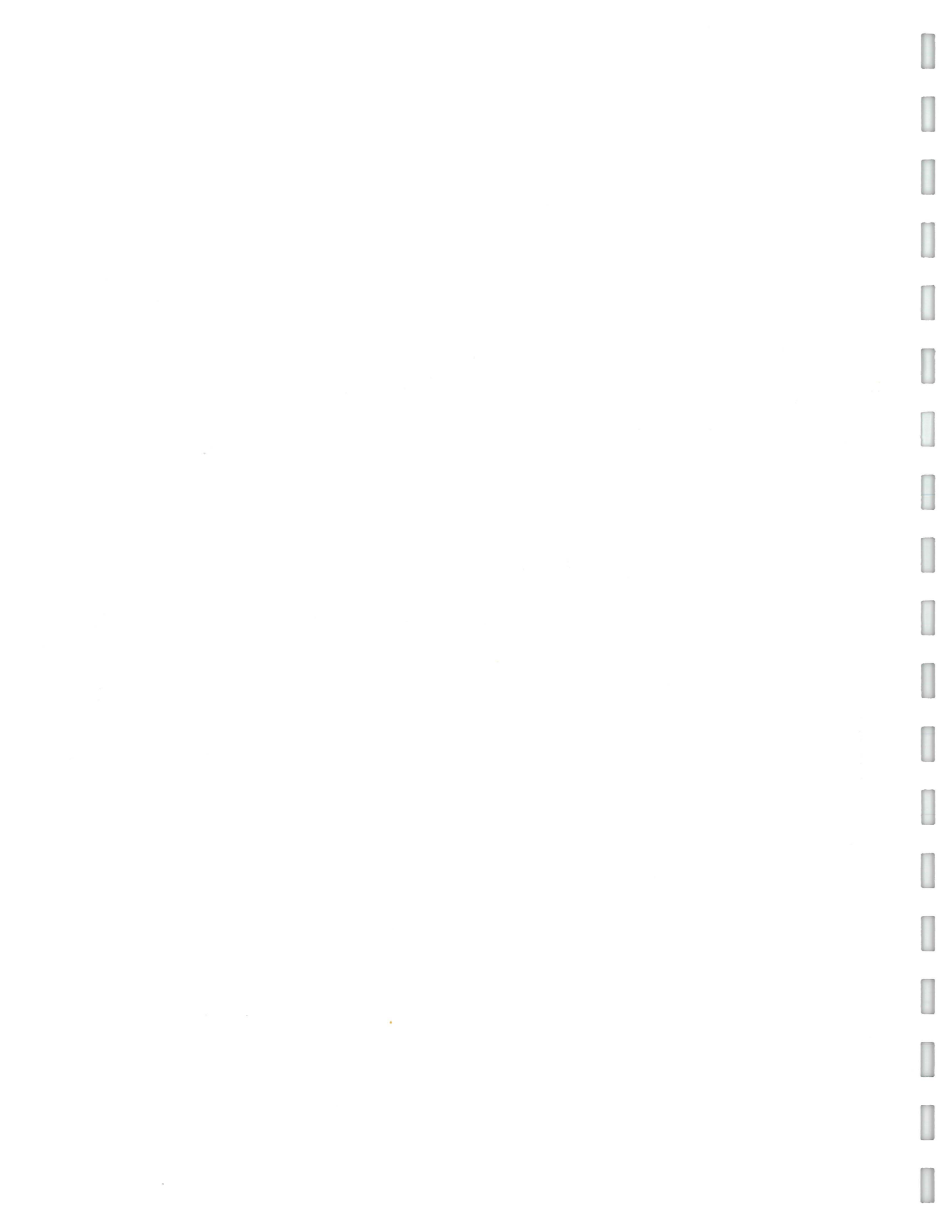


## 14th Legislative Assembly of the Northwest Territories



### The Circle of Self-Government: Report of the Special Committee on The Implementation of Self-Government and the Sunset Clause



Special Committee on the Implementation of  
Self-Government and the Sunset Clause

May 30, 2003

HONOURABLE ANTHONY (TONY) WHITFORD, MLA  
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker,

Your Special Committee on the Implementation of Self-Government and the Sunset Clause is pleased to present its Final Report with recommendations for preparing for the implementation of self-government and commends it to the House.

