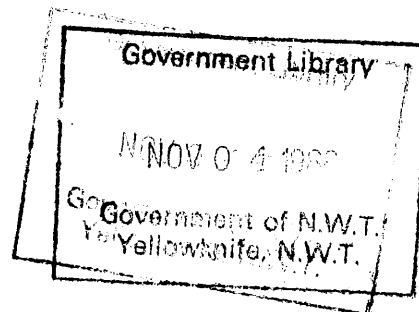


TABLED DOCUMENT NO. . 50 - 88 (2) TABLED ON NOV 2 1988



INUVIALUIT REGIONAL CORPORATION

**Submission to the Legislative Assembly
of the Northwest Territories
on the Principles of
Devolution**

**For Release November 1, 1988
Yellowknife, N.W.T.**

Introduction

We, the Inuvialuit, are very pleased to be able to make this submission to the Legislative Assembly on the subject of devolution and the principles that should be considered in respect thereof. We ask that Members of the Legislative Assembly consider carefully our views on first, the general principles pertinent to the issue of the devolution of power and authority from the Government of Canada to the Government of the Northwest Territories and second, the suggested principles to be followed for any future transfer of powers and authority.

The Inuvialuit achieved a landmark land rights settlement in 1984, the first in respect of the territories. This settlement evidences the values and aspirations that we hold for the evolution of government in the Northwest Territories.

One of the four general principles underlying this settlement, as expressed in section 1(b) of the Final Agreement, is that the settlement is "to enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society". The Inuvialuit have always sought to participate fully in the process and institutions of public government and to be responsible citizens. Indeed, because we have always sought to be equal participants in an evolving, responsible, public government, Inuvialuit expressly stated in our Inuvialuit Land Rights Settlement Agreement-in-Principle dated October 31, 1978, (section

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18(2)) that we "do not seek special rights or a special status ... through the public institutions of government." As well, section 18(3) of the Agreement-in-Principle states:

"Canada recognizes the need, as set forth in Part Four of Inuvialuit Nanangat, for greater decentralization both in respect of decision-making and the delivery of services, and shares the view of the Inuvialuit that the people of the region and the communities within the region should have greater control over certain matters, such as education, game management, health services, economic development, and police services, vital to the people within the Western Arctic Region, so that the Inuvialuit can achieve greater self-determination. As well, Canada recognizes that the people within the region should have greater control of the institutions which serve them, and that truly effective participation by the Inuvialuit in government is a significant means for the Inuvialuit to self-develop and integrate into the mainstream of society."

Another undertaking by the Government of Canada is seen in section 18(4) of the Agreement-in-Principle.

Canada agrees that the Land Rights Settlement is without prejudice to the Inuvialuit with respect to the matters raised in Part Four of Inuvialuit Nanangat, that is, put generally, the restructuring of the public institutions of government within the Western Arctic Region, and Canada agrees to consider these matters with the Inuvialuit in the future, and agrees that the Inuvialuit shall not be treated less favourably than any other native groups or native peoples as residents of communities and regions with respect to the governmental powers and authority conferred upon them."

The Inuvialuit retained their aboriginal right of self-government through their land rights settlement, as seen in section 4(3) of the Final Agreement.

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"Canada agrees that where restructuring of the public institutions of government is considered for the Western Arctic Region, the Inuvialuit shall not be treated less favourably than any other native groups or native people with respect to the governmental powers and authority conferred on them."

This right is a protected right by section 35 of the Constitution Act, 1982. No government in Canada can detract from this constitutionally entrenched right. We the Inuvialuit, are confident that the Legislative Assembly will respect our rights, and will work together with the Inuvialuit in giving life to the values and principles quoted above from the Agreement-in-Principle. If these objectives can be reached, the lives and welfare of not just the Inuvialuit, but all residents of the NWT will be enhanced significantly. We, the Inuvialuit, ask the Members of the Legislative Assembly to renew the commitment of governments to these values, principles and objectives, by being cognizant of the following general principles pertinent to the issue of devolution, and by accepting these suggested principles to govern the process and substance of any proposed future transfer of powers and authority.

