territory recognize and affirm the supremacy of the principles enshrined in the Canadian Charter of Rights and Freedoms;

And it is expedient to provide for the government of the New Western Territory;

And the consent of the Aboriginal First Nations has been given to the enactment of this Act;

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enact as follows:

Interpretation

Table with 2 columns: Definitions and 1. In this Act, containing definitions for 'Aboriginal First Nations', 'Chief Executive Officer', 'Chief Executive Officer in Executive Council', 'Court', and 'First Peoples'.

---

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, subject to the veto powers of Aboriginal First Nations, district governments and the central government.

---

Treaty First Nations made it very clear at the Commission's hearings that they believe they must consent to any New Western Territory constitutional amendment. Their process is likely to be as follows, according to Treaty First Nations representatives:

The Treaty First Nations assemble to agree on a process, that is, to decide on assembly ratification versus band by band ratification. Single bands may have an absolute veto, or their lack of consent may mean only that negotiators go back to the table. All amendments require Treaty First Nations consent.

### III DRAFT CONSTITUTION FOR A NEW WESTERN TERRITORY

The draft bill presented in the next few pages is not a law, or even a legislative proposal. The "draft bill" is meant to get people thinking about the fact that the New Western Territory constitution will be a law. Such a law will probably be similar in form if not in exact content, to the example given here.

The Commission has made a large number of recommendations regarding further work in Phase II on outstanding constitutional issues. Readers will note that this specimen constitution does not include all the matters that may be of concern to them. They should not be alarmed. The reason for this is that Phase II work will have to be taken into account when serious constitutional drafting begins. Legal drafting is a complex and time-consuming process.

#### b) Forms of District Government

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 see Aboriginal First Nations create an exclusive aboriginal district government.

---

The Commission recommends that the New Western Territory constitution specify that the people of a district shall have a voice in accepting the form of government for the district, that is whether it shall be a public, exclusively aboriginal, or mixed form of government.

---

#### c) Geographic Area of Districts

The members of the Commission were well aware that any mention of boundaries for New Western Territory districts is likely to result in lively discussion. The Commission is willing to put forward principles concerning the geographic description of districts in the hope of encouraging just such discussion. A list of possible districts in a New Western Territory follows this recommendation.

The Commission recommends that:

- \* 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;
- \* a district must be a geographically contiguous area;
- \* communities within the geographically contiguous area of a district can choose:
  - to opt in to that district
  - to have their own district government recognized instead; or
  - in the case of Aboriginal First Nations, to opt out of the New Western Territory constitutional process completely and seek a direct link with the federal government; and
- \* the right of Aboriginal First Nations to negotiate with the federal government regarding the geographic area of their lands be recognized, and that it not be prejudiced by participation in New Western Territory district governments.

#### **List of Possible Districts in the New Western Territory:**

##### Possible Districts Within the Inuvialuit and Gwich'in Settlement Regions

- \* All that part of the Inuvialuit Settlement Region lying within the New Western Territory excepting the lands lying within the municipal boundaries of the Hamlet of Aklavik and the Town of Inuvik;
- \* The Hamlet of Aklavik;
- \* The Town of Inuvik;
- \* The remainder of the Gwich'in Settlement Region lying within the New Western Territory.

##### Possible Districts Within the Sahtu Settlement Region

- \* All that part of the Fort Good Hope/Colville Lake Group Trapping Area lying within the New Western Territory excepting the lands lying within the Gwich'in Settlement Region;
- \* the Town of Norman Wells;
- \* Fort Norman's traditional lands lying within the Sahtu Settlement Region;
- \* Fort Franklin's traditional lands lying within the Sahtu Settlement Region.

The Commission recommends that amending the New Western Territory Constitution be under the exclusive authority of the people of the 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, there is some latitude in designing an amending formula for the constitution of the New Western Territory.

Who can initiate amendments, identification of amendments that require the consent of certain bodies, and the level of public involvement are all topics that must be addressed in a New Western Territory constitution.

The Commission recommends that:

- \* the New Western Territory constitution contain provisions which allow First Nations, the central legislature and District governments to initiate the constitutional amendment process;
- \* the New Western Territory constitution identify those amendments which will require the consent of Aboriginal First Nations, district governments and the central legislature before an amendment can be approved and enshrined in the 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.

The central Legislative Assembly may have exclusive authority in this area, with a series of checks and balances built in. These checks and balances would involve the public, the district governments, First Peoples and the central government.

### iii) Proportional Representation in the Central Order

Another option for reconciling the one person, one vote tradition with group representation would be a system of proportional representation, with "parties" organized to represent the different groups. For example, there could be a "Metis party," a "women's party" and so on.

