

**A POSITION PAPER ON POLITICAL
AND CONSTITUTIONAL DEVELOPMENT
PRESENTED BY THE EXECUTIVE COUNCIL
GOVERNMENT OF THE NORTHWEST TERRITORIES
TO THE LEGISLATIVE ASSEMBLY**

FEBRUARY 25, 1991

Government Library

FEB 26 1991

Government of N.W.T.
Yellowknife, N.W.T.

NWT GOVERNMENT LIBRARY



3 1936 00004 656 3

**A POSITION PAPER ON POLITICAL
AND CONSTITUTIONAL DEVELOPMENT
PRESENTED BY THE EXECUTIVE COUNCIL
GOVERNMENT OF THE NORTHWEST TERRITORIES
TO THE LEGISLATIVE ASSEMBLY**

FEBRUARY 25, 1991

Introduction

Over the past few years, the Executive Council has tabled two discussion papers on political and constitutional development in the Legislative Assembly. These papers identified the various issues facing the people and Government of the Northwest Territories under the broad heading of political and constitutional development and offered some analysis. The papers were introduced with the aim of promoting discussion and dialogue and ultimately assisting in the development of a northern consensus on the direction and goals of political and constitutional development in the Northwest Territories.

In those papers, the Executive Council stressed that the people of the Northwest Territories were entering a critical phase in their evolution. Decisions had to be made which affected the future of all of us. Opportunities were there to be seized if the leadership and the people were prepared to act. Conversely, there was a danger that confusion and indecision would lead to lost opportunities in the political, social and economic evolution of the Northwest Territories.

Since the introduction of these papers, a number of developments have taken place.

The Legislative Assembly reaffirmed its support for the creation of Nunavut in October, 1989.

The Dene/Metis land claim proceeded to Final Agreement in April, 1990, but was subsequently rejected by three of the five regions in July, 1990, largely on the issue of "extinguishment".

On November 7, 1990, the Minister of Indian Affairs agreed to open negotiations with the Mackenzie Delta Tribal Council towards the implementation of the Dene/Metis land claim on a regional basis. Discussions have also begun with the Dene/Metis of the Sahtu region.

The Tungavik Federation of Nunavut (TFN) and the Government of Canada signed an Agreement in Principle on the land claims of the Inuit of the Eastern Arctic in April, 1990.

Article IV of the Agreement in Principle required that the TFN and the Government of the Northwest Territories develop a process which could lead to the creation of a Nunavut Territory, consistent with the Iqaluit Agreement. The Iqaluit Agreement includes certain principles governing the process of dividing the Northwest Territories. Notably, there must be extensive public involvement, and funding must be assured so that the level of public services does not deteriorate.

On October 19, 1990, the Government Leader and the President of the TFN sent a joint letter to the Prime Minister proposing the introduction in 1992 of legislation into Parliament, which would create a Nunavut Territory and the implementation of a Nunavut Government within five years of the enactment of that legislation.

The Division of the Territories, which suffered a setback following the Iqaluit Agreement, is once again at the top of the agenda with land claims, devolution and self government.

Actions have been taken and decisions made since the introduction of the above papers. Opportunities have been seized, others have been lost.

At the national level, the Meech Lake Accord died, introducing a level of uncertainty on the constitutional future of the country. The events at Oka gave a renewed sense of urgency to the resolution of aboriginal issues.

In response, the Federal Government, several provinces and numerous business, labour, women's and native organizations have established commissions and task forces to review and make recommendations on the constitutional future of this country. Public hearings will be held over the next six months.

Recommendations and eventually, decisions, will embrace matters of great significance to the economic, political and constitutional future of both Canada and the Northwest Territories, including:

- new arrangements for the division of powers between the federal, provincial and territorial governments which could significantly influence the course of devolution;
- changes to the procedures for amending those sections of the Constitution which determine how new provinces can be established and the extension of existing provincial boundaries into the territories;
- different approaches for involving Canadian citizens and their governments in making changes to the Constitution, thereby improving upon the past status and role of northerners; and
- entrenching, within the Constitution, the right of aboriginal Canadians to self government, which could dramatically affect the approaches being advocated for the Northwest Territories.

The very survival of Canada is the ultimate question as Canadians look for answers to these questions. We are living in a time of national constitutional crisis which could overwhelm the resolution of northern constitutional issues.

There is also a high level of "constitutional fatigue" in the country at large and in the north, in particular.

Nevertheless, it is essential that the Government and the people of the Northwest Territories participate in the national debate. We must protect our interests both as Northerners and as Canadians.