I. GENERAL PRINCIPLES PERTINENT TO THE ISSUE OF DEVOLUTION OF POWER AND AUTHORITY FROM THE GOVERNMENT OF CANADA TO THE GOVERNMENT OF THE NORTHWEST TERRITORIES.

Much has been accomplished in the past decade toward the

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achievement of responsible public government in the Northwest Territories. This process of devolution must, of course, continue; however, it is necessary that a framework of principles guide this development.

1. First, the Inuvialuit of the NWT have an existing constitutionally entrenched land rights settlement. The Dene and Metis have recently entered into an agreement-in-principle on a land rights settlement, and undoubtedly the Inuit will achieve one in the future as well. All aboriginal peoples have, or will have, constitutionally protected rights through special land rights settlements which cannot be interfered with by any level of government.

As well, aboriginal peoples have special, aboriginal rights beyond the land rights settlements, recognized in Canada's Constitution. Any governmental initiatives that may impact upon such aboriginal rights or upon those rights in land rights settlements, are dependent upon the prior consent of the aboriginal peoples affected.

2. Second, all aboriginal peoples have a specific aboriginal right of self-government, as recognized and affirmed in constitutional discussions over the past decade, although the content of that right has not yet been defined. The Inuvialuit Final Agreement also gives recognition to this right of self-

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government, the content and regime being left to future considerations. Thus, aboriginal peoples have sovereign rights, including a right of self-government, through land rights settlements, and aboriginal rights generally as recognized by the common law and the Constitution.

3. The devolution of legislative authority cannot limit aboriginal rights, including the right of self-government. Aboriginal organizations must be effectively involved in all discussions and negotiations pertaining to devolution, to ensure that aboriginal rights are protected.

4. It is certainly true, and very encouraging, that the GNWT has both become significantly more democratic in its structure, and much more representative in its elected members, over the past decade. Indeed, there are at present 15 aboriginal members of 24 persons in the Assembly. There is a similar majority within the Executive Council. An effectively functioning democracy is a cornerstone value to public government in the NWT. We, as with all residents of the NWT, are very pleased with, and proud of the progress toward responsible government in the NWT.

5. However, two essential points are to be noted. First, elected legislative assembly members must, of course, represent the interests of all constituents in their electoral district. That is their responsibility in holding office in a public government.

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They have not been elected by aboriginal groups as such to represent such groups, although it is hoped and expected, of course, that public representatives will reflect the views and interests of their aboriginal constituents.

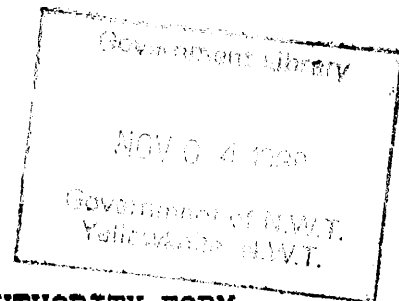
Aboriginal self-government has not been realized in the NWT through participation in public government. The two spheres of government are distinctive, with different (yet hopefully harmonious) objectives, and those who represent each government are responsible to somewhat different constituencies. The interests of the two distinctive spheres of government may sometimes conflict. It is a generally held view in the NWT that "locally important decisions must be made by local populations" as a basic, democratic right for all peoples. However, it is also an aboriginal right of aboriginal peoples in the context of aboriginal communities that "locally important decisions must be made by aboriginal populations". For some aboriginal groups, by their choice, the general exercise of the democratic right of self-government at the local level of public government may suffice, but if locally important decisions cannot effectively be made by aboriginal populations in the context of public government, they can rely and must be able to fall back upon, their inherent aboriginal right of self-government. As well, some aboriginal groups prefer a consociational form of government, whereby aboriginal self-government is integrated to some extent right within the institutions of public government in the NWT. As

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devolution impacts upon the development of consociational government, devolution must not proceed outside of the negotiations for the development of the aboriginal self-government component in the consociational institutions of public government.

