



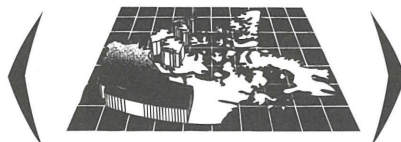
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# Partners in A New Beginning

ʔełts'ėnıkwı ʔası Gódhe Huhehenıłthėre  
Pıqatıgııt Nutaanun Sivunniurutinun  
ʔelehé ʔek'óne Kėʔegots'erıhwı  
Ełexė Eghàlats'eda T'à T'ahsıı Wegòòkėhots'ıhde  
K'eejit Natr'ıgwahtsıı geenjit Gwıjaa Tr'ıınlıı  
Ełexėh Gok'ónı Kėnaots'ėnıhthı  
Partenaires en cette aube d'ėre nouvelle

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Draft Constitution Package Recommended by  
The Constitutional Working Group  
of the Western Caucus of the Legislative Assembly  
and the Aboriginal Summit







The Constitutional Working Group of the Western Caucus and the Aboriginal Summit is pleased to present this Draft Constitution Package to the people of the western Northwest Territories for their consideration.

The Working Group submits it to the Western Caucus of the Legislative Assembly, the Government of the Northwest Territories, the Aboriginal Summit, and the Constitutional Development Steering Committee.

Presented at Yellowknife this 16th day of October, 1996



*Eddie Erasmus, Representative for Dogrib Treaty II Council, David Krutko, Mackenzie-Delta MLA, Roy Erasmus, Yellowknife North MLA, Jane Groenewegen, Hay River MLA, Hon. Jim Antoine, Minister of Aboriginal Affairs, Bob Simpson, Representative for Inuvialuit Regional Corporation and Gwich'in Tribal Council, George Kurszewski, Representative for Metis Nation, Michael Miltenberger, Thebacha MLA, Bill Erasmus, Representative of Treaty 8 and 11.*

*Missing from photo: Stephen Kakfwi, Sahtu MLA, James Wah shee, Representative for Dogrib Treaty II Council.*

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## PART ONE

# ) BUILDING OUR FUTURE IN THE WEST



## PART ONE

### BUILDING OUR FUTURE IN THE WEST

#### MANDATE

The mandate of the Constitutional Working Group is to make proposals on a constitution for a new territorial level of government. [Appendix A]

The proposals in this *Draft Constitution Package* are the result of cooperation. The Constitutional Working Group believes this package provides a starting place for the work which the people of the western territory must undertake together to refine and finalize a new constitution.

The package contains two main elements:

- A set of proposals for a new federal Act to replace the *Northwest Territories Act*; and
- An outline for a Companion Aboriginal Self-Government Agreement.

These two elements, and some of the reasons which led the Constitutional Working Group to propose them, are described in the pages that follow.

#### GUIDING PRINCIPLES

The Constitutional Working Group has attempted to establish an innovative constitution and structure of government for a western territory based on the following principles:

- The new government will represent and serve all residents of the western territory.
- The new system of government will include Aboriginal government institutions as well as public government institutions.
- The constitution of the western territory will recognize, affirm, and accommodate existing Aboriginal and Treaty rights, including modern Treaties and Aboriginal peoples' inherent right of self-government. The objective is to ensure aboriginal participation in decision-making to the maximum extent possible.
- There will be community, central and regional government institutions.
- A division of powers will be developed with a view to implement the inherent right and having authority exercised by the level of government which is able to deliver a service most efficiently and effectively.
- The constitution of the western territory will be consistent with the Constitution of Canada, including the Charter of Rights and Freedoms.
- The new government will recognize and facilitate the implementation of self-government agreements negotiated by Aboriginal peoples, Canada and the Crown in right of Canada.

## OBJECTIVES

- The federal government will enact legislation to implement the territorial constitution and aboriginal self-government agreements, and therefore, must be involved in the western constitutional process.

The new constitution for the new western Territory should be consistent with fundamental democratic principles and Aboriginal peoples' inherent right of self-government.

Democratic principles include representation by population, taking into account communities of interest and geographical circumstances.

Aboriginal participation in the central government would be the expression of the inherent right at the territorial level.

The new constitution should bring together public government and Aboriginal self-government at the territorial level consistent with the *Constitution of Canada* including the *Charter of Rights and Freedoms*, constitutionally protected Treaties and land claims and self-government agreements with Aboriginal peoples and processes established between Aboriginal peoples and Canada to negotiate such agreements.

The new constitution should establish a territorial government which could and would legitimately assume province-like powers.



A new constitution and structure of government for the western territory should be in place for the division of the Northwest Territories planned for 1999.

## THE FEDERAL ROLE

The new constitution for the new western Territory will be an Act of the Parliament of Canada.

While the people of the western territory must design and reach agreement on a new constitution in the west, they must also obtain the cooperation of the federal government and Parliament to change or replace the *Northwest Territories Act*.

## WHO ARE WE IN THE WESTERN NORTHWEST TERRITORIES?

We are people from many different cultures and backgrounds, living and working together. We live in an area covering 1.17 million square kilometres, stretching from the Arctic Ocean to the 60th parallel.

Half of us are the descendants of the first people of this land: the Dogrib, the Deh Cho, the Cree, the Slavey, the Chipewyan, the Inuvialuit, the Sahtu, the Gwich'in, the Metis. We have a tradition of respect for the land and the rich resources around us. We have treaties and agreements with the people of Canada, which reflect our willingness to share our land with those who have come from other places to make their homes here.

Others of us have come to the north for many reasons: for work, for family, or for a different kind of lifestyle. We have made it our home by choice.

We recognize and affirm the many cultures and traditions of the original peoples through recognition of language, strong support for traditional lifestyles, and Consensus decision-making. We work in partnership here: men with women, youth with elders, aboriginal peoples with those who have come here.

We are strong and independent people who accept and embrace the challenges and opportunities which this land provides. We need forms of government which mirror our spirit and the traditions of our people.

## WHY CHANGE THE CONSTITUTION OF THE NORTHWEST TERRITORIES?

Why change the *Northwest Territories Act* and the system of government in place in the Northwest Territories?

We have to face the reality of the fundamental changes that have occurred over the past twenty five (25) years and are occurring in the Northwest Territories today. Events that have brought us to where we are today include the Dene Declaration, the Mackenzie Valley Pipeline Inquiry, the negotiation and ratification of land claims resulting in aboriginal peoples being the largest private landowners in the western territory and related processes including the Nunavut Political Accord that will result in the formation of the new Western Territory and the Nunavut Territory on April 1, 1999. (For more detail, please see the summary historical backgrounder attached as Appendix D.)

We also have to recognize the constitutionally protected inherent right of self-government for aboriginal peoples.

A new constitution would represent a new social partnership between the people of the western territory to work together to build the new territory.

### **A General Desire to Change the Status Quo**

The present territorial system of government was brought to the Northwest Territories by the Federal government. People did not have the chance to create their government system.

At the Constitutional Conference sponsored by the Constitutional Development Steering Committee in January, 1995, most people wanted a new constitution for the western territory, developed by the people of the western territory.

At the Aboriginal Self-government Forum '96 in May, 1996, western Aboriginal leaders confirmed their intention to work with the Government of the Northwest Territories and the Legislative Assembly to develop a new constitution for the western territorial level of government which takes into account both public government and Aboriginal self-government.



In August, 1996, Treaty 8 and 11 delegates at the Dene National Assembly passed a resolution to confirm their desire to participate in developing a new western Territory constitution, subject to certain conditions.

### Division of the Territory

On April 1, 1999, two new territories will be created. *The Nunavut Act* will come into force on that date and will establish a new territorial government for Nunavut.

In the new western Territory the *Northwest Territories Act* will continue to operate unless steps are taken to replace it with a new federal Act.

The system of government that has evolved to the present day is not adequately reflected in the outdated provisions of the Northwest Territories Act.

### Reform of the Northwest Territories Constitution: a Constitutionally-protected Priority

The federal Government has made commitments to develop a new constitution for the Northwest Territories. These commitments are contained in constitutionally-protected Aboriginal land claims agreements. The federal policy on Aboriginal self-government, or federal Inherent Right Policy, further reflects this commitment.

The Gwich'in Comprehensive Land Claim Agreement contains the following provision:

*5.1.12 Government and the Gwich'in agree that the development of a future constitution for the Northwest Territories is a priority.*

*Government shall give the Gwich'in Tribal Council the opportunity to participate in any constitutional conference or similar process for reform of the constitution of the Northwest Territories. [emphasis added]*

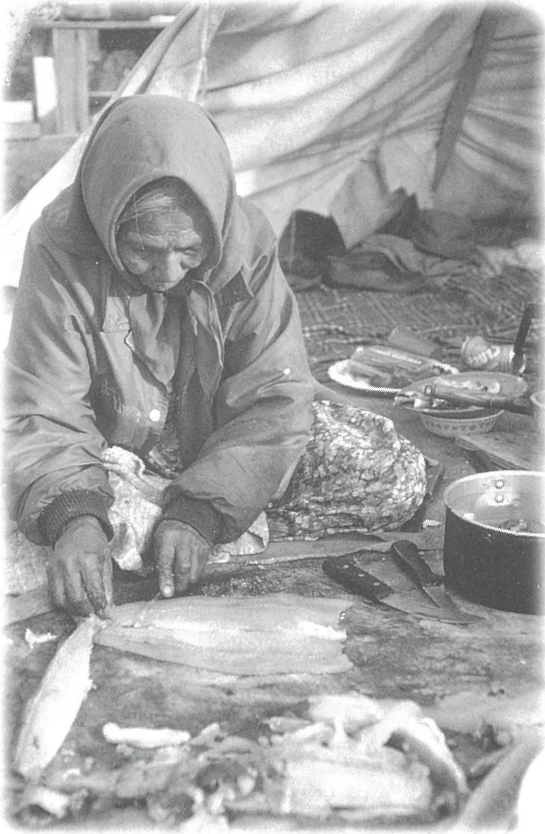
The same commitment was made to the Sahtu Dene and Metis in their Comprehensive Land Claim Agreement.

The Inuvialuit Final Agreement contains the following commitment:

*4.(3) 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.*

The Government of the Northwest Territories has supported these commitments.

Other regions of the western territory also want changes to the current system of government.



## Constitutionally-protected Commitments to Negotiate Aboriginal Self-government Agreements

The Gwich'in and Sahtu Dene and Metis Comprehensive Land claim agreements also contain commitments for federal and territorial governments to negotiate Aboriginal self-government agreements with regional Aboriginal organizations. For example the Gwich'in Agreement states:

*5.1.1 Government shall enter into negotiations with the Gwich'in with a view to concluding agreements on self-government appropriate to the unique circumstances of the Gwich'in and in conformity with the Constitution of Canada.*

*5.1.9 The objectives of self-government agreements shall be to describe the nature, character and extent of self-government, the relationship between government and Gwich'in institutions and to accommodate Gwich'in self-government within the framework of public government.*

The same commitments are contained in the Sahtu Dene and Metis Comprehensive Claim.

Aboriginal self-government agreements negotiated through these processes will have an impact on the powers and operations of any new territorial government.

In addition, other land claim, treaty land entitlement and Aboriginal self-government processes are in progress in other regions of the western territory.

The federal government's Aboriginal self-government policy states that the federal government is prepared to give constitutional protection to the rights contained in Aboriginal self-government agreements. Any new territorial constitution would therefore be subject to these Aboriginal self-government agreements.

## Federal Inherent Right Policy

The federal government has recognized an inherent right of Self-government for Aboriginal peoples as reflected in the federal inherent right policy.

In the case of the Northwest Territories, the federal inherent right policy states:

*"In the federal government's view, the self-government aspirations of Aboriginal peoples in the Northwest Territories can be addressed by providing specific guarantees within public government institutions. The creation of Aboriginal institutions to exercise certain authorities may also be a useful approach."*

In this *Draft Constitution Package*, the Constitutional Working Group recommends that any new territorial constitution should foster a partnership between Aboriginal and non-Aboriginal peoples through a system of government that brings together Aboriginal self-government and public government at the territorial level.



### Political and Economic Viability of the New Western Territory

The partnership reflected in this new constitution can give new meaning and direction to the western territory. Aboriginal peoples and other northern residents have an opportunity to develop a strong political, economic and social environment.

### Northern Tools to Control the Pace and Direction of Change

A new constitution cannot by itself guarantee solutions to all problems. Nor will a new constitution ensure that the western territory, or its regions and communities, will be prosperous. However, a new constitution can give northern residents better tools to control the pace and direction of changes to their society.

### A System for Finding Solutions Together

A major objective of a new constitution should be to establish a system of government that allows northern residents to undertake together the process of looking for solutions to an always-changing list of issues.

## WHAT IS THE CONSTITUTION OF THE NORTHWEST TERRITORIES?

The *Northwest Territories Act* establishes important institutions and confers legislative powers on the Legislative Assembly. However, it is not our entire constitution. The Northwest Territories constitution is not a single document.

