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A discussion paper prepared by the  
Government of the Northwest Territories  
on  
Political and Constitutional Development  
in the Northwest Territories

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## **Introduction**

This paper is being tabled to focus debate within the Legislative Assembly on the important future political and constitutional development issues facing the Northwest Territories.

Of paramount importance is to develop a consensus on the form, process and framework of shaping public government in the Territories. It is anticipated that debates generated in this Assembly will allow all members to achieve a common understanding of the appropriate direction for future political and constitutional development as well as initiating discussion to resolve outstanding issues.

## **Background**

During the past decade, the Legislative Assembly of the Northwest Territories has made great progress in establishing a northern public government that is increasingly sensitive to northern interests and traditional values. At the same time members of the Assembly and aboriginal organizations began working together towards development of positions on the shape of government in the NWT with the creation of a Constitutional Alliance.

More recently, through a process of devolution the federal government began transferring provincial-type responsibilities, but not necessarily the constitutional framework, to the North. As well, relations with Canada and the provinces matured or grew to the point where there is increasing recognition of the North's emerging role as a distinct jurisdiction.

In addition, a number of other significant events have occurred or are now happening which will greatly affect the shape of public government in the NWT:

- the Inuvialuit reached a final agreement
- an Agreement-in-Principle for a Dene/Metis land claim was signed
- an enabling agreement was signed on negotiation of a Northern Energy Accord
- the Tungavik Federation of Nunavut is expected to reach an agreement in principle on its land claim by March of 1989
- the Constitutional Alliance has been re-activated
- the Tungavik Federation of Nunavut and the Dene/Metis have resumed discussions on a land claims boundary and are seeking agreement by March of 1989
- efforts continue to lobby against certain sections of the Meech Lake Accord
- the demand to have aboriginal rights defined in the Canadian Constitution continues

## Overview

Success in establishing public government is not without cost. The NWT is an expensive place to provide public services with annual Territorial government expenditures alone amounting to \$15,000 for every man, woman and child - three times more that it would cost to provide comparable public services in the south.

Even with a budget of \$792 million in 1988-89, the GNWT continues to face huge problems brought about by growing demands for increased or new public services, programs and infrastructure. In addition, a population growth that in some regions is three times the national average is making it increasingly difficult for any real improvements or to maintain existing levels of service in some areas - let alone create new administrative structures.

Adding to the problem is the fact that the growth of institutions at the local, regional and territorial levels and their desire for greater decision making is leading to confusion in leadership roles. An example is the situation involving Regional and Tribal Councils.

It is estimated that there are over 1,500 elected politicians in the Northwest Territories. As well, there are at least 800 statutory and other GNWT sponsored bodies operating in our communities. These include community and municipal governments, local education authorities, hunters and trappers' associations, youth and justice committees, radio and television societies, housing associations and various kinds of social service committees to name only a few.

In non-tax based communities alone, there are over 320 special purpose bodies costing about \$66 million a year.

In addition, at the regional level there are regional and tribal councils, health, wildlife and education boards and aboriginal organizations. At the Territorial level there are boards and agencies, the Legislative Assembly and the GNWT, as well as the Territorial aboriginal organizations and other government-funded special interest bodies.

The cost of supporting these groups is deflecting public funds from the actual provision of public services such as education and housing. The proliferation of authorities is confusing to the electorate and in some constituencies it detracts from the role of the MLA.

## The Government

The Government of the Northwest Territories moved north from Ottawa in 1967. Since that time, and more particularly in the past 10 years, a public government has developed that is delivering a broad range of programs with the kind of increased sensitivity that comes with ministers being directly accountable to the Legislative Assembly.

Elections in 1979, with the Dene Nation taking an active part for the first time, saw a number of aboriginal leaders voted into office. Shortly after, members made a commitment to do whatever they could to encourage the land claims process. In 1981, the Executive Council was increased to 7 elected members. Elections held in 1983 produced a strong aboriginal majority in the Assembly. During the 10th Assembly the Commissioner removed himself from chairing the various Executive committees.

Unlike other democratic models, and to preserve the NWT's traditional approach to decision making, the Assembly remained and continues to operate by consensus rather than by partisan politics. The system is not without its hardships and critics. But, on the balance, it has allowed northerners regardless of political affiliations to work together in a more meaningful fashion and to share in the decisions that are necessary to establish public government in the Territories.

