

DEVOLUTION OF POWERS  
TO THE GOVERNMENT OF THE NORTHWEST TERRITORIES:  
PROVINCEHOOD AND ABORIGINAL SELF-GOVERNMENT

Dene Nation and Metis Association  
of the Northwest Territories

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The Dene/Metis believe that recent developments in the devolution of powers to the GNWT threaten to transform the character of constitutional development in the Northwest Territories, from consensus-building to confrontation.

Confrontation would not be new to the dynamic of constitutional development in the NWT. In the early days of the elected Legislative Assembly, many of its members declared themselves to be the only legitimate government of the peoples of the Territories. For their part, aboriginal organizations refused to recognize the GNWT at all. In the time frame by which constitutions are built, however, it did not take long for the two representative groups to recognize that each served an interest which must be respected in the government of the Northwest Territories. Both interests required that the government change, and the two groups needed each other to bring about reform.

The Constitutional Alliance was founded in the spirit of mutual respect carefully fostered between the Ninth Legislative Assembly and its Executive Committee, and the leaders of the Dene, Metis, Inuvialuit and Inuit. The constitution and objects of this body recognize that aboriginal self-government and public government must develop hand in hand in the Northwest Territories. Today, the need for major reform on both these fronts remains pressing. For aboriginal peoples, the existing GNWT is still an interim government, because it has yet to directly represent them or directly incorporate their values or priorities. It has yet to embody their constitutional right to



aboriginal self-government. For all residents of the NWT, the GNWT does not yet have the powers and resources, nor the necessary autonomy, to serve them as they deserve to be served.

It should be obvious that the twin goals of aboriginal self-government and provincehood cannot be pursued in the Northwest Territories independently. Unfortunately, the process by which the Northern Accord AIP was recently approved suggests that this understanding has either been lost or ignored by the GNWT and the Government of Canada.

Why must aboriginal self-government and provincehood for the Northwest Territories, be pursued in the same effort? It is because aboriginal self-government, in any of its various forms, requires a sharing of power between aboriginal and public institutions such as does not exist in our present system of government. If the present government continues to take on more powers to itself, without having in place the necessary structures and agreements for re-distributing these powers, it will soon cease to recognize the need for aboriginal self-government at all. The best intentions of Ministers and MLAs will not matter. By its nature, the expanded government will covet its power. If it pursues and achieves province-like status on its own, the GNWT will rapidly come to see aboriginal self-government as a secondary problem which is, as members of the Constitutional Alliance were told recently, merely the "price of success" for a government mainly concerned with other things. The government will cease to see itself as interim, and once again will assume that it is the only legitimate government of the Northwest Territories. The process of constitution-building will have been reduced to a race for power. In the short term,

the winners will have been the present institutions of the GNWT, and those who stand to benefit by them. The aboriginal peoples will be the losers. In the long run, the public government will be seen as the government of non-aboriginal peoples only, and as present population trends continue, it will act accordingly. The deepening alienation between aboriginal peoples and the public government will be felt by all residents of the Northwest Territories, and public government itself will suffer.

Thus, for the aboriginal peoples, direct involvement in the negotiations transferring power from Ottawa to Yellowknife, is simply a matter of interim protection of their interest in aboriginal self-government. Just as agreements have been necessary in land claims negotiations to prevent the alienation of land and resources while talks proceed, the aboriginal peoples need assurance that the very powers and resources under negotiation in aboriginal self-government discussions, are not being bargained off to another party without their consent or involvement.

The priorities of the Dene/Metis and, we believe, the other aboriginal peoples of the NWT, are firm. If forced to choose between support for continued devolution and the pursuit of self-government without this government's cooperation, the aboriginal organizations would have no choice but to actively oppose any further devolution of powers to the GNWT. Aboriginal self-government has not been achieved in the Northwest Territories simply by the participation of aboriginal people in the public government, and increased powers for the GNWT alone will not change this fact. Moreover, aboriginal people know that historically, once established, provincial governments have been

the parties in constitution-making least inclined to recognize and respect the constitutional right of aboriginal self-government. There is no reason to believe a provincial government for the Northwest Territories would behave any differently, if its aboriginal constituents have not achieved their own constitutional objectives by the time such a government is established.

The material consequences for public government of a breakdown in northern negotiations of aboriginal self-government, should also not be underestimated. The relatively exclusive models of self-government which the aboriginal organizations would then have to pursue, particularly in the western NWT, would cut more deeply into the jurisdiction and resource base of the public government, than their alternatives. Ultimately, the relationship between aboriginal institutions of self-government and the institutions of public government would be less cooperative and probably less efficient than what could have been designed in cooperative negotiations committed to rational power-sharing.