The Northwest Territories constitution includes:

- Political traditions, called “conventions”
- Important territorial Acts like the Elections Act
- Treaties
- Aboriginal land claim agreements
- Aboriginal traditions and practices
- Other federal Acts (eg. DIAND Act, Territorial Lands Act)
- Principles established by the courts

This *Draft Constitution Package* contains a wide-ranging set of proposals that would replace the *Northwest Territories Act* and the institutional framework of government. New political practices would evolve, but certain values would continue to shape the new system:

- Respect for the *rule of law*
- Respect for democratic institutions



- Respect for aboriginal laws and customs
- Respect for Aboriginal and Treaty rights
- Respect for individual and collective human rights
- Respect for International Treaties and Agreements

## WHAT WOULD A NEW CONSTITUTION DO, AND NOT DO?

This *Draft Constitution Package* makes proposals for a draft constitution which is a *general framework* for a new system of government.

The draft constitution cannot contain details about the political system, how government administration is organized and operates and the programs and services which government provides.

The goal is to create institutions which can evolve over time and which contain a balance between various interests. Solutions worked out through political processes will need to take into account the rights and interests of all residents of the new western Territory.

The objective has been to prepare a draft constitution which is capable of growth and adaptation.

## SHARING POWERS AND RESPONSIBILITIES IN NEW WAYS

Treaties 8 and 11, and three regional land claim agreements (Inuvialuit, Gwich'in, Sahtu) exist which include constitutionally-protected rights.

Certain "institutions of public government" are contained in the provisions of some of these agreements. In addition, these constitutionally-protected agreements contain important commitments requiring the federal and territorial governments to negotiate self-government arrangements, including governing institutions.

Aboriginal land claims, treaty land entitlements and Aboriginal self-government processes flowing from the inherent right of self-government, will continue to bring change to the western territory.

## FLEXIBILITY TO MANAGE THE FUTURE

A new constitution will need to be flexible and adaptable to adjust to future political and constitutional development.

People in the western Northwest Territories, like residents of other provinces and territories, have demanded that governments do things differently.

In general, there appears to be a demand for more local and regional power and control and for a recognition that power should flow from the people, including first nations.



Power and control are only half of the equation. Responsibility is the other half. People want to take greater responsibility for their own affairs. This means that decisions should be made as close as possible to the people affected by those decisions.

The people making the decisions must be accountable to the people they represent.

Whether we are choosing people to represent us in local, regional or territorial affairs, ultimately *we* are the government. In a democratic system, this is the nature of government. We choose representatives to serve our common interests and be accountable for their actions.

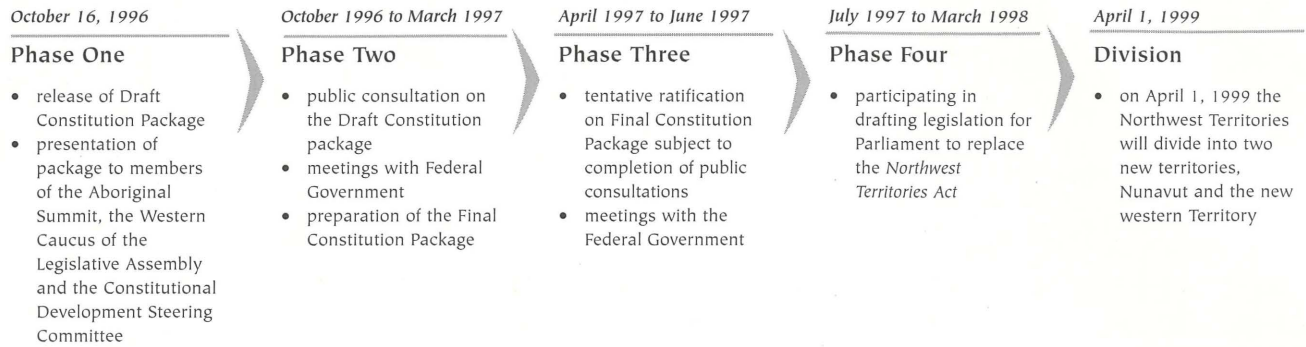
In addition, the population as a whole must accept responsibility for their role in governing. Our representatives must respond to our individual and collective expectations, wants and needs.

We are attempting to change the nature of government in the western territory at the same time that the nature of government is changing across Canada.

The western territory is facing a number of challenges as a result of changes occurring elsewhere in Canada.

Whether we are attempting to create more efficient and effective government, or trying to improve our financial self-sufficiency, people of the western territory will have to take into account these external factors.

**Overall, northerners will be shouldering greater responsibilities in the coming years, perhaps without the resources we have come to expect in the past. To manage in these new circumstances, the people of the western territory will have to find new ways to work together and to share powers and responsibilities.**



## TIMETABLE FOR CREATING A NEW CONSTITUTION

A number of factors will influence the timing of a constitution for the new western Territory. Some of these matters can be controlled by northern residents, others require the cooperation of other sources.

## CONSULTATION AND RATIFICATION

### Further Processes for Consultations with Northerners

The Constitutional Working Group's mandate was to develop a *Draft Constitution Package* for consideration by the Western Caucus of the Legislative Assembly, the Aboriginal Summit, the Government of the Northwest Territories and the members of the Constitutional Development Steering Committee (CDSC).

Aboriginal organizations, the Northwest Territories Association of Municipalities, and women's organizations have also been kept informed during the development of the *Draft Constitution Package*.

A *Draft Constitution Package* will be tabled in the Legislative Assembly in its October, 1996 session. The Constitutional Working Group recommends public consultations after that date.

### Ratification of Draft Constitution Package By Northerners

The Constitutional Working Group recommends that there be a public ratification process or processes for any new constitution for the new western Territory.

### Federal Involvement in Implementing Any Constitution Package

The federal government will have to be formally involved in the development of a new western constitution by the fall of 1996 to finalize a new constitution by 1999.

Some preliminary, informal discussions have taken place with federal Ministers and officials to keep them up to date on the process of developing a *Draft Constitution Package*.

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## PART TWO

### › GENERAL CHARACTERISTICS OF THE DRAFT CONSTITUTION



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## PART TWO

This Part contains the following sections:

- Section 1: PROPOSED STRUCTURE FOR TERRITORIAL GOVERNMENT
- Section 2: COMPANION ABORIGINAL SELF-GOVERNMENT AGREEMENT: An Outline
- Section 3: POLITICAL PROCESSES UNDER A NEW CONSTITUTION
- Section 4: FINANCING AND OPERATING GOVERNMENT.

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### 1. PROPOSED STRUCTURE FOR TERRITORIAL GOVERNMENT

The following headings outline the main provisions in the draft constitution. Under each heading is a brief description of the content of the provision.

#### DRAFT WESTERN CONSTITUTION: AN OVERVIEW

##### PREAMBLE

Aboriginal Peoples have traditionally used and occupied lands in \_\_\_\_\_ since time immemorial and are self-governing.

Canadians from many backgrounds came to \_\_\_\_\_ and made it their home.

Aboriginal peoples agreed through their numbered and modern day treaties to share their lands, their knowledge and their resources.

All people of \_\_\_\_\_ share a commitment to build a strong, united and caring northern society by respecting the following principles:

- That men and women are treated equally and every individual is worthy of respect.
- Respect and honour for our distinct cultures, traditions and languages is a vital aspect of northern society.
- The health and well-being of family, community and the land are of primary importance to the people of \_\_\_\_\_.
- Building and sharing a future together through partnership is essential to all peoples in \_\_\_\_\_.
- The power to govern flows from the people; government should serve the people and be exercised as close to the community level as possible.



## NAME OF TERRITORY

The new Constitution would name the western territory.

## BOUNDARIES OF THE WESTERN TERRITORY

The new western Territory will comprise that part of Canada north of the sixtieth parallel which is not part of Quebec, Newfoundland/Labrador, Nunavut or the Yukon Territory.

## SEAT OF GOVERNMENT

The new constitution would designate Yellowknife as the seat of government for the territorial government. The new Legislature would have the authority to change the seat of government in the future.

## OFFICIAL LANGUAGES

The Aboriginal languages indigenous to the western territory, and English and French, would be recognized as official languages.

The existing *Official Languages Act (NWT)* would be amended as necessary to recognize the appropriate languages, and the corresponding rights and services associated with that recognition.

The official languages would be “entrenched” in the new constitution through a mechanism similar to the current provisions of the *Northwest Territories Act*.

## THE LEGISLATIVE BRANCH

The legislative branch of government decides upon and sets out policies through laws.

**A primary issue facing the new western territory is the relationship between “public” government and Aboriginal “self”-government.**

The Constitutional Working Group considered:

1. a legislative branch with elected representatives conducting their business as a single body [called a “chamber” or “house”], and
2. a legislative branch composed of two elected chambers or houses.

The Constitutional Working Group recognizes that Aboriginal peoples have constitutionally-protected Aboriginal and treaty rights, including an inherent right to self-government.

Therefore, the Working Group tried to design legislative institutions that would reflect these constitutionally-protected Aboriginal rights in an appropriate way to ensure representation of Aboriginal interests in any new territorial government.

The Constitutional Working Group also recognizes that Treaties, Aboriginal land claims agreements, and Aboriginal self-governments will continue to have a significant influence on most matters dealt with by the public government for the western territory.

The Working Group, therefore, tried to design a model that would allow on-going harmonization of public affairs and Aboriginal affairs. It was determined that this need for harmonization could be addressed, in part, by bringing together public and Aboriginal law-making and administration in the institutions and structures of the territorial level of government.

As is the case today, the territorial institutions and structures, and the powers and duties they exercise, would still be subject to the terms of constitutionally-protected Treaties, land claims, and self-government agreements.

The following is the model the Constitutional Working Group suggests be put before the public for consideration. Two other models considered by the Working Group are in Appendix C.

There would be a single Legislative Assembly which brings together Aboriginal self-government and public government at the territorial level.

All members would sit together for the business of the Legislature.

### Candidates for Election

Any individual in the western territory who meets the qualifications as set out in territorial election legislation could be a candidate.

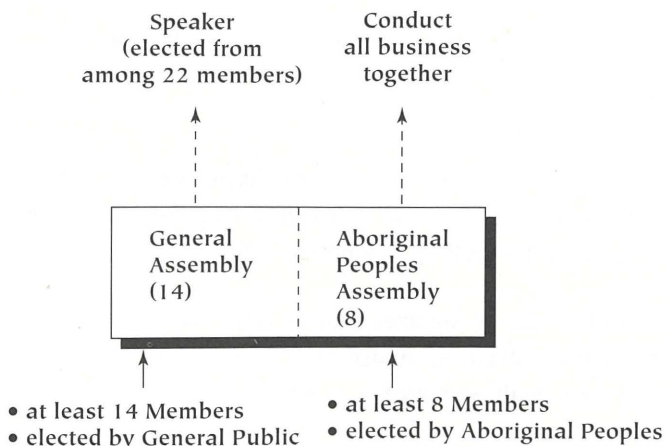
### Number of Members

The first Legislative Assembly would be made up of twenty two (22) members.

The new constitution would initially establish fourteen (14) electoral districts, and the initial rules for electing an additional eight (8) members.

The Legislature would be able to increase, but not decrease, these numbers through ordinary legislation after the first election.

## Legislative Assembly



### Election of Members

For the first election, fourteen (14) members would be elected from electoral districts established in accordance with the principles of representation by population. For purposes of voting on Bills, these members would constitute the "General Assembly". [Voting procedures are described in more detail later in this section.]

For the first election, eight (8) members would be elected by the eight Aboriginal peoples who have land claim agreements, on-going land claim negotiations, on-going self-government negotiations, or treaty processes, in accordance with rules established by the Aboriginal governments.

These governments are the Inuvialuit, the Gwich'in, the



Sahtu Dene and Metis, the Dogrib, the Deh Cho Dene and Metis, Treaty 8 First Nations, the South Slave Metis and the North Slave Metis. For purposes of voting on Bills, these members would constitute the “Aboriginal Peoples Assembly”.

The number of members of the Legislative Assembly may be increased from time to time by the Legislative Assembly, provided that the proportionate representation of the Aboriginal Peoples Assembly, as prescribed for the first election, is not disturbed.

### Electing Members after the First Election

After the first election the Legislature could enact laws in relation to election matters such as the boundaries for electoral districts, qualifications of candidates and electors, etc.. However, the minimum number of seats for the General Assembly (14) and the Aboriginal Peoples Assembly (8) could not be changed by territorial legislation.

A wide range of electoral systems could be explored or adopted as the need arises. For example, if it was decided that a system of proportional representation was most effective, or if it was decided that each riding should elect two members, this could be enacted by the Legislative Assembly through the normal legislative process.

Any territorial legislation in relation to election matters would have to be consistent with the new constitution, Treaties, land claim agreements, self-government agreements, federal legislation, and the *Constitution of Canada*.

### Development of Legislation

All twenty two (22) members of the Legislative Assembly would work together to develop legislation to take into account the rights and interests of all residents. Under a new constitution all members would have a voice in the making of laws for the territory.

### Political Parties

The new constitution would be flexible so the option of consensus government or political parties would be available depending on the circumstances of the time.

### Guaranteed Representation for Women

The Working Group considered the possibility of guaranteed representation for women. No proposal is made in this regard. However, such representation would not be prohibited by the proposed package. A future Legislative Assembly would be able to implement such guaranteed representation should there be a sufficient level of public support for the proposal.

### Quorum

A majority of the General Assembly and a majority of the Aboriginal Peoples Assembly sitting together constitute a quorum.