The Government has, in the last several years, made considerable progress in reaching a consensus on a basic political framework for the Territories. The main features are:

- The Government of the Northwest Territories continues to retain its authority and responsibility for the delivery of public programs and services to all Territorial residents.
- A two-tier public government system continues to exist in the NWT made up of the Government of the Northwest Territories and community governments.
- Responsibilities of community governments will be expanded as the prime public authority at the community level for the delivery of government programs. This will allow community governments to assume a more meaningful and visible political role in the constitutional evolution of the NWT.

These three points, at least, provide an initial focus or context in which the shape of public government can be debated and each issue, as subsequently described in this paper, can be discussed.

## A Place in Canada

Relations with the Government of Canada have improved as the GNWT has obtained more provincial-type programs and northerners increase their participation in intergovernmental affairs.

Between 1982 and 1988, elected ministers of the NWT began to exercise provincial-type responsibilities at a rapid pace. Budget responsibilities were transferred to the GNWT from Ottawa as well as responsibility for highways, forestry management and control, forest fire control, mine safety and health. Earlier this year the Northern Canada Power Commission was taken over by the Territorial government. In September, the Prime Minister and Government Leader signed an enabling agreement to negotiate a Northern Accord on Energy.

With this devolution of responsibilities, the Federal government could no longer claim to represent the NWT in intergovernmental relations. Territorial ministers now meet with their federal and provincial colleagues on issues ranging from health care to management of the economy. Over the past year alone, the Government Leader has met regularly with all of the other first ministers of Canada.

Regardless of the entry of the NWT onto the national stage, the Constitution Act 1982 (Section 42) contained contentious provisions on the creation and extension of provinces - a process that was confirmed in the 1987 Meech Lake Accord which still has to be ratified. This section established provincial government roles in the political evolution of the NWT and in doing so could severely limit the opportunity for the Territories to reach provincial status.

Of equal concern is the fact that Ottawa continues to retain power to amend the NWT constitution and exerts control over ownership of land and resources. A framework agreement on devolution will be required to address such basic constitutional issues. In the absence of an agreement, uncertainty will prevail, especially since the GNWT is committed to involve aboriginal organizations in the devolution process.

Finally, few guidelines exist on the increasing participation of the GNWT in the intergovernmental process. With the possible approval of the Meech Lake Accord, meetings with First Ministers will be the focus for crucial national decisions. It will be important for the Government Leader to be at the Federal/Provincial table as a full participant in the process.

## Sensitivity

Community governments have evolved rapidly to the point where they are now well positioned to play an extremely important role in the north and provide a solid foundation for political development. The basic issue of sensitivity - to ensure important local decisions are made by local communities - is being addressed through a process of devolution and delegation.

During the term of the Tenth Assembly, members approved the Charter Communities Legislation to provide for innovative approaches to community self-government. Through this Act, traditional aboriginal practices are integrated with accepted local government principles. This has permitted the creation of a unique form of community government, while still preserving the basic principles of one person/one vote in the selection of councillors.

In addition, government policies on devolution and delegation of responsibilities to community government and the introduction of the Prime Body concept are designed to further strengthen this level of government. This approach allows communities to assume responsibility for a broader range of programs and services than has been traditionally assumed by local governments elsewhere in Canada.

Regional and Tribal Councils developed in the early stages of ministerial government out of periodic meetings between government representatives, local mayors and local chiefs. As early as 1980, the Baffin Regional Council was legally recognized. And then, in 1983, the Legislative Assembly passed the Regional and Tribal Councils Act in order to create a similar regional focus amongst communities and bands elsewhere in the NWT. The councils mainly act in an advisory role and serve as a useful focus for the exchange of information and ideas on common concerns and problems.

## Aboriginal Participation

The NWT Assembly worked for recognition of aboriginal rights in the Constitution Act of 1982 while Government Leaders carried the message as first ministers in constitutional talks between 1983 and 1987. The Western Arctic Claim of 1984 and the recent Agreement-in-Principle have provided the Inuvialuit and should provide the Dene/Metis with the tools for economic and social development. The Tungavik Federation of Nunavut hopes to reach an Agreement-in-Principle by March of next year.

The Constitutional Alliance was formed following a northern leader's conference in January of 1982. The Alliance is an independent body with native and non-native representation from the Legislative Assembly and the aboriginal organizations. It was given the responsibility for developing recommendations on the shape of government in the north for consideration by its members, including the Legislative Assembly.

From 1982 to 1987, the Alliance fostered debates and research principles for constitutional development and possible models of public government. Much work of lasting value was accomplished. As a result, the style and the make-up of the Assembly has been most sensitive to aboriginal concerns.