6. Second, the nature of the composition of public government is not static, but rather reflects many factors, in particular, demographic and political changes over time. For example, due to limited fiscal resources, difficult choices as to priorities will have to be established. It may be that at some points in time, a majority of elected representatives (whatever their ancestry) are in opposition to positions taken by aboriginal groups in respect of aboriginal rights and interests. In particular, this may occur following upon a division, for aboriginal peoples would be a minority group in the Western Territory. As well, a ratified Meech Lake may well ultimately influence constitutional development in the NWT in a manner detrimental to aboriginal interests. As well, until land rights settlements are completed with formal, final agreements and enshrined in federal legislation, and with a selected land base and the formal recognition of title to those specific tracts of land, aboriginal interests are particularly vulnerable to public government activity. For example, GNWT asserts it wants to establish a system for managing northern resources; yet the experience in the recent signing of the Northern Accord Agreement-in-Principle contradicted the promise of effective involvement by

aboriginal organizations.



II. PRINCIPLES FOR ANY FUTURE TRANSFER OF POWER AND AUTHORITY FROM THE FEDERAL GOVERNMENT TO THE GOVERNMENT OF THE NORTHWEST TERRITORIES.

To ensure the continuation of fair and effective constitutional development an agreement must be reached by NWT participants in the process.

1. Political and constitutional development must proceed only with the agreement of all governing bodies within the NWT. As the GNWT is not the only governing body, a clear relationship must be established between the GNWT and aboriginal organizations, which recognizes the special rights of aboriginal peoples, including their right to self-government.

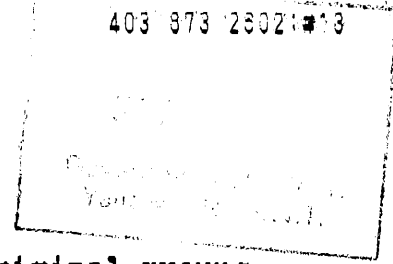
2. As there is a general consensus that the role of the communities should be paramount in the delivery of governmental services (the so-called "prime public authority" concept) it is essential that community government leaders be directly involved in questions of Territorial wide transfers of power and authority.

3. The integrity and rights of land rights settlements and the institutions created thereby must be affirmed and strengthened in the context of constitutional development in the NWT and any transfer of powers or authority.

4. The aboriginal right of self-government must be affirmed in the development of public government institutions, with integration and harmonization from a functional standpoint sought for public government and self-government institutions, and to the extent this cannot be achieved, aboriginal self-government institutions must be fully accommodated so that they can effectively implement their mandate on their own.

5. Any future transfer that possibly affects the rights and interests, or governing powers and authority, of aboriginal groups must be dealt with:

- 5.1 through claims negotiations, or within the context of an existing land rights agreement; or
- 5.2 by amending the land rights agreement with the consent of the signatory aboriginal group, to include the governing powers and authority; and
- 5.3 by the aboriginal groups, the Government of the NWT and Federal Government agreeing on the method of negotiating, and the ultimate nature of the transfer of powers and authority to a governing authority in the Northwest Territories.



6. In respect of any transfer in which the aboriginal groups and the Government of the Northwest Territories are in agreement that the transfer does not affect the powers and authority of aboriginal groups, the GNWT may proceed to receive the transfer of that power and authority.

7. In respect of any transfer of power and authority with which the aboriginal groups and the Government of Northwest Territories cannot agree as to the possible impact, the issue and nature of the transfer shall be dealt with within the formal constitutional development process, wherein the Federal Government, GNWT, and the aboriginal groups will be equal and full participants.

8. The negotiations concerning transfer shall define the relationships of aboriginal groups both within and outside the appropriate institutional-governing structures and the legislative, regulatory and administrative authorities and powers.