## THE LEGISLATIVE PROCESS

### Voting on Bills

The new constitution would describe the basic rules for introducing and voting on Bills.

All legislation, including money Bills, would be voted on by all the members of the Legislative Assembly.

If a majority of both the General Assembly and the Aboriginal Peoples Assembly passed a Bill it would become law after receiving assent.

Legislation could not conflict with the *Constitution of Canada*, federal legislation, or Aboriginal and Treaty rights.

If the Bill does not receive a double majority on the first vote, the Bill would be voted on a second time by all of the members of the Legislative Assembly.

On a second vote, the Legislative Assembly could:

- pass the Bill in its original form;
- pass the Bill with amendments; or
- defeat the Bill.

A two-thirds(2/3) majority vote of the members of the Legislative Assembly would be required to pass the Bill.

### Rules and Procedures of the Legislative Assembly

The Legislative Assembly would be empowered to make rules for its operations and procedures.

## LEGISLATIVE POWERS

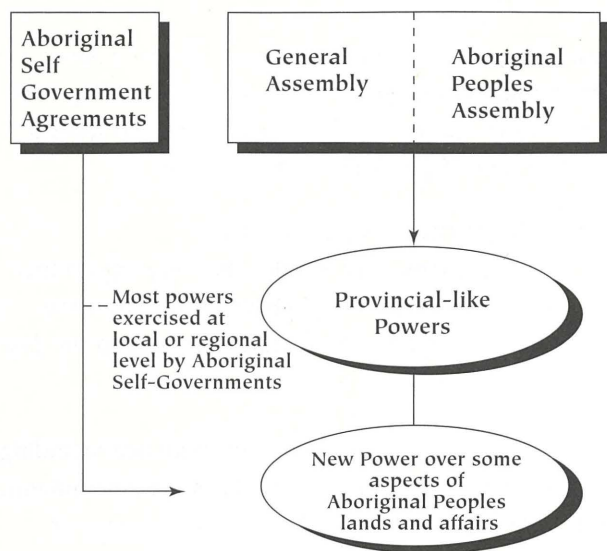
### Province-like Powers

The list of subjects in relation to which the Legislature would be able to make laws would be similar to those assigned to provincial legislatures, namely:

- Direct taxation
- Borrowing money for territorial purposes
- Education
- Old age pensions
- Agriculture and immigration
- Establishment of territorial offices
- Management and sale of public lands and timber
- Establishment of territorial prisons
- Establishment, maintenance and management of hospitals, etc.
- Municipal institutions
- Licensing for raising revenues
- Certain non-federal works and undertakings



## Legislative Powers



- Incorporation of territorial companies
- Solemnization of marriages
- Property and civil rights
- Administration of justice
- Imposition of punishment by fines, penalties, etc.
- Matters of a local or private nature in the territory
- Non-renewable natural resources, forestry and energy
- Taxation of resources.

### › Powers in Relation to Aboriginal Lands and Affairs

Aboriginal governments would exercise legislative authority in relation to Aboriginal lands and affairs in implementation of their inherent right of self-government.

In addition, subject to the terms of Treaties, land claim agreements, and Aboriginal self-government agreements, there may be legislative powers in relation to “Aboriginal lands and affairs” conferred on the Legislative Assembly.

The purpose of this additional power would be to complement Aboriginal self-government authorities.

For example, the Legislative Assembly could enact legislation that could apply to Aboriginal peoples throughout the western territory to allow greater efficiencies., subject to the terms of Aboriginal self-government agreements.

### › Relationship to Laws of Parliament

Legislation passed by the territorial legislative branch would be subject to federal laws. If there was a conflict between a federal law and a territorial law, the federal law would prevail.

A new constitution could explain the relationship between federal and territorial laws.

### › Relationship to Aboriginal Treaties, Claims and Self-government Agreements

Legislation passed by the territorial legislative branch could not alter or impair the terms of Aboriginal treaties and claims agreements. The new constitution would contain provisions to this effect.

In the case of self-government agreements, if they contain provisions in relation to the same or similar areas of jurisdictions as the territorial level, the particular self-government agreement will also contain provisions explaining the relationship between Aboriginal, federal and territorial legislation.

In some cases the Aboriginal legislation will prevail. In other cases federal or territorial legislation may prevail. One would have to look to the terms of the Aboriginal self-government agreement, any federal legislation associated with it, and the constitutional status of the Agreement.

Consistent with the Gwich'in, and the Sahtu Dene and Metis Comprehensive Land claim agreements, the new constitution could contain provisions explaining that the relationship between the powers in self-government agreement and federal / territorial powers will be set out in the self-government agreements.

### **Relationship to Community/Regional Governments**

The new constitution could contain provisions which make clear the importance of community and regional governments. The power to govern flows from the people; government should serve the people and be exercised as close to the community level as possible.

Aboriginal self-government agreements will have a significant influence including outlining structures and powers of community and regional levels of government. As indicated in the above paragraphs, territorial legislation could not alter or impair the terms of these agreements.

In order to determine the relationship between laws of the territorial legislative branch and those of a community or regional government, one would have to look to the terms of the Aboriginal self-government agreements, and any relevant territorial or federal legislation.

### **Harmonization of Laws**

In many sectors there will be a need for general legislation or harmonization of administrative and regulatory roles and responsibilities.

For example, if there is a need for legislation on water quality that would apply to the whole Mackenzie Valley, this would be beyond the jurisdiction of any single region or community. It may be more efficient and cost-effective to have such legislation passed by a territorial legislative branch, subject to the terms of Aboriginal Treaties, land claims and self-government agreements.

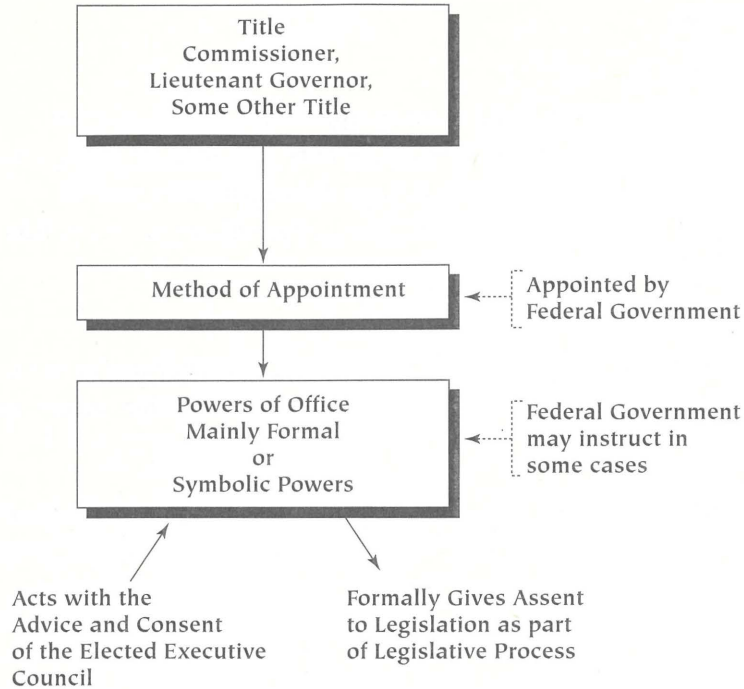
## **TERM OF THE LEGISLATIVE ASSEMBLY**

It is proposed that the new constitution provide for a maximum term of five (5) years for the Legislative Assembly.

## **SESSIONS OF THE LEGISLATIVE ASSEMBLY**

The Legislative Assembly must hold a session at least once in every year.

## Chief Executive Officer



### ELECTING A SPEAKER

The Legislative Assembly would elect one of its members to be Speaker.

### THE EXECUTIVE BRANCH

It is proposed that the new constitution create an office similar in style and function to the office of a provincial Lieutenant Governor.

The duties and powers of this chief executive officer would be primarily symbolic.

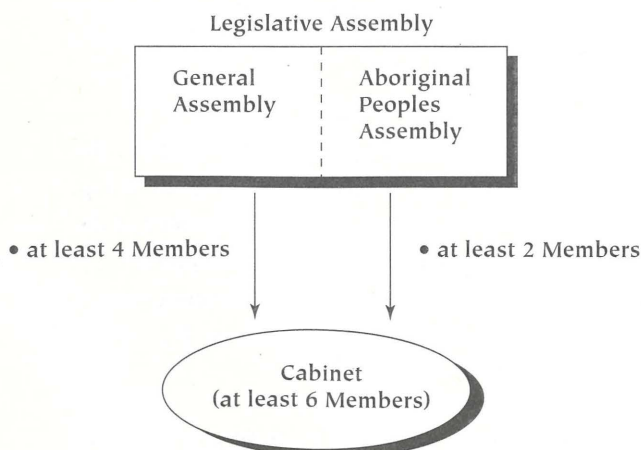
The appropriate title for the chief executive officer (eg. Commissioner, Lieutenant Governor, etc.) will have to be discussed with the federal government.

The chief executive officer would act with the advice and consent of the elected members on most matters.

It is proposed that the new constitution also establish an Executive Council so that it is clear that elected representatives constitute and exercise the powers and duties of the executive branch.

Provisions relating to the composition and functions of the Executive Council should be drafted to be flexible so that this body can evolve according to political practices and traditions, as is the case elsewhere in Canada.

## Cabinet



For example, the chief executive officer could designate the people to be on the Executive Council with the advice and consent of the Premier or the Legislative Assembly depending on the political practices of the time.

The Executive Council would have a minimum of six (6) members. The size of the Executive Council could be increased in the future by the Legislature in accordance with the needs and circumstances of the time.

The new constitution would require that at least four (4) members of the General Assembly and two (2) members of the Aboriginal Peoples Assembly be designated to the Executive Council.

Political practices and traditions in relation to the



assignment of Cabinet posts, regional representation on Cabinet, and so on, would be developed over time.

The new constitution would not contain provisions establishing the office of the Premier. The selection of Premier would be in accordance with the political practices of the day.

## **THE JUDICIAL BRANCH**

There will be a Supreme Court and a Court of Appeal for the new western Territory. The provisions of the new constitution in relation to judges and courts would be similar to the provisions we now have. This would not preclude Aboriginal self-government agreements or other agreements or processes from setting out alternative mechanisms or measures.

## **CONSOLIDATED REVENUE FUND(S)**

As is now the case in the Northwest Territories, all public money and revenue over which the Legislative Assembly has the power of appropriation should form the Consolidated Revenue Fund.

Monies transferred from Ottawa that are specifically designated for Aboriginal peoples pursuant to land claim, self-government or other agreements could form a separate Aboriginal Revenue Fund. The Aboriginal Revenue Fund would be disbursed in accordance with the terms of such agreements.

## **TERRITORIAL ACCOUNTS**

The new constitution would establish the fiscal year for the territory and provide initially for the Auditor General of Canada to act as the auditor of the territory. The Legislative Assembly would have authority to change the auditor of the territory in the future. Territorial accounts would be tabled in the Assembly each year by the government and would be audited by the Auditor General.

## **AMENDMENTS**

The Legislative Assembly would have significant control over the types of institutions it establishes to operate the government, and over the nature of the political and electoral processes. However, it would not have authority to amend the federal Act which forms the core of the territorial constitution. Only Parliament will have authority to amend this Act.

### **Companion Aboriginal Self-government Agreement**

To provide protection against Parliament's amending a new constitution, the Constitutional Working Group recommends a "Companion Aboriginal Self-government Agreement" be signed with the federal government to take effect at the same time that the new constitution is passed by Parliament. This Companion Aboriginal Self-government Agreement would acknowledge the new constitution of the western territory as an implementation of some aspects of the inherent right of self-government at the territorial level.

This Companion Aboriginal Self-government Agreement would also provide certain guarantees regarding the need for consultation and consent of Aboriginal



peoples if any provisions of the new territorial constitution were to be amended by Parliament.

In addition, the Companion Aboriginal Self-government Agreement would contain a commitment to proceed with land claims, treaty processes and self-government processes.

Finally, the Companion Aboriginal Self-Government Agreement should be given constitutional protection as a treaty to entrench the Aboriginal rights contained in it.

### **Territorial Legislation Requiring Special Majorities**

Territorial Legislation could set out some of the rules for the operation of the Legislative Assembly and the Executive Council, and these rules would only be amendable by special majority (for example, a special majority could mean two thirds of members of each of the General Assembly and the Aboriginal Peoples Assembly).

## **HOUSE OF COMMONS REPRESENTATION**

The Constitution of Canada currently requires the Northwest Territories to be represented by two members in the House of Commons. As of April 1, 1999, this provision of the Constitution of Canada would appear to apply to the western territory, particularly if the current Northwest Territories Act is not replaced. This provision of the Constitution of Canada should be amended to take into account the creation of Nunavut and the new western Territory, and to provide for the appropriate representation for each new territory. Parliament alone is authorized to amend the Constitution of Canada to provide for House of Commons representation of territories.

## **SENATE REPRESENTATION**

Under the Constitution of Canada, the Northwest Territories is entitled to be represented by one member in the Senate. As of April 1, 1999 the sitting senator for the Northwest Territories will be a resident of Nunavut and therefore not meet the residency requirements for a Northwest Territories senator as set out in the Canadian Constitution. Constitutional amendments will be required to ensure Senate representation for both new territories. Parliament alone is authorized to amend the Constitution of Canada to provide for Senate representation of territories.