The Comprehensive Approach to Political and Constitutional Development

The following are the main elements which make up the "big picture" of the political and constitutional development of the Northwest Territories.

- **Land Claims.** The completion of negotiations with the Inuit and the Dene/Metis, and the full implementation of the settlements with the Inuvialuit, Inuit, and the Dene/Metis on a regional basis.
- **Division.** The creation of Nunavut and a new territory for the Western Arctic.
- **The Northern Accord.** The transfer of responsibility for oil and gas, followed by the transfer of responsibility for minerals, with a view to the eventual transfer of ownership of subsurface resources.
- **Devolution of Land and Water.** The transfer of responsibility for the management of land and water and environmental assessment, with a view to the eventual transfer of ownership of the land and surface resources.
- **Constitutional Development.** The development of new constitutions for the two future territories and any interim amendments to the Northwest Territories Act necessary to allow for division, devolution and "modernization" of the Act.
- **Self Government.** The continuation of the transfer of responsibility to the community level of government, and the realization of aboriginal self government in the context of public government at the community and territorial level.
- **National Issues.** Participation by the Government of the Northwest Territories, northern organizations and residents in the process of national constitutional reform to ensure that our current and long term interests and aspirations are reflected and protected in a renewed Confederation.

- **Provincial Status.** The successful implementation of these elements of the "big picture" to ensure that at the appropriate time in the future, both Nunavut and the new western territory can seek and be granted provincial status and full participation as a member of Confederation.

The following examples illustrate the degree of interconnection of the various elements to each other and to the whole.

- The TFN land claim is largely premised on division, and creates a regime of social and environmental regulation of development in the Eastern Arctic, which will be quite different from the regime in place in the Western Arctic. It will therefore be easier and more practical to plan and provide for the transfer of surface and subsurface resources and the implementation of the TFN, Inuvialuit and Dene/Metis land claims if it is done in the context of division.
- The Dene/Metis Final Agreement and the TFN Agreement in Principle anticipate public regimes of environmental assessment and regulation of land and water use. This is fundamentally an issue of political and constitutional development. These regimes should be territorial not federal regimes, so that the people of the north can regulate and approve developments on terms which benefit northerners and protect the environment for future generations.
- Canada and the Northwest Territories are committed to finalize and implement a Northern Accord. Planning for the Northern Accord cannot be done in isolation from planning for the regime or regimes which will regulate the use of land and water. The Northern Accord is therefore connected to the devolution of land and water, the implementation of land claims and the division of the Northwest Territories.

Position Paper - Political and Constitutional Development

- The finalization of outstanding land claims may be connected to progress on the other elements of political and constitutional development. The Inuit may need to see a time frame for the creation of Nunavut before they will ratify their claim. The Dene/Metis may need to see the place of constitutional development, and "self government" in particular, in the larger context to be comfortable with finalizing their land claims.
- The issue of "extinguishment" is particularly difficult for the aboriginal people. It may be that only with a view of the "big picture" will they be comfortable with the surrender of "aboriginal title".
- The creation of Nunavut is more than the creation of one new territory. Division is the creation of two new territories. Western Constitutional Development must therefore be synchronised with Eastern Constitutional Development, and the people of the Northwest Territories must be given a reasonable period of time to develop new constitutions before division is implemented.
- All of Canada is engaged in a reassessment of the character of this country, including a redefinition of how the regions relate to each other. Northerners must participate in this redefinition, or, by default, be prepared to live with the consequences of non-participation. In assessing and defining the future of the north in Canada, we must take into account the place of division, devolution and the role of land claims. We must have a clear vision of where we are going and when or we will not be able to communicate as a region with the rest of Canada.
- In the aftermath of Oka, there is a sense of urgency to do justice for the aboriginal people of Canada. It is imperative that the unique circumstances of the North are represented and fully taken into account in the search for solutions at the national level.

The very particular challenge to the people of the

Northwest Territories as they address questions relating to land claims, division, extinguishment, devolution, self government, and our future in Canada, is to assess the relevance of each question in the larger context. This is easier said than done, however. The "ad hoc" solution is difficult to resist when we are operating with a short term perspective.

In practical terms, if we do not address each question in the larger context, it is difficult to make decisions and maintain progress. Each question may take on an exaggerated importance if addressed in isolation, that it would not have if assessed in the larger context.

In the longer term, there is no satisfactory alternative to careful planning and coordination, because the questions cannot be isolated. Action taken in relation to one element affects each other element and the overall evolution of our political and constitutional development.

Indeed, it is likely that the degree of interconnection between these elements is so high that progress on any one element will be extremely difficult, if not frequently impossible, unless it is coordinated with most if not all of the other elements.