The system might work like this:

Each party would provide a list of candidates, starting with the candidate they most want to see in the House, and going on to the next more preferred candidate and so on. But voters would vote for a party, rather than a particular candidate. The parties would receive seats in roughly the same proportion as their popular vote. Thus, if the "Metis party" picked up 25% of the popular vote, that party would receive 25% of the seats in the Legislative Assembly. They would fill the seats in the order of the list they provided, until they reached their 25%.

This is a common system, used in many world governments. However, it was the view of the Commission that representation is a matter which will require a great deal more public discussion and research. It will be dependent on conclusions reached about structures of government in Phase II.

---

The Commission recommends that the option of proportional representation in the central order be explored in Phase II.

---

## 10. Amending the New Western Territory Constitution

The procedure for making changes to a constitution is a vital part of constitutional development. As an example of the importance of this topic, it is only necessary to recall the years of protracted debate over an amending formula for the Canadian Constitution. Most of the discussion hinged on a veto for Quebec over any constitutional change affecting matters of special interest to that province.

The current "constitution" of the Northwest Territories, The Northwest Territories Act, is a federal statute. This means that the Parliament of Canada is legally able to change the way residents of the Northwest Territories are governed without their consent, provided the change does not affect Aboriginal First Nations' rights under s.35 of the Canadian Constitution.

### Possible Districts Within the Deh Cho Region

- \* The Town of Hay River, the Hay River Corridor and Enterprise;
- \* The Village of Fort Simpson;
- \* The remainder of the Deh Cho Region lying within the New Western Territory.

### Possible Districts Within the North Slave Region

- \* The City of Yellowknife and the Ingraham Trail area;
- \* The remainder of the Tli Cho Region lying within the New Western Territory.

### Possible Districts Within the South Slave Region

- \* The Town of Fort Smith;
- \* The remainder of the Treaty 8 area, including Ndilo and Dettah and unsundered lands east of the Treaty 8 area within the New Western Territory.

### iii) The Central Order of Government

There was unanimous agreement at the Commission's hearings on the need for a central government, if only on grounds of practicality and economy. Some speakers believe there is also a need for a central government to act as a force for the greater good of all people in the New Western Territory.

---

The Commission recommends that the New Western Territory Constitution establish a central order of government.

---

### iv) Distribution of Powers and Responsibilities

The division of powers among the orders of government is at the heart of the Canadian federal system. A meaningful division of powers between orders of government in a New Western Territory offers the best hope of all residents having a common future, in the view of Commission members.

District governments will be responsible for those matters which most directly affect the daily lives of residents. By "responsible," we do not mean that the district government will simply administer programs on behalf of the central government, unless that is the wish of the district's people. Rather, like provinces and the federal government, districts will have their own spheres of influence. They will make and enforce laws and regulations, as well as administer programs.



Aboriginal governments, and mixed aboriginal-public governments, may have a different list of exclusive powers drawn from their special relationship with the federal government, from treaties or modern land agreements. In effect, aboriginal governments could constitute another order of government within Canada. This matter is under discussion in current constitutional talks.

Similarly, some district governments could, because of their location or other factors, negotiate different types of powers than others. For example, the Inuvialuit are interested in the regulation of renewable and non-renewable resources in the Beaufort Sea offshore, which is currently a federal responsibility.

---

The Commission recommends that the principle of asymmetry, or unequal distribution of powers, be recognized as acceptable among district governments.

---

Powers for each district government will have to be established before district governments are set up. The members of the Commission have assumed that all the powers of a province will be available to New Western Territory governments, and that special arrangements may also be negotiated between district governments, the central government and Ottawa. Treaty First Nations may wish to exercise exclusive powers that flow from their treaties.

The Commission suggests that the powers available to the district order of government could include, at a minimum:

- \* culture, recreation and language;
- \* pre-school, 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;
- \* tribal and municipal administration of justice and delivery of police and corrections services;
- \* renewable resource management, possibly including some areas now within the federal jurisdiction, including migratory birds and marine mammals;
- \* ownership of lands, including surface and subsurface title;
- \* management and administration of lands and waters, the latter now being a federal power;
- \* ownership and administration of district parks;

---

The Commission recommends that:

- \* the Legislative Assembly of the central government be representative of the residents of the New Western Territory;
  - \* the Legislative Assembly be structured to ensure that First Peoples' representatives and non-aboriginal residents are present as members; and,
  - \* the Legislative Assembly of the central government be representative of men and women.
- 

These proposed principles did not go far enough for some, and were repugnant to others. Much depends on the degree of power that remains with the central government. If a great deal of power remains at that order, some groups will want to see guaranteed representation. If most real power remains with the districts, guaranteed representation, except perhaps, of districts themselves, may not be seen as very necessary.

The term "guaranteed representation" covers two different types of representation. It is possible, for example, for a Legislative Assembly to contain women or First Peoples in the approximate proportion that exists in the general population. However, unless MLAs are specifically appointed or elected to represent female or a First People's interests, these groups may say, perhaps rightly, that they are not "represented."