### **Social Charter**

Over the years, people have called for a Social Charter to set out important standards that government must strive to meet. Some broad goals have been set out in the preamble of this Draft Constitution Package.

Further discussion on the need for a Social Charter should be undertaken in the coming days as the people of the new western Territory move forward to finalize their new constitution. Issues that should be kept in mind include:

- What would be the objectives of a Social Charter?

- What matters would be identified as priorities in a Social Charter?
- Should a Social Charter be in the new constitution?
- Would the provision of a Social Charter be binding on the government and enforceable in the courts?
- How could a Social Charter be adapted to changing circumstances over the years (a Social Charter in the new constitution would be Federal legislation that would require Parliament to amend it; whereas a Social Charter in Territorial legislation could be amended by the Legislative Assembly)?

## TRANSITION PROVISIONS

The new constitution will require various transition provisions to ensure that territorial laws continue until amended or repealed by the Legislative Assembly.

Consequential amendments to other federal Acts could also be included.

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## 2. COMPANION ABORIGINAL SELF-GOVERNMENT AGREEMENT: *An Outline*

### PURPOSE OF COMPANION ABORIGINAL SELF-GOVERNMENT AGREEMENT

The *Companion Aboriginal Self-government Agreement* for the new western Territory would be concluded between the federal government, the government of the Northwest Territories and Aboriginal peoples to take effect at the same time as the new western Territory constitution is passed by Parliament.

It would be a general document which acknowledges and "ratifies" the new federal Act as a system of government which implements, in part, the Aboriginal inherent right to self-government at the territorial level.

### OUTLINE OF A DRAFT COMPANION ABORIGINAL SELF-GOVERNMENT AGREEMENT

1. Under this Agreement, the federal Act establishing the constitution of the new western Territory would be acknowledged as a model of Aboriginal self-government at the territorial level through an integration of public government and Aboriginal self-government systems.
2. This Agreement would contain an "amending formula" for this Agreement and for the constitution of the new western Territory which would require Aboriginal consent if there were to be substantive changes.
3. This Agreement would recognize any existing and future exclusive Aboriginal self-government arrangements entered into by the Parties, and should contain a commitment to complete Aboriginal self-government processes in the regions or communities.
4. This Agreement could provide for a review of the new federal Act within ten (10) years.
5. This Agreement could be recognized as a treaty under s.35 (1) of the Constitution Act, 1982.
6. The Parties to this Agreement would be the Aboriginal peoples, federal government and Government of the Northwest Territories.

### 3. **POLITICAL PROCESSES UNDER A NEW CONSTITUTION**

The new constitution for the new western Territory should be a framework. Therefore, many of the institutions and processes outlined in the new constitution should be fleshed out over time by legislation and practical political arrangements.

The objective of the model proposed by the Constitutional Working Group is to create a balance within the institutions of the territorial level of government so that all people of the new western Territory can work together.

Therefore, political processes under a new constitution will be an extremely important means for arriving at solutions.

The Constitutional Working Group believes this flexible approach has more likelihood of success than attempting to define relationships through increasingly detailed and rigid structures and divisions of power in the constitution itself.

#### **Partnership between Aboriginal and non-Aboriginal peoples**

Any new constitution must foster a partnership between Aboriginal and non-Aboriginal peoples through a system of government that brings together Aboriginal self-government and public government.

As the Bourque Commission recognized, a constitution does not necessarily contain solutions to all our problems, but it can create institutions and processes to help us look for solutions together.





The key issue for the new territory will be finding ways to develop legislation and programs and services which take into account and serve the rights and interests of all residents.

### Existing Political Practices that would be Retained

**Elections:** The *Constitution of Canada* and current democratic practices and traditions require that certain general principles must be taken into account and respected in drafting a new western constitution.

For example, election of members to the Legislative Assembly must be consistent with rights guaranteed in the *Canadian Charter of Rights and Freedoms* and the rights contained in *Part II of the Constitution Act, 1982* entitled *Rights of the Aboriginal Peoples of Canada*.

**System of Government:** The system of government in Canada and in the Northwest Territories is often described as “representative and responsible government”. There are also Aboriginal systems of government.

Aboriginal peoples have individual and collective rights, customs and traditions which have had a significant influence on how representative and responsible government has evolved in the western territory to date.

The system of government under a new western constitution would build on these principles and traditions, making room for new practices and traditions to evolve.

**Representative government:** In our present system of government, the word “representative” means that the process of governing is carried on by people who are elected to represent the interests of the people who elect them.

Until 1975, the federal government continued to **appoint** people to the “Council” [now called “legislative assembly “] and these appointed people helped the Commissioner govern the Northwest Territories.

Today the Commissioner is still appointed by the federal government, but the Commissioner’s role is very different than it was prior to 1975. Today elected people are in charge of the government.

The representatives are entrusted with making decisions for their constituents based on their own judgment. The constituents do not exercise daily control over the decision-making of their representatives, but representatives are **accountable** to their constituents.

In part accountability means that representatives are expected to consult regularly with their constituents and serve their general interests as much as possible.

As anyone who has served in an elected role knows, this can be a very difficult job given the wide range of interests in every community and region.

Voters decide at the time of the election who can best represent their interests. An elected person who does not do a good job is unlikely to be re-elected.

**Responsible Government:** In our present system of government the word “responsible” usually refers to two things. In Canada, “responsible government” means that the operation of government is carried on by elected representatives who are responsible for giving direction to, and taking responsibility for the actions of, non-elected government employees. These employees carry out the day-to-day business of delivering programs and services to the public and managing the operation of government departments and institutions according to the priorities and directions set by the elected representatives.

Secondly, “responsible government” means that the elected representatives must maintain the support of the majority of other elected representatives of the people.

In our system of **consensus government** in the Northwest Territories, this means that the Ministers who make up the Executive Council can set the priorities and direction of the government only as long as the majority of other MLAs agree.

In practice this does not mean that the majority of MLAs must agree with every decision of the Executive Council, but they must agree that the Executive Council should be allowed to continue to lead. The Ministers and other MLAs together make decisions based on what they think the people want or need.

Few, if any, governments can do everything the people demand, so choices have to be made. To govern successfully, representatives must maintain the support of the people for the choices made by the government.

**Accountability:** A main objective of designing a new constitution for the new western Territory is to ensure clear lines of accountability. What does this mean in practice?

It means that residents of the new western Territory must know who has the power to make decisions and must have some means of calling decision-makers to account for their actions.

The decision-makers must be prepared to explain their decisions to those people who are affected, and must take responsibility for the implications of their decisions.

The principle of accountability includes financial matters. Those responsible for governing have responsibility for both raising and spending money.

In the current economic environment in Canada, the people of the western territory can expect to take greater responsibility for setting priorities, raising revenue to pay for programs and services, and making difficult decisions to reduce costs.

**Fairness and Equity:** A new constitution for the new western Territory should

establish a system of government which represents and serves all residents fairly and equitably.

One of the most challenging jobs of any government is deciding how to best serve the people when there is limited money to spend. Setting priorities and finding the right balance is never easy.

The new constitution should create a system of government which people can trust to make decisions fairly and equitably according to the circumstances.

The new western constitution should not try to dictate how much, or the matters on which, a government should spend money. Things change too quickly and the constitution would soon be out of date.

For example, a new constitution would not say how much money should be spent on fighting forest fires. Obviously no one knows how many fires will occur each year.

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#### 4. FINANCING AND OPERATING GOVERNMENT

A constitution is only a framework. A new constitution will establish institutions through which the people of the western territory will be able to pursue solutions to their problems and attempt to build the kind of society they want.

Even with a perfect constitution, there will still be difficult choices to make because of the current economic and political situations in the western Northwest Territories and in Canada as a whole.

The capacity of any community, regional or territorial government to meet the expectation of the people may be influenced by financial factors.

The following statements provide a context for the *operation* of governments under a new constitution:

- Fiscal realities must be taken into account
- The administration must be affordable and workable
- Resources put into programs and services must be maximized
- Programs and services must be responsive and effective to meet community needs



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## PART THREE

# › A PRACTICAL GUIDE TO THE DRAFT CONSTITUTION PACKAGE



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**PART THREE**

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**A PRACTICAL GUIDE TO THE DRAFT CONSTITUTION PACKAGE**

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**1. MAIN OBJECTIVE OF A NEW CONSTITUTION**

The main objective of a new constitution is to find ways to work together to build a strong, healthy, northern community in the new western Territory that will be a politically and economically viable part of Canada.

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**2. RELATIONSHIPS AMONG GOVERNMENTS IN THE WEST**

**PROCESSES FOR DEFINING RELATIONSHIPS AND WORKING TOGETHER**

Some matters that will have a bearing on the roles and responsibilities of the new territorial government will be negotiated through Aboriginal self-government agreements.

For example, the Gwich'in Comprehensive Land Claims Agreement, which is constitutionally-protected, states:

*5.1.9 The objectives of self-government agreements shall be to describe the nature, character and extent of self-government, **the relationships between government and Gwich'in institutions** and to accommodate Gwich'in self-government within the framework of public government. [emphasis added]*

*5.1.10 Self-government negotiations will address the Gwich'in desire to have **self-government exercised as close to the community level as is reasonably possible**. [emphasis added]*

The Sahtu Dene and Metis Comprehensive Land Claim Agreement contains similar provisions.

Community and regional structures that will be the subject of self-government negotiations would not be set out in the new territorial constitution.

However, the new constitution would contain provisions which make clear the importance and status of Aboriginal self-government agreements.

The Constitutional Working Group anticipates that certain types of relationships could develop among the various levels of government within the new western Territory.

## SOME ANTICIPATED RELATIONSHIPS

It will be necessary to renew and strengthen the partnership between all residents of the new western Territory at the community, regional and territorial levels.

### › **Aboriginal Self-government and Territorial Government**

Aboriginal self-government negotiations will determine the nature and scope of Aboriginal self-government powers and define the relationship which Aboriginal governments will have with the territorial and federal governments.

Through these processes, Aboriginal peoples will have a very important role in influencing the powers and structures of governments in their respective regions or communities, and in the territory as a whole.

Maintaining a constructive relationship between territorial powers and legislation, and Aboriginal self-government powers and legislation will be an on-going challenge.

In some cases Aboriginal legislation might prevail; in other cases federal or territorial legislation might prevail. This will be determined by the terms of the negotiated Aboriginal self-government agreements and any federal legislation associated with them.

The constitutional status of any given Aboriginal self-government agreement will also be a factor: some may be constitutionally-protected; others may not.

### › **Community/Regional Government, Aboriginal Self-government, and Territorial Government**

The need for cooperation among all people will be especially great at the community level.

The new western constitution can be the basis for a new system of government which ensures that local priorities are set and decisions are made at the community and regional level.

As is the case today, the new constitution would allow the Legislative Assembly to make laws to establish municipal or community institutions of government.

The Constitutional Working Group recognizes the multi-cultural nature of many communities and the importance of effective community/regional government to the future of the western territory.

Aboriginal self-government agreements will have an important role in influencing the structures and powers of governments in communities and regions.

Territorial legislation, including legislation in relation to institutions of government at the community level, could not alter or impair the terms of Aboriginal Treaties, land claims, or self-government agreements.



People in communities who are not directly involved in Aboriginal self-government agreements also have a valid interest in how their communities and regions are governed.

All residents of the new western Territory must continue to explore ways to ensure effective representation of the interests of those people in communities who are not directly involved in Aboriginal self-government negotiations.

The Constitutional Working Group believes this *Draft Constitution Package*, and the system of government which will be established at the territorial level, will provide a forum for balancing rights and interests of all residents and building strong communities.

The new western constitution would recognize the importance of community governments and the need to empower the community level of government in accordance with their priorities, after full consultation with the people in these communities.

The community and regional governments should be the primary delivery points for programs and services, appropriate to the circumstances, capacities, and priorities of the communities and regions.

#### **Roles and Responsibilities of Governments Must be Balanced**

A new constitution should be flexible so that the roles and responsibilities of the various levels of government can be balanced according to changing needs and circumstances over time.

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### **3. QUESTIONS AND ANSWERS ON THE PROPOSED STRUCTURE OF TERRITORIAL INSTITUTIONS**

This section explains the main provisions of the new constitution in general language.

#### **Q. WHAT ARE THE MAIN FEATURES OF THE DRAFT CONSTITUTION PACKAGE?**

A. The package contains two main elements:

- A set of proposals for a new federal Act to replace the Northwest Territories Act; and
- A set of proposals for a Companion Aboriginal Self-government Agreement by which Aboriginal peoples would consent to the new constitution and receive assurances about on-going Aboriginal participation in government, among other things.

#### **Q. HOW WOULD THE NEW TERRITORIAL SYSTEM OF GOVERNMENT DIFFER FROM THE EXISTING SYSTEM?**

A. The main differences are found in the structure of the Legislative Assembly. This *Draft Constitution Package* brings together public government and Aboriginal self-government at the territorial level.

The federal policy on implementing the inherent right of self-government states a preference for integrating public government and Aboriginal self-government in the Northwest Territories.