Division was a major element of the Alliance's mandate. A plebiscite, held in 1982, led to talks on an east-west boundary. In 1987 the Iqaluit Agreement was endorsed by the Legislative Assembly. The agreement could not be put into force when the Dene/Metis and Inuit failed to reach agreement on a land claims boundary by the pre-determined deadline ending in March of 1987. While the Dene/Metis and Inuit still have to agree on a claims boundary, the Iqaluit Agreement remains an important constitutional landmark containing principles that survived the temporary breakdown of boundary negotiations.

The decision to support the Iqaluit Agreement on a claims boundary process and on common principles for constitutional development, demonstrates long-standing support for the democratic resolution of an issue that affects all northerners. The Assembly's support in helping to re-activate the Constitutional Alliance re-confirms its will to work with aboriginal organizations and all groups on our common political futures.

Now an agreement on a claims boundary as a basis of a political boundary for division would present an opportunity to clarify this issue as well. Uncertainties over our northern futures in East and West could, over time, affect our economic and social opportunities. The work of the Legislative Assembly and the Alliance in coming months will be critical in this respect.

### **Constitutional and Political Development Options**

The North, fortunately, is still a place for building. The challenge that is facing the Assembly is to shape public government to suit the political and constitutional desires of northern people.

Here are several options for discussion. Our ability to act together begins with an examination of these discussion points.



## 1. TERRITORIAL EVOLUTION

For the purpose of discussion, this paper lists some options which have been raised in considering the political evolution of the Northwest Territories. They are:

### 1.1 The Division Option

The creation of two new territories, as a result of division, could result in new styles of government within each territory.

This option requires the Assembly to consider its position on the Iqaluit Agreement.

### 1.2 The Provincial Option

In September, the Prime Minister of Canada promised support for Northerners in their lobby for rights enjoyed by provincial citizens of Canada. This gives rise to the question of whether or not provincial status is in reach within the near future. The Meech Lake Accord suggests that some existing provinces might not see it in their interest to allow for creation of new provinces.

### 1.3 Autonomous Federal Territories

The creation of autonomous federal territories with full self-government and a system adjusted to unique social and ethnic needs might be desirable. Under such a system, it is proposed that no amendment to a Territorial Constitution is made without Territorial agreement.

### 1.4 The Federal Option

The Federal government, in a reverse of its policy, would re-assert direct authority in some or all of the areas presently under the jurisdiction of the Government of the Northwest Territories.

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While this is an unlikely prospect in 1988, the federal government could be called upon to play a more active political role if the Dene decided to select reserves by seeking self-government on their own lands.

## 2. THE SHAPE OF GOVERNMENT

Since 1970, aboriginal groups have put forward a number of proposals on the shape of northern government. With the settlement of land claims, a significant level of control over resources will pass from the Federal government to the aboriginal organizations. These groups will, therefore, wield a much higher level of economic and political power and the GNWT must be in a position to respond to the challenges created by this shift in power from the Federal government. Settlement and implementation of the claims agreements will add urgency to this question.

Two concerns have emerged from discussions of government options:

- the degree to which aboriginal interests should and can be accommodated in public government
- the evolution of consensus government

### 2.1 The Status Quo Option

This option would maintain the existing consensus form of government in the Northwest Territories. The Legislative Assembly is at a crossroads and consideration should be given to reviewing and formalizing structures and procedures in order for this option to remain viable.

### 2.2 The Party Option

There are strong arguments for and against party politics. Election to the Legislative Assembly would occur on the basis of party platforms and programs. While the Assembly has a certain ability to accommodate or discourage party politics, through its rules and procedures, whether or not such a system is introduced will largely be due to outside forces.

### 2.3 Guaranteed Representation Option

The Legislative Assembly may not always contain an aboriginal majority in the future. It is argued that guaranteed representation in the legislative and executive branches would provide aboriginal people with a confirmed access to public government. A Dene Senate in the Mackenzie Valley was one option considered in the past.

## **2.4 Partnership Option (Consociation)**

This option is complicated and calls for a constitution that would allow various ethnic groups exclusive legislative rights in areas they perceive to be culturally important while sharing in other areas of jurisdiction such as public works.

## **3. LEVELS OF GOVERNMENT**

Through its legislation, the Legislative Assembly has again emphasized the importance of community government. Northerners want democratic, representative and accountable bodies in their communities.

Much work has been accomplished on the relations between different levels of government. Several options can be considered with a view to achieving a greater clarity in this area.

### **3.1 The Community Option**

Municipal and community governments in the Northwest Territories will get additional direct responsibilities. An increased measure of control and planning would give full meaning to the prime public authority at the local level.