One scheme considered by the Commission involved having both a man and a woman elected by all the voters in each riding. First Peoples' representation would be guaranteed in the same manner as it is now, by disproportionately representing rural ridings. Such a scheme could be made more attractive by the addition of extra seats for First Peoples if the numbers elected fall below a critical threshold.

Recall provisions, in which constituents can force an election under certain circumstances, would make legislators more accountable to their constituents.

---

The Commission recommends that a variety of models to fulfill the goals of guaranteed representation of women and men, and First Peoples and non-aboriginal residents, be further examined in Phase II.

---

ombudsperson, in the view of Commission members, would be a very useful addition to the institutions of government in the central order.

---

The Commission recommends that the government of the Northwest Territories proceed with the creation of an office of ombudsperson, and that this office continue in a New Western Territory.

---

## 9. The Right to Vote and Stand for Office

### i) The Charter Provisions

The Canadian Charter of Rights and Freedoms provides in s.3 that: "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." It is not known to what extent the desire of some districts to re-establish forms of government which are based on consensus and traditional forms of leadership will be exercised under the Charter s.25, or as an inherent right.

Bearing these facts in mind, the Commission nevertheless recommends that the option for traditional forms of representation remain open at least at the district order.

---

The Commission recommends that representation in the law-making branches of district governments should be in accordance with the wishes of the residents living within their boundaries.

---

### ii) Guaranteed Representation in the Central Order

The Commission presented specific recommendations regarding guaranteed representation in the central order of a New Western Territory government in its interim report.

- \* authority to tax property;
- \* agriculture;
- \* management of wills and estates;
- \* regulation of liquor;
- \* regulation of lotteries;
- \* official languages, in addition to French and English;
- \* solemnization of marriages;
- \* fiscal policy and relations, including direct taxation within the district in order to raise money for district purposes with the exception of income and corporate taxation; and,
- \* such other matters, including the above, where authority may be shared with the central government, or where no provision has been made for the central government to exercise authority.

As noted, some of these powers in Canada today do not belong to the provincial order of government, but to the federal order. In other words, they are not easily transferable through the type of devolution process the government of the Northwest Territories has undertaken with the federal government.

---

The Commission recommends that powers, such as inland water management, that now lie with the federal order of government in Canada, but which are desired by district governments in a New Western Territory, be a topic for further study in Phase II.

---

The Commission suggests that the central order of government be restricted to the following suggested range of responsibilities:

- \* fiscal policy and relations, including direct taxation within the territory to raise revenue for territorial purposes;
- \* external intergovernmental relations;
- \* standards for and regulation of trade within the territory;
- \* standards for and regulation of transportation infrastructure;
- \* standards for and regulation of utilities;
- \* standards for and regulation of labour relations, 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;
- \* tribal and territorial police services and administration of justice, including territorial courts;
- \* 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;
- \* regulation of property and civil rights not noted under the powers of district governments
- \* such other matters, including the above, which require territorial wide standards and regulation or that will be managed jointly with other orders of government.

There are a number of outstanding issues regarding the division of powers. One of the most important is whether or not the central government, as well as the district governments, will be able to own land (apart from roads and airstrips), and have authority to tax land and improvements.

---

The Commission recommends that, without detracting from the principle of district government ownership of land with surface and subsurface rights, the issue of ownership and jurisdiction over land by the central government be further considered in Phase II.

---

The main outstanding issue, for many of the people who made submissions to the Commission on the division of powers, is how much authority the central government will have. Given, for example, very strong aboriginal governments with many exclusive powers, the central government might not have a great deal of authority. It is the view of Treaty First Nations governments that they would be the senior governments.

---

The Commission recommends that the appropriate balance of power between central and district governments be addressed in Phase II.

---

#### v) Powers of Taxation

One question which is related to the degree of authority that each order of government shall have is the power of taxation. While district governments, clearly, should be able to tax land and improvements, as municipalities now do, should they

However, certain practical constraints suggested themselves to some Commission members. Are the approximately 15 district governments going to have 15 sets of legal registries and 15 law societies?

---

The Commission recommends that further consideration in Phase II be given to establishing a more relevant and effective judicial system in a New Western Territory.

---

#### iv) Chief Executive Officer

There is a matter of some symbolic importance to be decided, among the institutions detailed in a New Western Territory constitution. Does the territory need a "Commissioner"? What are the requirements for this position?

The Commission was not able to make specific recommendations on who appoints this person, how he or she is selected, or what the name of the position should be. The terms "Commissioner" and "Lieutenant Governor" both have a colonial history, rather than one of ownership by New Western Territory residents. A term such as "Grand Chief" in a First People's language may be more appropriate in the New Western Territory. In the draft bill, this position is referred to as the Chief Executive Officer.