This *Draft Constitution Package* recommends a Legislative Assembly of twenty two (22) members. Fourteen (14) members of the Legislative Assembly would be elected according to the existing electoral practices. This group would be called the “General Assembly” for purposes of voting on proposed legislation.

Eight (8) members would be elected by Aboriginal groups who have rights of self-government in the western territory. This group would be called the “Aboriginal Peoples Assembly” for purposes of voting on proposed legislation.

In the proposed Legislative Assembly, all members would endeavour to work together to develop legislation that takes into account the rights and interests of all residents.

**Q. WHO COULD BE A CANDIDATE IN AN ELECTION?**

A. Any individual who meets the eligibility requirements in the territorial election laws would be able to run for election for any of the twenty two (22) seats.

**Q. WHO COULD VOTE IN ELECTIONS?**

A. Any individual who is eligible to vote under the territorial election laws would be eligible to vote in one of fourteen (14) electoral districts.

For the first election, Aboriginal individuals who are beneficiaries, or are eligible to be beneficiaries, of Treaties or land claim agreements in the western territory would vote for one of eight individuals. Each of these eight individuals would represent one of eight Aboriginal governments. (As land claims and Treaty processes are settled, the settlement areas/Treaty areas could become permanent electoral districts.)

In subsequent elections, the method of selecting the representatives of these Aboriginal governments would be set out in territorial legislation which would have to be approved by the eight (8) representatives of the Aboriginal peoples.

**Q. WHY ARE SOME MEMBERS ELECTED ONLY BY ABORIGINAL PEOPLES?**

A. The federal and territorial governments have recognized that Aboriginal peoples have an inherent right of self-government. The federal government’s policy on implementing the inherent right in the Northwest Territories states a preference for integrating public government and Aboriginal self-government.

The Gwich’in and the Sahtu Dene and Metis, for example, have signed constitutionally-protected land claim agreements which contain commitments by governments to negotiate Aboriginal self-government agreements in relation to a broad range of matters. Other Aboriginal peoples in the western territory are engaged in Treaty processes, land claims and self-government.

The Constitutional Working Group believes that this *Draft Constitution Package* is one way to implement the inherent right by integrating Aboriginal self-government and public government at the territorial level.

**Q. WHO COULD SIT ON THE EXECUTIVE COUNCIL?**

A. The Executive Council would have at least six (6) members. Four (4) of these members would be from the General Assembly. Two (2) members would be from the Aboriginal Peoples Assembly.

**Q. WHAT HAPPENS IF PARTY POLITICS IS INSTITUTED IN THE NEW TERRITORY?**

A. The system of government proposed in the *Draft Constitution Package* could operate under consensus government or party politics. Political traditions and practices could evolve and change over time.

**Q. WHAT WILL THE BOUNDARIES OF THE NEW WESTERN TERRITORY BE?**

A. The eastern, western, and southern boundaries of the new western Territory are already defined by the *Yukon Act*, *Nunavut Act*, and the constitutional documents establishing British Columbia, Alberta, Saskatchewan and Manitoba. The northern boundary is tied to Canada's international boundary.

After division, the western part of the Northwest Territories will comprise that part of Canada north of the sixtieth parallel which is not part of Quebec, Newfoundland/Labrador, Nunavut or the Yukon Territory.

**Q. WHERE WILL THE CAPITAL BE?**

A. The *Northwest Territories Act* currently gives the federal government control over the location of the capital. The federal government designated Yellowknife as the seat of government for the Northwest Territories.

The new constitution would also designate Yellowknife as the capital. However, if it was decided to change the capital in the future, the Legislative Assembly of the new territory would have the authority to designate another community as the seat of government.

**Q. WHAT WOULD THE OFFICIAL LANGUAGES BE?**

A. The Northwest Territories Legislative Assembly has passed the Official Languages Act (NWT) which makes English, French, Chipewyan, Cree, Dogrib, Gwich'in, North Slavey, South Slavey and Inuktitut the official languages.

The federal government then "entrenched" this territorial law by amending the *Northwest Territories Act* to prevent the Legislative Assembly from making any amendments to the *Official Languages Act (NWT)* which would reduce language rights.

Amendments can be made by the Legislative Assembly to provide additional language rights or services. Parliament's consent is not needed for these sorts of amendments.



The new constitution would continue a similar arrangement. However, the *Official Languages Act (NWT)* should be reviewed to ensure that the appropriate languages are included.

**Q. HOW WOULD THE NEW LEGISLATIVE ASSEMBLY OPERATE?**

A. This *Draft Constitution Package* proposes that the new constitution describe the basic rules for introducing and voting on Bills.

All members would sit together and conduct the business of the Legislative Assembly together.

All legislation would be voted on by all the members of the Legislative Assembly.

Legislation could not conflict with the Constitution of Canada, federal legislation, or Aboriginal and Treaties rights.

If a majority of both the General Assembly and the Aboriginal Peoples Assembly passes a Bill, it becomes law.

If the Bill does not receive a double majority on the first vote, the Bill would be voted on a second time by all of the members of the Legislative Assembly.

On a second vote, the Legislative Assembly could:

- pass the Bill in its original form;
- pass the Bill with amendments; or
- defeat the Bill.

A two thirds (2/3) majority vote of the members of the Legislative Assembly would be required to pass the Bill.

**Q. WHAT WOULD BE THE SYSTEM OF COURTS UNDER THE PROPOSED CONSTITUTION?**

A. *The Northwest Territories Act* and the *Nunavut Act* currently provide for the creation of courts for the territory and for federally-appointed judges.

For example, the *Nunavut Act* states that the Supreme Court of Nunavut and the Court of Appeal of Nunavut are the superior courts in that territory. The federal government appoints judges of the superior courts across Canada.

In addition, there are provisions for jurisdiction to hear criminal cases, tenure of office and powers of deputy judges, and sittings of the Court of Appeal in the territory.

The provisions of the new constitution in relation to judges and courts would be similar to those we currently have. This would not preclude Aboriginal self-government agreements from setting out alternative mechanisms or measures.

**Q. WHAT WOULD BE THE POWERS OF THE LEGISLATIVE ASSEMBLY?**

A. The powers proposed for the new Legislative Assembly would be similar to the list of powers exercised by provincial legislatures. Included in this list would be powers over non-renewable natural resources, forestry, energy and taxation of natural resources on public lands.

As is the case today, legislation passed by the Legislative Assembly would be subject to federal laws. If there was a conflict between a federal law and a territorial law, the federal law would prevail.

As is also the case today, legislation passed by the Legislative Assembly could not alter or impair the terms of Aboriginal Treaties and land claim agreements.

If Aboriginal self-governments have the same or similar powers under self-government agreements, those agreements will also contain provisions explaining the relationship between Aboriginal, federal and territorial legislation. In some cases the Aboriginal legislation will prevail, in other cases federal or territorial legislation may prevail.

The new constitution would contain provisions explaining that the relationships among federal and territorial legislation and Aboriginal treaties, claims agreements, and self-government agreements will be found in those agreements.

**Q. HOW WOULD A NEW CONSTITUTION BE AMENDED?**

A. The Legislative Assembly will be able to increase the size of the Assembly and Executive through territorial legislation. However, it would not have direct authority to amend the federal Act which forms the core of the territorial constitution. Only Parliament will have authority to amend this Act.

The "Companion Aboriginal Self-government Agreement" proposed by the Constitutional Working Group would provide certain guarantees requiring Parliament to consult with and receive the consent of Aboriginal peoples if any provisions of the new territorial constitution were to be amended by Parliament.

Any aspects of the constitution for the western territory captured in Territorial legislation could be amended by the Legislative Assembly according to amending procedures contained in the legislation.

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## PART FOUR

### › DRAFT LEGAL TEXT





1. DRAFT LEGAL TEXT

This draft Act to replace the Northwest Territories Act is for illustrative purposes only. Any such legislation would have to be an Act of Parliament. Therefore, the federal government would control the drafting.

**CONSTITUTION FOR THE WESTERN NORTHWEST TERRITORIES**

**Preamble**

Aboriginal Peoples have traditionally used and occupied lands in \_\_\_\_\_ since time immemorial and are self-governing.

Canadians from many backgrounds came to \_\_\_\_\_ and made it their home.

Aboriginal peoples agreed through their numbered and modern day treaties to share their lands, their knowledge and their resources.

All people of \_\_\_\_\_ share a commitment to build a strong, united and caring northern society by respecting the following principles:

- That men and women are treated equally and every individual is worthy of respect.
- Respect and honour for our distinct cultures, traditions and languages is a vital aspect of northern society.
- The health and well-being of family, community and the land are of primary importance to the people of \_\_\_\_\_.
- Building and sharing a future together through partnership is essential to all peoples in \_\_\_\_\_.
- The power to govern flows from the people; government should serve the people and be exercised as close to the community level as possible.

**Short Title**

1. This Act may be cited as the \_\_\_\_\_ Act.

**Definitions**

2. In this Act,

“Aboriginal peoples” means the Indian, Inuit and Metis peoples of Canada;

“Public lands” means any land, and any interest in any land, in the Territory that belongs to Her Majesty in right of Canada or of which the Government of Canada has power to dispose;

“Territory” means the \_\_\_\_\_ Territory.

### **Establishment**

3. A territory of Canada to be known as \_\_\_\_\_ is hereby established.

### **Boundaries**

4. The Territory shall be defined as all that part of Canada north of the sixtieth parallel of north latitude that is not within Quebec, Newfoundland/Labrador, Nunavut and the Yukon Territory.

### **Seat of Government**

5. The seat of government of the Territory shall initially be at Yellowknife. The Legislature may thereafter designate another place as the seat of government.

### **Executive**

6. There shall be a chief executive officer for the Territory, styled the title \_\_\_\_\_, appointed by the Governor General in Council by instrument under the Great Seal of Canada.
7. The provisions of the *Constitution Act, 1867* in relation to the Lieutenant Governor of a province shall apply, mutatis mutandis, to the chief executive officer for the Territory.
8. All powers, authorities and functions which under any law were before the coming into force of this Act vested in or exercisable by the Lieutenant Governor of the North-West Territories and the Commissioner of the Northwest Territories, with the advice, or the advice and consent, of their Executive Council, shall be vested in or shall be exercisable by the chief executive officer of the Territory, so far as they are capable of being exercised after the coming into force of this Act in relation to the government of the Territory.
9. The Executive Council of the Territory shall be composed of at least six members, under such designations as the chief executive officer from time to time thinks fit.
10. The Executive Council shall be composed of at least four sitting members of the General Assembly and at least two sitting members of the Aboriginal Peoples Assembly.

### **Legislative Power**

11. There shall be a Legislature for the Territory, consisting of the chief executive officer, and the Legislative Assembly.
12. The chief executive officer of the Territory shall from time to time summon and call together the Legislative Assembly.
13. Each Legislative Assembly shall continue for five years from the day of the return of the writs for choosing that legislative assembly and no longer, subject to the Legislative Assembly being dissolved sooner by the chief executive officer.
14. There shall be a session of the Legislature at least once in every year.
15. Until the Legislature otherwise determines, the Legislative Assembly shall be composed of at least twenty two members as follows:
  - a) at least fourteen (14) elected members to represent the electoral districts defined in Schedule II, styled as the General Assembly; and

- b) at least eight (8) members to be elected in accordance with the provisions in Schedule III, styled as the Aboriginal Peoples Assembly. **[Schedule III would set out the qualifications of candidates and electors, as well as the electoral districts which correspond to claims and treaty areas.**
16. Until the Legislature otherwise determines, all the provisions of the law with regard to the constitution of the Legislative Assembly of the Northwest Territories and the election of members shall apply, *mutatis mutandis*, to the Legislative Assembly of the Territory and the election of members to the General Assembly, respectively.
  17. The writs for the election of the members of the first Legislative Assembly of the Territory shall be issued by the chief executive officer and made returnable within \_\_\_\_ days after this Act comes into force.
  18. The Legislative Assembly shall elect one of its members to be Speaker, who shall preside over the Assembly when it is sitting.
  19. Unless and until the Legislature otherwise provides, a majority of the General Assembly and a majority of the Aboriginal Peoples Assembly, including the Speaker, shall constitute a quorum of the Legislative Assembly.
  20. Except as otherwise provided in this Act, questions arising in the Legislative Assembly shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.
  21. If a majority of each of the General Assembly and the Aboriginal Peoples Assembly pass a Bill it shall become law after receiving assent.
  22. If a majority of either the General Assembly or the Aboriginal Peoples Assembly opposes the Bill after a vote, the Bill would be voted on a second time by all of the members of the Legislative Assembly.
  23. On a second vote on a Bill, the Legislative Assembly may:
    - (a) pass the Bill in its original form;
    - (b) pass the Bill with amendments; or
    - (c) defeat the Bill.provided that a two thirds (2/3) majority vote of the members of the Legislative Assembly then sitting would be required to pass the bill.
  24. All public moneys and revenue over which the Legislature has the power of appropriation shall form a fund to be known as the \_\_\_\_\_ Consolidated Revenue Fund.
  25. Neither the General Assembly nor the Aboriginal Peoples Assembly may adopt or pass any vote, resolution address, or bill for the appropriation of any part of the revenue of the Territory, or of any tax, for any purpose, that has not been first recommended to the General Assembly and the Aboriginal Peoples Assembly by message of the chief executive officer in the session in which the vote, resolution, address or bill is proposed.
  26. Except as otherwise provided in this Act, Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall not be given assent unless adopted or passed by the Legislative Assembly.
  27. When a sum of money is granted to Her Majesty by Parliament to defray expenses for a specified purpose in the Territory, the power of appropriation



- by the Legislative Assembly over that sum is subject to the specified purpose for which it was granted.
28. When a sum of money is granted to Her Majesty by Parliament to defray expenses for a specified service for Aboriginal peoples in the Territory, Bills for appropriating any part of that sum shall originate in the Aboriginal Peoples Assembly.
  29. Bills for imposing any tax or impost on Aboriginal peoples for a specified purpose for Aboriginal peoples shall originate in the Aboriginal Peoples Assembly.
  30. Bills in relation to any matter having to do with the election of members to the Aboriginal Peoples Assembly, shall originate in the Aboriginal Peoples Assembly.
  31. Bills in relation to any matter having to do with the election of members to the General Assembly, shall originate in the General Assembly.