Moreover, if decisions are made in isolation, it is likely that our political and constitutional evolution would happen so haphazardly that the people of the Northwest Territories and their Government or Governments could be left with institutions and systems which do not work very well - if at all - because of excessive complexity and lack of coordination.

In addition, in the absence of effective coordination with national constitutional reform, we may find that our objectives are inconsistent with or do not take advantage of new constitutional arrangements at the national level.

A comprehensive and integrated - as opposed to a piece-meal - approach, must be taken if we are to experience progress.

Timing and the Future

We cannot be indifferent to the issue of "timing". Canadians will shortly be making decisions about our future. Northerners must be ready to participate in this process.

Land Claims have been an issue in the north for two decades. Mr. Justice Berger recommended fourteen years ago that major resource developments be put on hold for ten years to allow the aboriginal people time to finalize their land settlements and resolve their place in the political and constitutional future of the Northwest Territories.

One land settlement has been finalized, and the remaining claims are in various stages of finalization. The whole process of land claims is in a stage of uncertainty, to say nothing of the individual claims themselves.

The course of political and constitutional development awaits and is affected by the resolution of land claims. So too does economic development, although there are other reasons why economic activity is low. Notably, Canada is now into a severe recession.

Indeed, more is at stake than our political and constitutional future. All the elements of political and constitutional development vitally affect our social and economic futures as well.

How will people make a living? How will they relate to each other politically, socially and economically? Will we progress together or stagnate? Will we work together or separately? What kind of life will we leave for our children?

Ultimately, these are the issues behind each question we address in the context of land claims, division, devolution and self government. The answers relate to our political and constitutional as well as our social and economic futures. Land claims have social and economic implications, as well as political and constitutional. The Northern Accord is equally as important to our economic and social future as it is to our political and constitutional future. The bottom line is self determination for the people of the Northwest Territories. Having the capacity to make the decisions which affect our futures.

Some might argue that land claims and the other elements of political and constitutional development are too important to be rushed, and two decades is not really a long time considering the scope of the undertaking.

On the other hand, people are waiting, want to and must get on with their lives. Opportunities are here, ready to be seized, and may not wait.

Moreover, economic, social and political development is ongoing. It is never over. The finalization of land claims, devolution, the Northern Accord, division and other aspects of political and constitutional development will be just a stage in the ongoing evolution of the Northwest Territories.

We can agree that we must take the time and make sure that we are doing things correctly, just as we must acknowledge that the timing may be such that making decisions now may be the right thing, even though in a more perfect world we would have more time.

The Executive Council believes that now is the time for making some critical decisions, and these decisions must be made comprehensively.

Deadline 1997

The Government of the Northwest Territories has committed itself to a division scenario which would see the introduction into Parliament in 1992 of legislation providing for the creation of Nunavut and the implementation of division within five years of the enactment of this legislation. A government for Nunavut would be up and running by 1997.

In addition, the other current initiatives in political and constitutional development should be finalized prior to 1997. Concurrent with the planning and implementation of division in this scenario, the TFN land claim should be finalized and implemented. The Dene/Metis land claim would be implemented in those regions which have opted to finalize and implement the claim on a regional basis.

The transfer of responsibility for oil and gas, minerals, environmental assessment and land and water should be executed in the same period, coordinated with division and the implementation of land claims.

1997 thus becomes the target for the next stage in the evolution of the Northwest Territories, when all current items on the political and constitutional development agenda will be completed in a rational and coordinated fashion.

In addition to land claims and planning and execution of the transfer of responsibility for renewable and nonrenewable resources, constitutions must be developed for the new Eastern and Western Territories consistent with the principle that aboriginal self government will be realized in the context of public government.

The financial requirements of both governments must be settled well in advance. The capital requirements must be identified. The planning for the executive and administrative branches must be completed and the infrastructure for a new eastern territory and government put in place prior to implementation day.

The boundaries of the future territories must be finalized.

Significant progress in the evolution of self government at the community level must be realized.

While all these changes are taking place within the Northwest Territories in the period leading up to 1997, northerners, their Legislative Assembly and Government must develop and maintain a strong and effective presence in the national constitutional debate. We must ensure that new arrangements within Confederation reflect northern interests within Canada and do not prejudice territorial objectives such as devolution, division, self government and the settlement of land claims.

For all of this to happen, the people of the North must articulate a consensus on our political and constitutional goals and objectives, express them to other Canadians and the Government of Canada at every opportunity, and then actively work to finalize each element by 1997 in accordance with the schedule necessary for that finalization.