### **3.2 The Regional Option**

Regional bodies, through the delegation or devolution of responsibilities from the GNWT and communities, would exercise prime responsibility in certain areas of jurisdiction.

An issue for the Legislative Assembly, with this option, is how MLAs can retain their authority, accountabilities and responsibilities to electors in those areas that are delegated or devolved to regional bodies.

### **3.3 Exclusive Aboriginal Self-Government Option**

Negotiations on self-government agreements between the federal government and aboriginal people could lead to exclusive aboriginal government.

This option could lead to an increased role for the Federal government in the North. It could also change the areas of responsibilities and program authority of the Legislative Assembly if negotiations resulted, for example, in the application of the Indian Act for Dene people.

#### 4. CHOICES: THE FRAMEWORK

Consideration of various options for constitutional and political development will be shaped by a number of basic factors. Several important and related issues are important to political development in the Northwest Territories. They include:

- growth of institutions
- financial constraints
- the transfer of provincial-type responsibilities
- negotiation and implementation of claims
- national discussion on aboriginal rights
- the on-going work and recommendations on NWT constitutional issues

##### 4.1 Financial Constraints

Only 18 per cent of the Government's revenues in 1988-89 will come directly from NWT sources. There is an obvious gap between needs, on the one hand, and resources on the other. Furthermore, the GNWT is engaged in difficult negotiations on the renewal of the Formula Financing Agreement.

A public consultation paper has been released in order to examine the difficult issue of how revenues are to be generated. The Assembly should consider how we can become more independent while protecting the fragile northern economy and those who should not be unduly taxed.

##### 4.2 Growth of Institutions

The proliferation of regional and local special purpose bodies has led to confusion in responsibilities and costly duplication. This duplication serves to divert scarce resources away from the development of new, or the enhancement of existing programs and services being demanded by northern residents. The accountability of the Legislative Assembly is being affected.

Community governments are the prime public authority and how a community and its local government choose to exercise that authority can differ. Local governments, for instance, may decide to combine special purpose groups to increase their political leadership.

The Assembly may want to discuss the role of regional councils and other regional bodies as it relates to the proliferation of these groups, the cost and, as well, the shape of institutions arising out of final land claim agreements. The direction of special purpose regional boards also deserves attention.

#### **4.3 Transfer of Provincial-type Responsibilities**

The process of devolution from the federal to the territorial government is essential to progress leading towards provincehood. The involvement of aboriginal organizations in the design of a northern system of government extends to the transfer of new powers. Only close co-operation between natives and non-natives will ensure a constructive transition towards provincial status.

At what point would it be realistic to seek amendments to the Northwest Territories Act in order to achieve a more responsible government? Would the year 2000 be a realistic goal by which to obtain provincial status?

#### **4.4 Negotiation and Implementation of Claims**

The Legislative Assembly and the Government have a pivotal role in the implementation of claims. Yet the Territorial role in negotiations has been modest. Careful planning and full co-operation will be required to ensure the smooth integration of claims' institutions with public government.

#### **4.5 National Discussions on Aboriginal Rights**

Despite the efforts of the GNWT, the process of identifying and affirming aboriginal rights came to an abrupt halt during a constitutional conference of First Ministers in March of 1987.

Consideration could be given to new procedures for such discussions. For example, a political process could precede the constitutional route. A regional focus could initially reflect the specific needs of different aboriginal peoples. In addition, consideration must be given to such practical issues as the provision of services to aboriginal people.

#### 4.6 Territorial Discussions on Constitutional Issues

The Legislative Assembly and the Constitutional Alliance have played a significant role in developing constitutional and political development recommendations. The Alliance has made it possible for aboriginal organizations and native and non-native MLAs to formally address these important issues. Continued support from the Legislative Assembly is required for the resolution of these outstanding issues.

#### Conclusion

Resolution of the important issues surrounding the question of political and constitutional development will also create a much-improved political climate for economic investment and development opportunities. Streamlining our decision-making will also provide northern people with a greater degree of self-confidence in their ability to exercise strong community leadership to tackle the serious social problems afflicting the NWT today.

It is time for northerners to work together to manage the change and to develop or modify public government institutions and authorities in a way that serves the best interests of all northern people.

This is why the Executive Council is presenting this discussion paper. The paper has outlined the complex nature of the present situation and has presented a number of questions and options for discussion purposes. While there is general agreement that political and economic self-determination for the north is essential, the question remains: How do we achieve it?

As a result of our debates on this paper in the Legislative Assembly, the GNWT will develop recommendations on the process, framework and form for the shaping of public government. These recommendations will be used as a point of reference for future discussion and decision-making by this Assembly.