### **Legislative Powers**

32. The Legislature may make laws in relation to matters coming within the following classes of subjects:
  1. Direct taxation within the Territory in order to the raising of a revenue for Territorial purposes.
  2. The borrowing of money for Territorial purposes.
  3. Education.
  4. Old age pensions.
  5. Agriculture in the Territory.
  6. Immigration into the Territory.
  7. The establishment and tenure of territorial offices and the appointment and payment of territorial officers.
  8. The management and sale of the public lands and of the timber and wood thereon.
  9. The establishment, maintenance and management of hospitals, asylums, charities, and eleemosynary institutions in and for the Territory, other than marine hospitals and territorial prisons.
  10. Establishment, maintenance and management of public and reformatory prisons in and for the Territory.
  11. Municipal institutions in the Territory.
  12. Shop, saloon, tavern, auctioneer, and other licences in order to the raising of a revenue for Territorial, local, or municipal purposes.
  13. Local works and undertakings other than such as are of the following Classes:
    - a. Lines of Steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the Territory with any other or others of the provinces or territories, or extending beyond the limits of the Territory;
    - b. Lines of ships between the Territory and any foreign country;
    - c. Such works as, although wholly situate within the Territory, are before or after their execution declared by the Parliament of

- Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces or territories.
14. The incorporation of companies with territorial objects.
  15. The solemnization of marriages in the Territory.
  16. Property and civil rights in the Territory.
  17. The administration of justice in the Territory, including the constitution, maintenance, and organization of territorial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.
  18. The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the Territory made in relation to any matter coming within any of the classes of subjects enumerated in this section.
  19. Generally all matters of a merely local or private nature in the Territory.
  20. **Non-renewable natural resources, forestry and energy Taxation of resources.** [Note: to be worked out through devolution processes.]
  21. Subject to Treaties, land claim agreements, and Aboriginal self-government agreements, Aboriginal lands and affairs, including
    - a. Indians and lands reserved for the Indians;
    - b. implementing any land claim agreements or self-government agreements entered into by Her Majesty in right of Canada with an Aboriginal people in the Territory.
33. (1) Nothing in section 32 derogates from the authority of Parliament to enact laws in relation to the matters referred to in that section.
- (2) Where a law of the Territory referred to in subsection 32(21) and a law of Parliament conflict, the law of Parliament prevails to the extent of the conflict provided that....[Insert here wording to provide that the federal law in relation to Aboriginal affairs or lands would not be paramount if the tests in the Sparrow case are not met.]

### **Processes Relating to Community and Regional Government**

34. Nothing in this Act derogates from the authority of Parliament or of the Government of Canada to enter into agreements with Aboriginal peoples in the Territory and to enact laws in relation to the matters referred to in section 32, and where such an Agreement or a law passed in accordance with such an Agreement conflicts with a law of the Territory, the law passed in accordance with the Agreement prevails to the extent of the conflict.

### **Community and Regional Government Conference**

35. (1) Until the Legislature otherwise provides, a conference composed of the Premier and the leaders of communities and regions in the territory shall be convened by the Premier within the first eighteen (18) months after the first sitting of each Legislative Assembly.
- (2) The conference convened under subsection (1) shall have included on its agenda such items respecting community and regional matters as determined by the Premier after consultation with leaders of communities and regions in the territory.

### Community and Regional Development

36. Without altering the legislative authority of Parliament or of the territorial Legislature or any rights of either of them with respect to the exercise of their legislative authority, Parliament and the territorial Legislature, together with the Government of Canada and the Government of the Territory, are committed to:
- a. Promoting equal opportunity for the well-being of individuals, communities and regions in the Territory;
  - b. Furthering economic development to reduce disparity in opportunities among communities and regions in the Territory; and
  - c. Providing essential public services of reasonable quality to all individuals, communities and regions in the Territory.
37. Parliament and the Government of Canada are committed to the principle of making payments to ensure that the territorial, regional or community governments have sufficient revenues to provide reasonably comparable levels of public service at reasonably comparable levels of taxation.

### Official Languages

38. [It is proposed that the Aboriginal languages indigenous to the new western Territory, and English and French, be recognized as official languages. The existing *Official Languages Act (NWT)* would be amended as necessary to recognize the appropriate languages, and the rights and services associated with them. The official languages could be “entrenched” in the new constitution through a mechanism similar to the current provisions of the *Northwest Territories Act*.]

### Judicial Power

39. (1) The Supreme Court of \_\_\_\_\_ and the Court of Appeal of \_\_\_\_\_ are superior courts in \_\_\_\_\_.
- (2) The Governor in Council shall appoint the judges of the superior courts of \_\_\_\_\_.
- (3) The judges of the superior courts in \_\_\_\_\_ hold office during good behaviour, but may be removed by the Governor in Council on address of the Senate and House of Commons and cease to hold office on attaining the age of seventy-five years. [The Nunavut Act contains provisions for jurisdiction to hear criminal cases, tenure of office and powers of deputy judges, sittings of the Court of Appeal in the territory, and so on. It is recommended that the new constitution contain similar provisions. This would not preclude Aboriginal self-government agreements from setting out alternative mechanisms or measures.]

### Public Lands

40. Note: [Territorial administration and control of public lands for the use and benefit of the territories is the subject of devolution



processes. Appropriate provisions will be required to identify the powers which the Legislature and executive council will have in relation to public lands.]

### Aboriginal Lands

41. Note: [Provisions should be included to recognize the terms of treaties and land claim agreements. The Aboriginal Peoples Assembly would have a role in the harmonization of laws in relation to Aboriginal lands where matters are involved that extend beyond the control of the regional or community Aboriginal authorities.]

### Consolidated Revenue Fund

42. Note: [As is now the case in the Northwest Territories, all public money and revenue over which the Legislative Assembly has the power of appropriation would form the Consolidated Revenue Fund.]

### Territorial Accounts

43. Note: [The new constitution would establish the fiscal year for the territory and provide initially for the Auditor General of Canada to act as the auditor of the territory. The Legislative Assembly would have the authority to change the auditor for the territory in the future. Territorial accounts would be tabled in the Assembly each year by the government and would be audited by the Auditor General. Any limitations on borrowing or requirements to run a balanced budget could be included in these provisions.]

### Amendments

44. Note: [While the Legislature will have significant control over the types of institutions it establishes to operate the government, and over the nature of the political and electoral processes, it would not have direct authority to amend the federal Act which forms the core of the territorial constitution. Only Parliament will have authority to amend this Act.

However, the Constitutional Working Group considered the possibility that a “companion” Aboriginal self-government agreement could be signed which would acknowledge the new constitution of the western territory as an implementation of some aspects of their inherent right of self-government. This companion agreement could provide certain guarantees regarding the need for consultation and consent of Aboriginal peoples if any provisions of the new territorial constitution were to be amended by Parliament.

This companion Aboriginal self-government agreement could be given constitutional protection to entrench the rights contained in it. However, the federal Act which established the

new constitution for the western territory would not be entrenched.]

### Transition provisions

45. Note: [The new constitution will require various transitional provisions to ensure that territorial laws continue until amended or repealed by the Legislature. In addition, the number and boundaries of the electoral districts for the first election of the members could be included in the Act. Subsequent elections would be governed by territorial legislation.]

## CONSEQUENTIAL AMENDMENTS TO OTHER FEDERAL ACTS

### House of Commons Representation

The Constitution of Canada currently requires the Northwest Territories to be represented by two members in the House of Commons.

As of April 1, 1999, this provision of the Constitution of Canada would appear to apply to the western territory, particularly if the current *Northwest Territories Act* is not replaced.

This provision of the Constitution of Canada should be amended to take account of the creation of Nunavut and the new western Territory, and to provide for the appropriate representation for each new territory.

Parliament alone is authorized to amend the Constitution of Canada to provide for House of Commons representation of territories.

### Senate Representation

Under the Constitution of Canada, the Northwest Territories is entitled to be represented by one member in the Senate.

As of April 1, 1999 the sitting senator for the Northwest Territories will be a resident of Nunavut and therefore will not meet the residency requirements for a Northwest Territories senator as set out in the Canadian Constitution.

Constitutional amendments will be required to ensure Senate representation for both new territories.

Parliament alone is authorized to amend the Constitution of Canada to provide for Senate representation of territories.

A provision could be included in this Act as follows:

“Paragraph 1(c) of the Constitution Act (No.2), 1975 is hereby repealed and the following substituted in its place:

“the Yukon Territory, the \_\_\_\_\_ Territory, and the Nunavut Territory shall be entitled to be represented in the Senate by one member each.

# APPENDICES

## APPENDIX A: TERMS OF REFERENCE

1. The Working Group is established as a sub-committee of the Western Caucus and the Aboriginal Summit and will report all results and recommendations back to these two groups.

### OBJECTIVES AND MANDATE

2. The Working Group will develop a Draft Constitution Package, including materials, options and recommendations, on the political and constitutional development of the western territory for consideration by the Western Caucus, the Constitutional Affairs Committee and the Aboriginal Summit.
3. The Draft Constitutional Package may include:
  - draft political development options which do not require federal legislative measures;
  - draft constitutional development measures and options which may require amendments to the *Northwest Territories Act*;
  - draft models for a new constitution for the west to replace the *Northwest Territories Act*;
  - such other materials, options or recommendations as the Working Group determines are appropriate.

### MEMBERSHIP

4. The informal Working Group is composed of the Ad Hoc Working Group which includes the Co-Chairs of the Constitutional Affairs Committee of Cabinet and the Chair and three members of the Western Caucus of the Legislative Assembly; and four members of the Aboriginal Summit. These members are Hon. Jim Antoine, Hon. Stephen Kakfwi, Michael Miltenberger, Roy Erasmus, David Krutko, Jane Groenewegen, James Wah shee, George Kurszewski, Bob Simpson and Bill Erasmus.
5. Other members of the Western Caucus, Cabinet and the Aboriginal Summit are ex-officio members of the Constitutional Working Group and may participate as alternate members.

### CHAIRS

6. The Constitutional Working Group will be co-chaired by Hon. Jim Antoine and George Kurszewski.

### QUORUM

7. One of the Co-Chairs and four members constitutes a quorum, providing at least two members of each of the Western Caucus (including one member from the Constitutional Affairs Committee) and the Aboriginal Summit are present.

### CONSULTATIONS

8. The Working Group shall undertake formal consultations with Aboriginal



organizations, The NWT Association of Municipalities, women's organizations, and other groups in the development of the Draft Constitutional Package.

### REPORTING

9. The Working Group will table the Draft Constitutional Package for consideration by Cabinet, the Western Caucus, the Aboriginal Summit and CDSC by August 30, 1996.
10. The Working Group will refine the Draft Constitutional Package based on consultations and comments and will table a revised Draft Constitutional Package for consideration by the Constitutional Development Steering Committee by September 30, 1996.
11. The Minister of Aboriginal Affairs will table the revised Draft Constitutional Package in the Legislative Assembly on October 2, 1996.
12. The Western Caucus and Aboriginal Summit will coordinate discussion with the public and the Federal Government on the revised Constitutional Package.

### STAFF SUPPORT

13. Administrative support will be provided by officials of the Government of the Northwest Territories in collaboration with Legislative Assembly and Aboriginal Summit staff.

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## APPENDIX B: SUMMARY OF PRINCIPLES BY CATEGORIES

- \* The following documents were reviewed:

BOURQUE REPORT  
IQALUIT AGREEMENT  
CDSC REPORT  
I.R.C./GWICH'IN DISCUSSION PAPER MAY 1/96

- \* These documents contain numerous general criteria and principles for a new constitution.

- \* These principles and criteria can be grouped into categories. The main categories are:

GENERAL OBJECTIVES/ASSUMPTIONS  
PROCESS MATTERS  
STRUCTURAL/INSTITUTIONAL MATTERS  
POWERS  
RIGHTS  
POLITICAL PROCESSES

- \* Not all of the above categories have a direct bearing on the design of a new constitution. Some principles and criteria relate more to the political processes and desired outcomes of the day to day operations of a future government. In

other words they do not provide any clear direction on the provisions that would go into a new western constitution.