These are some of the reasons why the aboriginal peoples of the Northwest Territories have insisted, and the GNWT has repeatedly agreed, that aboriginal representatives should be directly involved in the negotiation of the transfer of powers from Ottawa to Yellowknife. This is why, in approving the framework agreement on constitutional development reached in Iqaluit in 1987, the Tenth Legislative Assembly agreed that the further transfer of such powers should be "vigorously pursued", but only "in the context of recognizing aboriginal self-government, and without prejudice to the negotiation of land claims".

Unfortunately, the signing of the Northern Accord AIP has violated this and all of the similar promises made in the past on behalf of the GNWT. The aboriginal organizations are left with the question whether the GNWT really remains committed to recognizing their constitutional right to aboriginal self-government.

#### THE NORTHERN ACCORD AIP AND THE DEVOLUTION PROCESS

The aboriginal members of the Constitutional Alliance have all had different forms of agreement with the GNWT regarding their role in the devolution process. The Dene/Metis had an overall memorandum of understanding on devolution which provided a framework for individual "participation agreements" on various subject matters. The Inuit declined to enter into a comprehensive memorandum, but reached a specific agreement on an energy accord. The Inuvialuit chose not to sign any formal memoranda, but have worked actively with the GNWT on several issues, particularly the energy accord. All of these organizations have had prior experience in negotiating the terms of specific transfers with the GNWT. It is unnecessary to go into each of these experiences in detail. In virtually every case, as in the process leading to the signing of the Northern Accord AIP, the aboriginal organization had been led to believe that it would be directly involved in establishing the terms of the transfer. Unfortunately, in a majority of such cases the aboriginal organization was finally shuffled aside in the process.

Examples of this common experience include the experience of the Inuvialuit and Dene with the health transfer which, after successful negotiations between the northern parties, was virtually re-written by the "transfer policy" unilaterally adopted by the Executive Council. Previously, there had been the Dene/Metis experience with the forestry transfer. Of a more general but similar nature, was the experience of the Inuvialuit with the "devolution" policy (devolution from Yellowknife to the regions and communities). Thus, the signing of the Northern Accord AIP without real involvement on the part of the aboriginal organizations, was the culmination of a history of broken promises in the devolution process.

The Executive Council has adopted various excuses for its conduct in each of these cases. Sometimes, the memorandum or political understanding in question, was said not to apply, or to have been misinterpreted. In others, the transfer in question was called "administrative", and the Executive Council claimed that aboriginal rights are not affected by administrative matters. In the case of the Northern Accord AIP, in which some aboriginal leaders received a mere telephone call or a short briefing days before the signing, while others heard nothing, the most credible explanation given is that the Executive Council knew it was breaking its promises to the aboriginal organizations, but was presented by the federal government with a "take it or leave it" decision, and had to make its choice quickly. Clearly, the choice made was to promote increased power for the existing government, regardless of the consequences for aboriginal self-government.

Among several major concerns shared by the aboriginal parties to the Constitutional Alliance regarding the Northern Accord AIP, are the following:

- No guarantees that revenue sharing agreements reached in land claims agreements will be protected from the reduction in royalties implicit in the criteria to be adopted for fixing government royalties;
- Exclusion of lands in Hudson Bay and Hudson Strait from the ambit of the agreement;
- Express denial that the role of aboriginal peoples in the management of oil and gas development, is an aboriginal right;
- The absence of any guarantee that aboriginal peoples will be directly involved in the management of oil and gas development.

What is at stake in the negotiation of the energy accord is, particularly for the western NWT, the single most important provincial type power sought by the GNWT. Together with the powers it already holds under the NWT Act, this power will give the GNWT almost all the authority of a provincial government. Management of oil and gas development is at the same time for aboriginal peoples, one of the most important issues involved in land claims and aboriginal self-government negotiations. For aboriginal peoples, management of oil and gas development in the Northwest Territories, and particularly the western NWT, will be the predominant factor determining the use of aboriginal lands, and the use of other lands critical to aboriginal peoples for renewable resource purposes. If a Northern Accord is finalized which satisfies the aspirations of the GNWT without respecting the rights of aboriginal peoples, the prospects for further



cooperation on developing aboriginal self-government in the Northwest Territories, will have ended.