---

The Commission recommends that:

- \* the issues of whether the New Western Territory must have a "Commissioner" or "Lieutenant Governor," what the requirements of the position are, how the person is selected, and by whom, be decided upon appropriate advice in Phase II; and,
  - \* that the name for a New Western Territory Chief Executive Officer be taken from a First People's language.
- 

#### v) Ombudsperson

A simple mechanism for monitoring the Social Charter could be a commission or an ombudsperson. The GNWT is now considering creating the latter office along with access to government information legislation. A commission or ombudsperson could also monitor and report to the central legislature on regional disparities. An



---

The Commission recommends that:

- \* the central government of a New Western Territory have legislative, executive and judicial branches; and,
  - \* that models for the structure of these institutions be thoroughly studied and publicly discussed in Phase II.
- 

In the meantime, the Commission has assumed that a Legislative Assembly of some variety will be among the institutions of a New Western Territory. Provisions for such a body, based on the one now in existence, have been included in the draft constitution in chapter III.

The Commission has not precluded the addition of other institutions, such as a senate or council of elders. Nor is the current method of electing MLAs and selecting the government leader and executive the only one possible. For example, it has been suggested that the government leader be elected in a territory-wide vote. It has also been suggested that the government follow a full consensus system, in which all members of the Legislative Assembly are also members of the executive. These are among the many proposals people may wish to examine in depth in Phase II.

### iii) The Judiciary

Questions of who appoints the judiciary, where the seats of justice should be located, and whether each order of government should have a corresponding set of judicial institutions, were not dealt with by the Commission in the interim report. The question of who appoints the judiciary is one that has caused some debate at the national level.

---

The Commission recommends that the people of the New Western Territory have input to appointments to courts and other bodies of a judicial nature, without prejudice to the independence of the judiciary.

---

A number of Aboriginal First Nations have indicated that they wish to establish their own judicial systems. The Native Women's Association wants to see a set of aboriginal justice councils set up in each First Peoples community to handle family law.

be able to charge a sales tax? an income tax? a tobacco tax? The Commission has so far suggested leaving most such powers of taxation with the central order.

However, Treaty First Nations represented at national constitutional discussions recently recommended that Treaty First Nations have exclusive jurisdiction over taxation, including tax immunity, of Treaty First Nations lands and people.

A number of people who made submissions to the Commission also stressed the issue of accountability. Should the government that spends the money be the one that is responsible, to the extent possible, for raising the revenue?

---

The Commission recommends that the powers of taxation be given special attention in Phase II.

---

### vi) Territorial-District Fiscal Relations

All levels of government in the current Northwest Territories are dependent on federal transfer payments, and have limited ability to raise significant revenues in the foreseeable future. Provision will have to be made for the conditions the two new orders of government will face, and for the sharing of financial resources in the future, subject to negotiated agreements.

---

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.

---

As noted above, if districts are to have real power, they may require more taxation authority. Conversely, there may need to be limits to their powers to borrow, for example. District and central orders of government will have to harmonize fiscal policy and fiscal relations.

---

The Commission recommends that fiscal relations be examined in Phase II.

---

### vii) 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 ability to deliver programs and services until the transition is complete.

---

The Commission recommends that:

- \* each district government may assume its powers at its own pace;
  - \* provision be made for the temporary assignment of authority to the central government during the transition to district government; and,
  - \* provision be made for the temporary assignment of authority to the central government at any time.
- 

Commission members also anticipate that a lot of experimenting will have to be done for the central and district governments to find the most acceptable and efficient division of powers.

---

The Commission recommends that in Phase II, provisions to examine, and, if necessary, change the division of powers between the central government and any district at specified intervals (for example, every five years) should be considered.

---

## 8. Institutions of Government

### i) For District Governments

The Commission noted that residents may choose whether their governments will be exclusive aboriginal governments, public governments or a mixture of both. Commission members are of the view, however, that whatever form such governments take, they will all have to have certain basic institutions of government.

---

The Commission recommends that district governments shall have legislative, executive and, if necessary, judicial branches of government.

---

Districts may well wish to exercise some creativity in the form of these institutions. District assemblies or traditional forms of government may be preferred in some districts. Each district government should set out the particular forms these institutions will take, how people are elected or appointed to office in each of them, and for what time period people serve in each office. Representation of groups in district governments is dealt with in section 9 of this chapter.

---

The Commission recommends that each district government set out the form of its institutions, the manner of appointment or election and terms of office, in a charter to be attached as a schedule to the New Western Territory constitution.

---

### ii) For the Central Government

Commission members also believe the central government will have to have all three basic institutions of government. The possibilities are perhaps more limited in this order, both in terms of forms of government and in terms of institutional structures. The central government, for example, is unlikely to be an exclusive aboriginal government. The central government, no matter what its form and institutional structures, will have to reflect a balance among all the cultures of the New Western Territory.