**NOTE: the CDSC Research Report Summaries are the source of the principles set out below in relation to the Bourque Report and the Iqaluit Agreement.**

## GENERAL OBJECTIVES/ASSUMPTIONS

### BOURQUE REPORT

1. Flexible arrangements will be necessary if people want to stay together under one government in one territory.
2. A new constitution will not solve all of the long-standing problems of the western Northwest Territories.
3. Some guarantees people are seeking are already found in the Canadian constitution, the Charter of Rights and Freedoms and existing constitutional protection of Aboriginal and treaty rights.
4. New territorial laws, improved enforcement of existing laws, and social programs may offer more immediate solutions to problems of equity and caring than constitutional proposals.
5. The new constitution should have a preamble relating to peoples, values and responsibilities.
6. All levels of government in the present Northwest Territories are dependent on federal transfer payments and have limited ability to raise significant revenues.

### IQUALUIT AGREEMENT

1. The over-riding objective of a new western constitution is to build a system of public government which will protect the individual rights of all citizens and the collective rights of its Aboriginal Peoples, and whose overarching principle is one of bringing peoples together.
2. Each Aboriginal community should be explicitly recognized in the constitution and mechanisms entrenched to enable each community to flourish as a distinct cultural entity regardless of its proportion of the population.
3. A major objective is to improve the quality of government and the delivery of services to citizens.
4. Adequate funds must be provided by the Government of Canada to ensure that the level and quality of services and the rate at which capital needs are met are at least maintained.

### CDSC CONFERENCE

1. There is a need for a central government that is community driven.

### I.R.C./GWICH'IN PAPER

1. There shall be one territory.
2. Development of a constitution for a western territory will meet the interests of all parties.

## PROCESS MATTERS

2. The primary focus of constitutional development will be at the level of community and regional governments.
3. The primary focus of a territorial government shall be to determine territorial standards.
4. The territorial government primary area of interest will be external territorial affairs, fiscal policy, the economy, and the setting of territory-wide standards.
5. The primary focus of regional or community governments shall be the delivery of programs and services with authorities to implement those programs and services.

**BOURQUE REPORT**

1. The ratification process for a new constitution should provide for the consent of Aboriginal First Nations, guaranteed public information and consultation processes, and a process for approval by new western Territory residents in a plebiscite or referendum.

**IQUALUIT AGREEMENT**

1. If negotiations towards a western constitution succeed, they will result in a constitution whose relevant sections are designed to constitute, together with the provisions in land claim agreements, the definition of Aboriginal self-government in the western territory.
2. In the negotiation of a new western Territory constitution with the Government of Canada in the context of recognizing Aboriginal self-government, and without prejudice to land claims negotiations, the further transfer of powers and jurisdictions from Ottawa shall be vigorously pursued.

**CDSC CONFERENCE**

1. Progress is needed on Aboriginal rights and the inherent right of self-government.
2. Western constitutional development and self-government must be pursued concurrently.
3. Local communities must be part of the process and a source of political power.
4. Research is needed on probable costs of community and regionally-based government.
5. It is imperative that progress be made on negotiations on land claims and self-government.
6. A second conference should be held to deal with the text of a new constitution.
7. Independent research is needed on the cost of government, representation, etc.
8. More public involvement regarding constitutional options is needed, particularly at the community level.

**I.R.C./GWICH'IN PAPER**

1. Negotiated self-government agreements shall address jurisdiction and legislative capacity.
2. Agreement on a discussion paper will provide the basis for collaborative work among Aboriginal Summit members in preparing a more detailed and comprehensive constitutional framework for the western territory.
3. Legislation might be passed by Parliament to revise the Northwest Territories Act.



4. Any changes to the Northwest Territories Act will have to take into account agreements that implement the inherent right of self-government.

## STRUCTURAL/INSTITUTIONAL MATTERS

### BOURQUE REPORT

1. The constitution should establish a district order of government which may be public, exclusively Aboriginal, or a combination of both.
2. The constitution should establish a central order of government, for reasons of practicality and economy to act as a force for the greater good of all residents.
3. District governments should have legislative, executive and if necessary judicial branches.
4. District governments may wish to exercise creativity in the form of these institutions.
5. The form of each district government and the manner of appointment or election and terms of office would be set out in a charter attached to the new constitution. [ie. Because district governments might all be different.]
6. The central government should have legislative, executive and judicial branches.
7. Models for these institutions require further study and discussion but whatever form they take must reflect a balance among all the cultures of the new western Territory.
8. The Commission assumes the central government institutions will include a Legislative Assembly in some form and may include other institutions such as a senate or council of elders.
9. The Legislative Assembly of the central government should be representative of the residents of the western territory, structured to ensure that First Nations peoples representatives and non-Aboriginal residents are present as members, and representative of men and women.

### IQUALUIT AGREEMENT

1. If provisions for Aboriginal self-government can be entrenched in a new constitution, trade-offs on regional government principles may be required.
2. Communities would have the right to form regional governments.
3. The structure and accountability of regional governments would be determined by member communities according to democratic principles.

### CDSC CONFERENCE

1. The community must be the basis of any new structure of government.
2. All four levels of government, community, Aboriginal, regional and central, are necessary and should be entrenched.
3. There is strong support for the recommendations of the Bourque Commission on structures and powers.
4. Communities should have the power to form regional/district governments.

### I.R.C./GWICH'IN PAPER

1. The inherent right of self-government can be implemented by Aboriginal insti-

## POWERS

- tutions, or integrated Aboriginal and public institutions, or public institutions.
- 2. Guaranteed Aboriginal representation in legislative and executive branches can be carried out by guaranteed representation by a regional government institution and representation according to population.
- 3. Democratic principles will apply to the territorial level.

### BOURQUE REPORT

- 1. The new constitution should recognize different orders of government and their powers.
- 2. District governments would be responsible for making laws and administering programs and not merely administering programs on behalf of the central government.
- 3. Aboriginal governments and mixed Aboriginal/public governments may have different lists of exclusive powers and some district governments could negotiate different types of powers than others because of their location and other factors.
- 4. The principle of asymmetry or unequal distribution of powers should be recognized as acceptable among district governments.
- 5. The Bourque Report lists minimum powers of a district government.
- 6. The Bourque Report recommends that central government powers be restricted to a certain list of matters.
- 7. The constitution must allow districts to gradually assume increased powers while ensuring the central government can deliver programs and services during the transition.
- 8. Provision should be made for the temporary assignment of authority to the central government by a district government during the transition or at any time.
- 9. Provisions to review and change the division of powers between the central government and any district at specified intervals should be considered.
- 10. District governments may require more taxation authority, but there may be also a need to place limits on their borrowing powers.
- 11. Amendment of a new western Territory constitution should be under the exclusive authority of the people of the territory and subject to amending procedures established in the constitution.

### IQALUIT AGREEMENT

- 1. A constitution could include exclusive Aboriginal jurisdictions in limited areas of direct concern to Aboriginal people.
- 2. The constitution, or those parts which address each of these principles and objectives, must not be amendable without the approval of Aboriginal and non-Aboriginal peoples.
- 3. Public lands outside community boundaries but within regional government boundaries should be held by the territorial government.
- 4. Territorial authority over the management of sub-surface resources should be exercised in the interests of all residents in the territory, but regional land interests may receive formal consideration in land use planning and management.

› **CDSC CONFERENCE**

1. There should be a statement of social principles as a goal for legislative policy.

› **I.R.C./GWICH'IN PAPER**

1. Regional/community institutions could have legislative capacity.
2. Jurisdictions of Aboriginal and public governments must be clear to avoid conflicts between laws.
3. In general terms, the territorial government powers as set out in a western constitution will be similar to those of a provincial government, subject to the inherent right and self-government agreements.
4. The Aboriginal governments will have a role in any amendments to the constitution. . .

**RIGHTS**

› **BOURQUE REPORT**

1. The Constitution should reaffirm the rights set out in the Charter of Rights and strengthen rights for women, human rights, workers' rights, environmental rights, and social rights.
2. The constitution should include a social charter identifying the basic necessities required for the spiritual, emotional, mental, physical and economic well-being of all members of the new western Territory society.
3. The constitution should include Aboriginal language rights.
4. Aboriginal peoples should have the right to opt out of the constitutional process for the new western Territory and seek a direct link with the federal government.
5. The spirit and intent of Treaties 8 and 11 should be recognized, upheld and protected in the new constitution.
6. The rights of the Metis First Nations must be recognized, upheld and protected in the new constitution.
7. The Gwich'in, Inuvialuit and any other future self-government agreements negotiated with Canada should be recognized, upheld, and protected in the new Constitution.
8. Aboriginal First Nations could exercise the right to establish an exclusive order of government and flexible arrangements will be necessary if people want to stay together under one government in one territory.

› **IQUALUIT AGREEMENT**

1. A new western constitution must balance two principles: 1) protection of individual rights; 2) protection of Aboriginal rights of Dene, Metis and Inuvialuit.
2. Aboriginal rights to language, culture and any other political rights which are not included in claims agreements should be entrenched in the constitution and means found to help ensure all Aboriginal rights are protected.
3. There should be a guarantee of Aboriginal participation in government and significant impact on decision-making.
4. The regional Aboriginal language or languages and English would be the official working languages of a regional government.



5. Every resident of a region shall have an equal right to participate in regional government and to benefit from its programs and services, but programs and services and the manner of participating need not be identical for members of different cultural groups.

#### CDSC CONFERENCE

1. The constitution must recognize individual and collective rights of all northerners.
2. The constitution must recognize the collective rights of all Aboriginal peoples.
3. There was strong support for the implementation of the recommendations of the Bourque Report on individual and collective rights and a social Charter.

#### I.R.C./GWICH'IN PAPER

1. All residents of the western territory will have equal access to public programs and services provided by public governments.
2. Governments of the western territory will respect the individual and collective rights recognized in the Canadian Charter of Rights and Freedoms.
3. The recognition of the inherent right is legally enforceable and can be exercised by Aboriginal governments or negotiated agreements. [B.R.]

### POLITICAL PROCESSES

#### BOURQUE REPORT

1. The people of a district must have a voice in determining whether the district government will be public, exclusively Aboriginal or a mixed form of government.
2. Communities may opt into a district government, have their own district government or, in the case of the Aboriginal First Nations, opt out of the new western Territory and seek a direct link with the federal government.
3. Participation in a district government would not prejudice the right of Aboriginal First Nations to negotiate with the federal government regarding their lands.
4. The central and district governments will have to harmonize fiscal policy and relations through negotiated agreements for sharing financial resources.
5. The constitution should state that each order of government will be assured an equitable distribution of financial resources in order to properly deliver programs and services for which it is responsible.
6. An ombudsman to monitor and report on the social charter and regional disparities would be useful.
7. The option for traditional forms of representation should remain open at least for district governments in accordance with the wishes of the residents living within the district boundaries.
8. The constitution should guarantee a public information and consultation process on all amendments.

#### IQALUIT AGREEMENT

1. Provision should be made to require co-operation between the governments

- of both territories in decisions relating to non-resident Aboriginal rights and interests, management and use of resources, harvesting, etc.
2. Every bona fide resident should have the right to participate in and benefit from public institutions, programs and services according to basic democratic principles.
  3. Government decision-making should rest as closely as possible with those governed.
  4. People and communities should have control over those matters which affect them exclusively and input in and influence over those decisions which affect them as well as others.
  5. The level of funding should be assured and predictable and restrictions on use should be flexible.
  6. Funding for regional government must be fair and adequate and include funds covering duties assumed from other governments.
  7. Regional governments could obtain shared responsibility, management and control over certain programs and services from territorial or community governments.
  8. Every level of government in the western territory must have sufficient powers, authority and resources to enable it to carry out its responsibilities.

#### CDSC CONFERENCE

1. Communities should have the necessary financial resources to deliver a broad range of services.
2. Each region/district should establish its own basis for representation.
3. Provisions to encourage balanced representation of Aboriginal people and others are required.
4. The basis for political power should reside in the community.

#### I.R.C./GWICH'IN PAPER

1. Governments of the western territory will respect the individual and collective rights recognized in the *Canadian Charter of Rights and Freedoms*.
2. The Aboriginal governments will have a role in . . . any agreement between the territorial and federal government.
3. Efficiency, effectiveness and affordability will be the principle concerns in determining which level of government delivers particular programs and services.
4. All levels or orders of government in a western jurisdiction must be accountable to those whom they serve. Democratic principles will apply to the territorial level.
5. The delivery of programs and services shall avoid duplication and ensure effective and efficient use of limited resources.
6. All governments shall consult with each other prior to the passage of any laws.
7. All governments shall commit to harmonize laws to limit potential conflicts between jurisdictions and legislation.
8. An efficient and credible dispute resolution mechanism and process must be agreed to by all of the parties.

## APPENDIX C: OTHER MODELS CONSIDERED

### THE LEGISLATIVE BRANCH

The Constitutional Working Group considered other models for the Legislative Branch prior to selecting the model set out in the package. Two models that the Working Group considered are set out below.

#### 1. A SINGLE LEGISLATIVE CHAMBER

In this model there would be a single legislative house which brings together Aboriginal self-government and public government at the territorial level.