We must immediately begin the articulation of our vision and demonstration of our commitment, starting at the February, 1991 Session of the Legislative Assembly.

If we do not begin in this fashion, we will be committing ourselves to a process of development which is ad hoc and piece meal and to a future which is uncertain.

Leadership

The comprehensive approach will not happen without leadership.

Ultimately, it is the people of the Northwest Territories who will be blessed with a comprehensive and rationalized outcome or cursed with one which is ad hoc and piece meal. Therefore, it is the people of the Northwest Territories through their representatives, the Government of the Northwest Territories, who must exercise stewardship.

While the Government of the Northwest Territories has the greatest responsibility to exercise this leadership, it does not have full control of the agenda. For example, the native organizations exercise more control over the finalization of land claims than does the Government of the Northwest Territories. The Government of Canada is the ultimate authority on virtually all the elements.

However, once the advantages of the comprehensive approach are appreciated and endorsed by all parties our future will unfold as it should. The bigger job is to develop the consensus and secure the commitment of all parties to the comprehensive approach. This is where leadership from the Government of the Northwest Territories, and the Members of the Legislative Assembly in particular, must be exercised.

The Schedule

The Executive Council is inviting the Legislative Assembly to join in the commitment to the Comprehensive Approach to Political and Constitutional Development in the Northwest Territories with a target for the realization by 1997 of the following:

- o The division of the Northwest Territories into two territories and the development of new constitutions and governments.

- o The finalization and implementation of land claims.
- o The transfer of responsibility for land and water, oil and gas and minerals to the territories for the onshore, and the development and implementation of joint federal/territorial regimes for the offshore.

In addition the Legislative Assembly is invited to commit itself to a debate on these issues in this session and to endorse and commit itself to an action plan which will ensure that our goals are met.

Action must be initiated immediately, with a view to achieving significant progress in the remaining life of this Legislative Assembly. Work must begin on the identification of a process of constitutional development, and public participation in that process.

The members of the Legislative Assembly have played an important role over the last decade in national constitutional debates. The Special Committee on Constitutional Reform continues to have a particular role to play in the post-Meech Lake era. The Executive Council is looking forward to working with and receiving the views of the Special Committee during the remainder of the life of this Assembly.

In its consultations with northern residents and presentations to the various committees and task forces which have been established by the federal government, provincial governments and private organizations, the Special Committee must take into account the importance of maintaining an approach to national issues which is consistent with political and constitutional objectives at the territorial level.

The timing is short and the challenges are significant. Nevertheless, just as this Legislature needs to lay sufficient groundwork for the newly elected Legislative Assembly on territorial constitutional and political development issues, it must also seek to lay a similar foundation at the national level.

In the subsequent months the issues will be debated by the northern public. The position of the Government of the Northwest Territories will be expressed to the Canadian public and the Government of Canada in a program of public information.

The people of the Northwest Territories will express their position on these issues in the upcoming election and the different forums addressing the constitutional future of Canada and the Northwest Territories.

Together, we will lay sufficient groundwork to allow the newly elected Legislative Assembly to take up the responsibilities and challenges, and ensure that the political and constitutional goals of the Northwest Territories are realized.

Conclusion

The Government of the Northwest Territories is firmly committed to a comprehensive approach to political and constitutional development and the cultivation of similar commitments from other interested parties such as the Government of Canada and the native organizations. It is the opinion of the Executive Council that the alternative is stagnation and the loss of opportunities for improvement in the political, social and economic status of northerners.

It a time for coordinated action and decision making. Inaction and indecision is not an option.

The timing of developments on land claims and other initiatives such as the Northern Accord, devolution and division makes 1997 an obvious and firm target for comprehensive progress in political and constitutional development and movement into the next stage of the political, social and economic evolution of the Northwest Territories.

In that next stage, we will continue to pursue our ongoing evolution with the rest of Canada, but we will have an enhanced capacity to assert our interests. The settlement of land claims and the transfer of responsibility for renewable and nonrenewable resources will give us more socio-economic power and therefore more political power to dedicate to our self determination. We will have new structures of government, which can be made more responsive to the diverse interests of the northern peoples.

Position Paper - Political and Constitutional Development

We will continue to develop the terms and timing for the realization of new northern provinces in Canada, but with growing awareness that it is not some distant possibility but a real and imminent question for the people of the north and the country at large.

In the months to come we, as northerners and as Canadians, will be making decisions as difficult as any we have ever been called upon to make. We will be participating in the definition of the future of both our region and our country, and thereby affecting the welfare of the generations to come. We must not let them down.