If at this stage in the devolution process the GNWT is prepared for the sake of expediency to break its prior promises of aboriginal involvement and to give aboriginal interests short shrift on an issue of this magnitude, the aboriginal organizations have no reason to expect that it will not do the same thing again in future negotiations regarding matters such as ownership and administration of Crown land. The Dene/Metis therefore ask the Legislative Assembly to examine the devolution process to date, and to give clear direction to the Executive Council for changes in its conduct.

#### PRINCIPLES AND CONDITIONS FOR DEVOLUTION

The Dene/Metis ask that the Legislative Assembly affirm its commitment to the following principles and conditions:

1. Aboriginal organizations must be effectively involved in all discussions and negotiations pertaining to devolution, to ensure that aboriginal rights, including land claim rights and the right of self-government, are protected.
2. To ensure continuation of fair and effective constitutional development, a framework agreement must be reached by members of the Constitutional Alliance and ratified by the appropriate constituent bodies, which governs the process to be followed.

3. The framework agreement must be based on the following principles and conditions:
- a) Recognition and protection of aboriginal title and the aboriginal right of self-government;
  - b) Non-interference with negotiations respecting land claims, implementation of land claims settlements, and aboriginal self-government, including negotiations in the Constitutional Alliance and through the community self-government process;
  - c) Direct participation in negotiations by aboriginal negotiators as members of the NWT negotiating team, wherever aboriginal title or the right of aboriginal self-government is affected by the transfer of authority;
  - d) Involvement of the aboriginal negotiators in all aspects of the transfers under negotiation, including fiscal arrangements;
  - e) Adequate resources for the aboriginal organizations, to permit full participation in negotiations;
  - f) The firm guarantee that once agreement on devolution of a power is reached, the GNWT will not take any action of an administrative, policy or legislative nature, which may undermine the agreement;
  - g) The firm guarantee that devolution of a power affecting aboriginal rights will not proceed until agreement has been reached and satisfactory arrangements made, for the role of aboriginal

self-government institutions in the exercise of the power;

- h) The recognized mandate for the Constitutional Alliance, to decide the question whether a proposed transfer affects aboriginal rights, if there is not ready agreement otherwise.

#### EXECUTIVE MEMBERSHIP IN THE CONSTITUTIONAL ALLIANCE

In order to ensure that devolution and comprehensive constitutional development proceed hand in hand, the Dene/Metis are also prepared to consider supporting full membership in the Constitutional Alliance for the Executive Council, with seats reserved to the Government Leader and the Minister responsible for Aboriginal Rights, and alternates. If the Legislative Assembly and Executive Council favour this idea, the Dene/Metis Joint Leadership will discuss the matter and, if approved, the Dene/Metis will propose the necessary changes in by-laws to the Constitutional Alliance.

#### CONCLUSION

This paper was prepared originally by the Dene/Metis as a draft to be considered, amended and adopted by the Constitutional Alliance. Unfortunately, the Constitutional Alliance has not had time to consider the paper fully before the Legislative Assembly is due to discuss this issue this week. The Dene/Metis therefore put forward these proposals as their own, but the Dene/Metis firmly believe that the concerns and priorities reflected in the

foregoing discussion reflect the fundamental interests of all of the aboriginal peoples of the NWT. The Constitutional Alliance plans to consider and adopt an Alliance paper on these issues, at its next meeting.

Several of the principles and conditions for devolution proposed in this paper are already contained in memoranda signed on behalf of the Executive Council of the Government of the Northwest Territories. The Dene/Metis have no choice but to believe that with clear direction from the Legislative Assembly, and perhaps full involvement in the Constitutional Alliance, the Executive Council will honour its commitments to such principles in future. If such a cooperative approach is not followed, the course of constitutional development in the Northwest Territories will change, and the unique chance for a constitution based on a negotiated and balanced relationship between the institutions of aboriginal self-government and public government, will be lost.

The Dene/Metis recognize that the Constitutional Alliance has no exclusive claim on positive ideas for constitutional development in the Northwest Territories. It is clear, however, that constitutional development in the NWT must continue to proceed on the basis of equality and mutual respect between the representatives of aboriginal peoples and the representatives of public government. Cumbersome as the process sometimes appears, all parties whose constitutional rights are affected, must have a secure place in this process. The making of a constitution should be the building of relationships, not a race for power between competing groups. To this end, the Dene/Metis sincerely hope that the proposals made in this paper will receive the support of the Legislative Assembly.