Under the new constitution, both Aboriginal and non-Aboriginal representatives would be guaranteed representation in the Legislative Assembly and Executive Council. Furthermore, some cooperation between MLAs representing Aboriginal and non-Aboriginal residents would be required for the enactment of all legislation. This would be achieved through:

- a guaranteed minimum number of seats for four “cultural communities”, namely Inuvialuit, Dene/Gwich’in, Metis and Northerner. The Dene/Gwich’in Cultural Community would include Gwich’in, North Slavey, South Slavey, Dogrib, Chipewyan and Cree;
- a voting system in general elections based on four permanent voters lists, namely a list for each cultural community;
- a system of voting for Bills in the Legislative Assembly based on two caucuses, namely an Aboriginal caucus and Northerner caucus.

A new constitution could include general rules covering these matters.

#### Number of MLAs

The new constitution would set the initial number of members in the Legislative Assembly at eighteen(18).

#### Election of Members to a Single Chamber

All eligible voters would be allocated to one of the four cultural communities. The Inuvialuit, Dene and Metis voters lists would be based on enrolment or eligibility for enrolment in comprehensive claims or treaties in the western NWT.

Rules might be developed by ordinary legislation setting out procedures for changing cultural communities.

#### Candidates for Election

Although voters lists would be drawn up according to cultural criteria, a cultural community would not have to elect a member of its cultural community to be their representative.

#### Number of Seats for Each Cultural Community

Each cultural community would vote for an assigned number of seats. The number of seats for each cultural community would be based on the principle of representation by population.



Based on current population figures, an eighteen seat Legislative Assembly would be constituted as follows:

Northerner: 9 seats  
Dene: 5 seats  
Metis: 2 Seats  
Inuvialuit: 2 seats

The total number of seats could be changed by amendments to territorial legislation.

### Guaranteed Minimum Number of Seats

Consistent with the federal Aboriginal self-government policy, the new constitution would guarantee the Metis and Inuvialuit cultural community *at least* two seats each. The Dene/Gwich'in cultural community would be guaranteed five seats, one for each of the five Dene/Gwich'in regions.

### Electoral Districts

Constituencies would be defined geographically. The constituencies for each cultural community must cover the entire territory so that everyone can be assured a vote. For example, if the population of a cultural community is entitled to elect 5 seats, the geographical area of the five constituencies, when added together, would comprise the entire territory.

The constituencies of the four cultural communities would therefore overlap.

Alternatively, there could be two cultural communities, "Aboriginal" and "Northerner", with voting lists for each. Each of these two cultural communities would be guaranteed at least 9 seats in the Legislative Assembly.

### Operations in the Legislative Assembly

The new constitution would divide the Legislative Assembly into two Cultural Caucuses for purposes of voting on Bills as follows:

Aboriginal Caucus  
Northerner Caucus.

### Political Parties

The new constitution would be flexible so the option of consensus government or political parties would be available depending on the circumstances of the time.

### Selecting a Speaker

The Speaker would be selected from one cultural caucus, the Deputy Speaker from the other.

### Quorum

A minimum of ten (10) MLAs with a minimum of five (5) MLAs from each cultural caucus would constitute a quorum.

### Selecting Cabinet

The new constitution would require at least 30% of the members of Cabinet be selected from each of the cultural caucuses.

The procedure for selecting the Cabinet would be in accordance with the political practices of the day.

### Aboriginal Affairs

Legislation in relation to Aboriginal lands and affairs would be exercised by Aboriginal governments in communities or regions as provided for in self-government agreements.

### Introducing and Voting on Bills

Motions would require a simple majority of members.

All legislation, including money Bills, would require support from both cultural caucuses. Two ways to accomplish this are:

- a single count of votes requiring 70 per cent of members present to constitute a yes vote, or
- a double count of votes with a minimum of 50 per cent of members present from each cultural caucus required to constitute a yes vote.

Legislation in relation to Aboriginal lands and affairs would be exercised by Aboriginal governments in communities or regions as provided for in self-government agreements.

Legislation, as is the case today, could not conflict with any existing treaties, Aboriginal land claim agreements, or Aboriginal self-government agreements.

The constitution for the western territory could include territorial legislation, in addition to the act of Parliament replacing the Northwest Territories Act. The possible advantage of this is that it would enable the people of the north to amend parts of their constitution without having to appeal to the federal government and Parliament.

The current Legislative Assembly, before it dissolves, could enact 'constitutional' legislation at the same time as Parliament passes an act to replace the Northwest Territories Act.

Such legislation would include a formula for future amendments which would require two thirds (2/3) of the members from each Cultural Caucus to vote Yes for an amendment to pass.

## 2. A TWO CHAMBER LEGISLATIVE BRANCH

The Parliament of Canada has two houses, one elected and one appointed: the *House of Commons* and the *Senate*. Manitoba and Quebec initially had legislative branches composed of two houses. Manitoba abolished its appointed second

house in 1876. Quebec abolished its appointed second house in 1968.

A two-chamber model could be adopted for the new western territory as a means of bringing together public government and Aboriginal self-government at the territorial level. Both chambers would be elected, so comparing one of them to a “senate” would not really be appropriate. Under a new constitution both chambers would have a significant role in making laws for the territory.

#### **A. Chamber One: Aboriginal Peoples [Legislative] Council”**

One chamber, called the Aboriginal Peoples Council, could be composed of members who were the representatives of Inuvialuit, Dene, Gwich’in or Metis peoples who have signed, or are eligible to sign, treaties, land claim agreements or self-government agreements in the western territory.

This Aboriginal Peoples Council would participate in the general legislative process to make laws for the western territory as a whole.

In addition, a new legislative power could be added in relation to “Aboriginal affairs and Aboriginal lands” so that the Aboriginal Peoples Council could pass laws that would apply directly to these matters, *subject to treaties, land claim agreements, and self-government agreements*. Consequently, the manner of electing these representatives should take this into account in the context of Aboriginal self-government rights.

#### **Number of Members**

This chamber would be smaller in number than the Legislative Assembly. Initially there would be seven members.

#### **Electoral Districts**

Members would be elected from constituencies that correspond to settlement areas under claims, or Treaty areas.

#### **Candidates for Election**

There are two approaches that could be taken to determining who could stand as a candidate:

- a. An individual who is elected by Inuvialuit, Dene, Gwich’in or Metis peoples who have signed, or are eligible to sign, treaties, land claims agreements or self-government agreements in the western territory (i.e. Aboriginal voters list); or
- b. An Aboriginal individual who is a beneficiary under a land claim agreement or Treaty.

#### **Electing Members to the Aboriginal Peoples Council**

The new constitution would require that Members of this Chamber be elected by Aboriginal electors as in alternative (a.) above. The details in relation to compiling Aboriginal voters list would be set out in ordinary legislation.



In alternative (b.), the general public, or Aboriginal electors, could elect candidates.

For alternative (b.), the rules governing elections to the Aboriginal Peoples Council [eg. such as who would be eligible to vote, whether members would be elected from single-member constituencies, and so on], would also be set out in ordinary legislation enacted by the legislative branch so that there is sufficient flexibility to meet changing circumstances.

For example, if it was decided that there should be distinct voters lists, or community/regional constituencies, this would be done through the legislative process. The Aboriginal Peoples [Legislative] Council would have a veto over this type of legislation.

### **Operations in the Legislature**

This Aboriginal Peoples [Legislative] Council would participate in the general legislative process to make laws for the western territory as a whole.

In addition, a new legislative power would be added in relation to “Aboriginal affairs and Aboriginal lands” so that the Aboriginal Peoples [Legislative] Council could pass laws that would apply directly to these matters, subject to treaties, land claim agreements, and self-government agreements.

### **B. Chamber Two: a “Legislative Assembly”**

Under the two chamber model, the Legislative Assembly would be similar to the current Legislative Assembly.

### **Members of the Legislative Assembly**

The Legislative Assembly would be open to any individual in the western territory who meets the normal qualifications for candidates as set out in territorial election legislation.

### **Electoral Districts**

The Canadian principles of representation by population would be followed. Electoral districts with roughly the same number of voters in each would return members who received a plurality of votes.

The new constitution should set out the initial electoral districts, and initial number of members; however, the legislature would be able to determine these matters through ordinary legislation after the first election.

### **Political Parties**

The new constitution would be flexible so the option of consensus government or political parties would be available depending on the circumstances of the time.

### **Electing Members**

A wide range of electoral systems could be explored or adopted as the need arises. For example, if it was decided that a system of proportional representation was most effective, or if it was decided that each riding should elect two

members, one man and one woman, this would be enacted by the Legislative Assembly through the normal legislative process.

### » **Selecting Cabinet**

The procedure for selecting the Cabinet would be in accordance with the political practices of the day.

### » **Introducing and Voting on Bills**

It is proposed that the new constitution describe the basic rules for introducing and voting on Bills in each chamber.

With the exception of money Bills, either chamber could introduce general legislation. If the legislation was passed in that chamber, it would then go to the other chamber for passage. Most legislation would only become law if both chambers passed it and it was given assent by the chief executive officer.

As an alternative approach, if the Aboriginal Peoples [Legislative] Council defeated a Bill of the Legislative Assembly on a general matter the new constitution could contain a provision requiring a joint sitting of the two houses. The Bill would be voted on again and would pass if a simple majority (50% + 1) of the Joint sitting approved it.

In some cases, however, one of the chambers could pass certain types of legislation without the consent of the other chamber. For example, legislation relating to Aboriginal affairs could be passed by the Aboriginal Peoples Council, even if it was not passed by the Legislative Assembly. Similarly, money bills drawing on the public treasury would have to originate in, and be subject to the approval of, the Legislative Assembly. Therefore, money bills could be passed by the Legislative Assembly without the consent of the Aboriginal Peoples Council.

Legislation in relation to public lands would be the responsibility of the Legislative Assembly and could not be vetoed by the Aboriginal Peoples Council. Similarly, general legislation in relation to some aspects Aboriginal lands would be the responsibility of the Aboriginal Peoples Council and could not be vetoed by the Legislative Assembly.

Legislation, as is the case today, could not conflict with any existing treaties, Aboriginal land claim agreements, or Aboriginal self-government agreements.

In the Aboriginal Peoples Council, matters could be decided by a majority of voters or some other system which takes into account the community or regional interests represented in this Chamber. The Aboriginal Peoples Council would be able to set its own rules and procedures in this regard.

If a separate Aboriginal Consolidated Fund were created for monies designated for Aboriginal peoples (eg. certain funds for claims implementation or Aboriginal programs transferred from DIAND), money Bills drawing on this fund should orig-

inate in, and be subject to the approval of, the Aboriginal Peoples Council.

Both the Aboriginal Peoples Council and the Legislative Assembly should be empowered to make rules for its operations and procedures.

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## APPENDIX D: HISTORICAL BACKGROUNDER

### 1982: Constitutional Alliance formed

- Work on a new constitutional arrangement in the NWT began in the 1982 by the Constitutional Alliance, which subdivided into the Western Constitutional Forum and the Nunavut Constitutional Forum.

### 1987: Agreement to divide NWT

- In 1987, their work resulted in the Iqaluit Agreement to divide the NWT into two territories as well as principles and processes for developing and ratifying constitutions for each new territory.

### 1991: Committee of political leaders formed

- In March, 1991, a committee of western MLAs and leaders of various aboriginal groups was formed.

### 1992: Committee establishes Bourque Commission

- This Committee of political leaders set in motion the Bourque Commission, which presented its report in April of 1992.

### 1992: Plebiscite held on boundary for division

- Following a plebiscite in 1992, the Prime Minister and representatives of the Inuit of Nunavut signed the Nunavut Final Land Claims Agreement. The *Nunavut Act* was passed in 1993 creating a new Nunavut Territory in 1999, effectively creating a new Western Territory.

### 1992: Constitutional Development Steering Committee forms

- The committee of political leaders expanded to include the elected leaders of seven aboriginal organizations, the 14 western MLAs, three mayors from the tax-based municipalities, and one representative chosen by the Native Women's Association of the NWT and the NWT Status of Women Council.
- This group became the Constitutional Development Steering Committee.
- The Constitutional Development Steering Committee, which operated independently of government, has taken on the task of guiding constitutional development in the western NWT.

### 1993: Constitutional Development Steering Committee research reports

- In 1993, funding was arranged from the Government of the Northwest Territories so CDSC member groups could produce a set of research reports setting out their desires regarding constitutional reform.



**1994: Community Information Meetings organized**

- With additional funding from the Government of the Northwest Territories and the federal government, the Constitutional Development Steering Committee organized community information meetings to prepare for a constitutional conference.

**1994: Reports prepared by CDSC**

- The reports produced earlier by Constitutional Development Steering Group member groups served as a starting point for discussions at the First Constitutional Conference.

**1995: First Constitutional Conference held**

- The Constitutional Development Steering Committee organized the First Constitutional Conference to bring together people from all 34 western NWT communities to discuss their ideas, discover areas of common ground, explore differences of opinion and identify where there is more work to do.
- The Conference produced a twenty-two point emerging consensus which confirmed many of the principles and recommendations of the Iqaluit Agreement and the Bourque Commission.
- The Conference stressed the importance of proceeding with constitutional development and self-government as parallel processes.

**1996: Constitutional Working Group Formed**

- A ten member constitutional working group is formed to draft a comprehensive draft constitution package for submission in the Legislative Assembly in October.