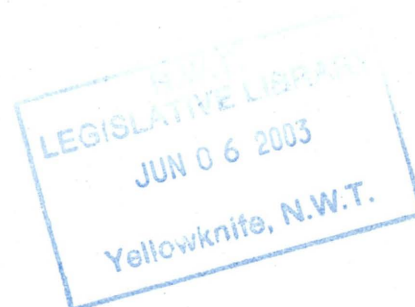
Sincerely,

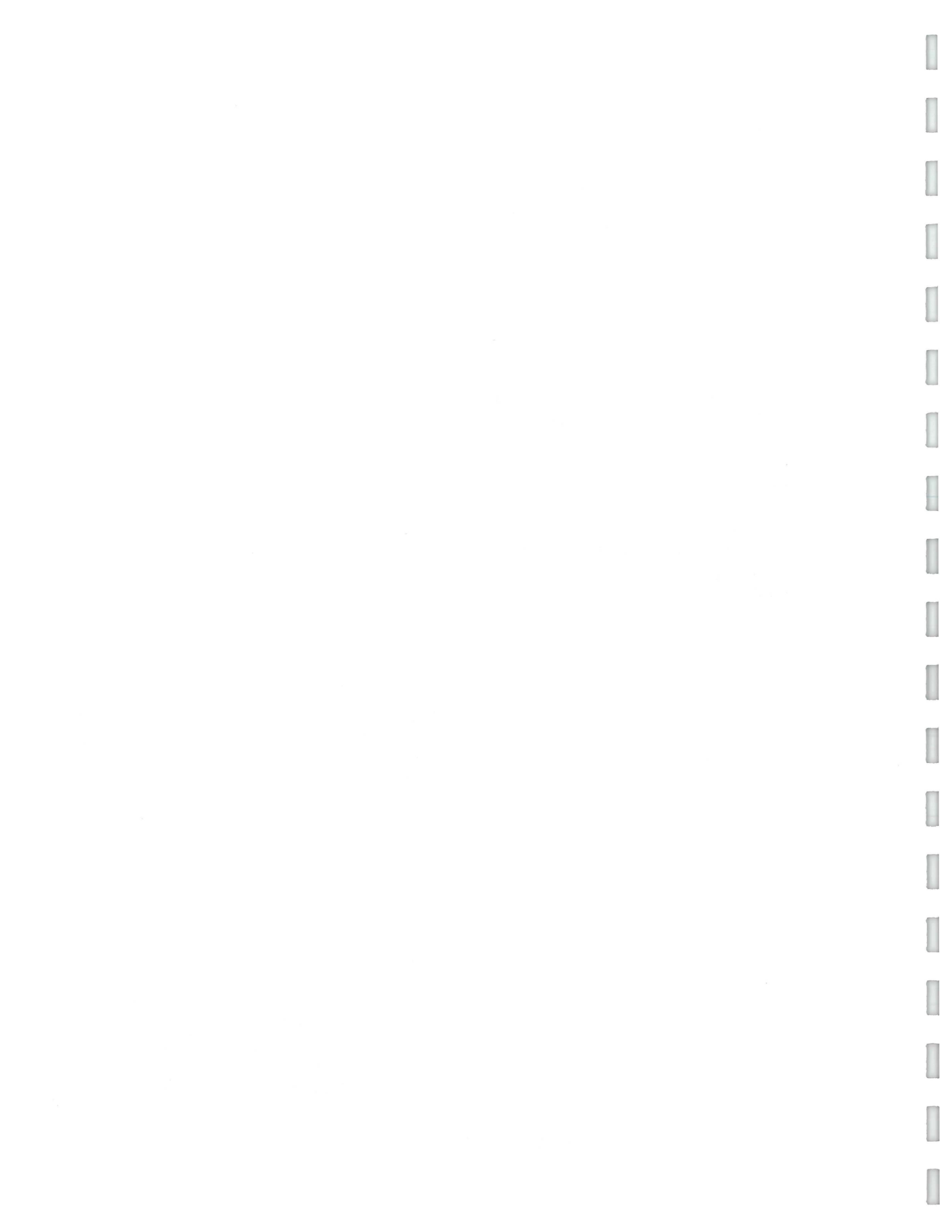


Sandy Lee  
Co-chair



Jim Antoine  
Co-chair







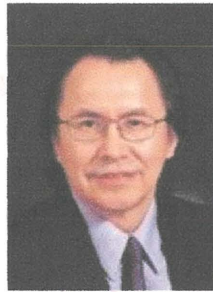
## **PREFACE**

Self-government is a subject that requires careful study and respect. It is not an easy subject to confine to a relatively short Report. There are many ways to approach any study of self-government and the Committee hopes that the approach taken here will be helpful and will foster ongoing dialogue about governance in the NWT.

**Legislative Assembly of the Northwest Territories**

*Special Committee  
on  
Implementation of Self-Government and the Sunset Clause*

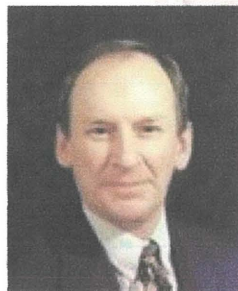
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**The Circle of Self-Government:**  
**Report of the Special Committee on**  
**The Implementation of Self-Government**  
**and the Sunset Clause**





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## Executive Summary

**T**he starting point for this Report is the assumption that a number of self-government agreements will be negotiated, ratified and implemented. Therefore, based on our understanding of the situation in the NWT today, we have attempted to identify the broader implications which implementation of these self-government agreements is likely to have for governance institutions, laws, policies, programs and services, and other government processes and operations in the future.

The Committee has identified five broad trends and issues that appear to be emerging from self-government negotiations and agreements in the NWT. The three trends that we believe will be the major drivers of change are: 1) changes to the status and powers of **communities**; 2) **concurrency** of law-making powers; and 3) formal **consultation** requirements imposed on all governments. Two important ongoing issues, in our view, will be 4) the need for **coordination**, and 5) **cooperation** among governments. We call these the Five C's.

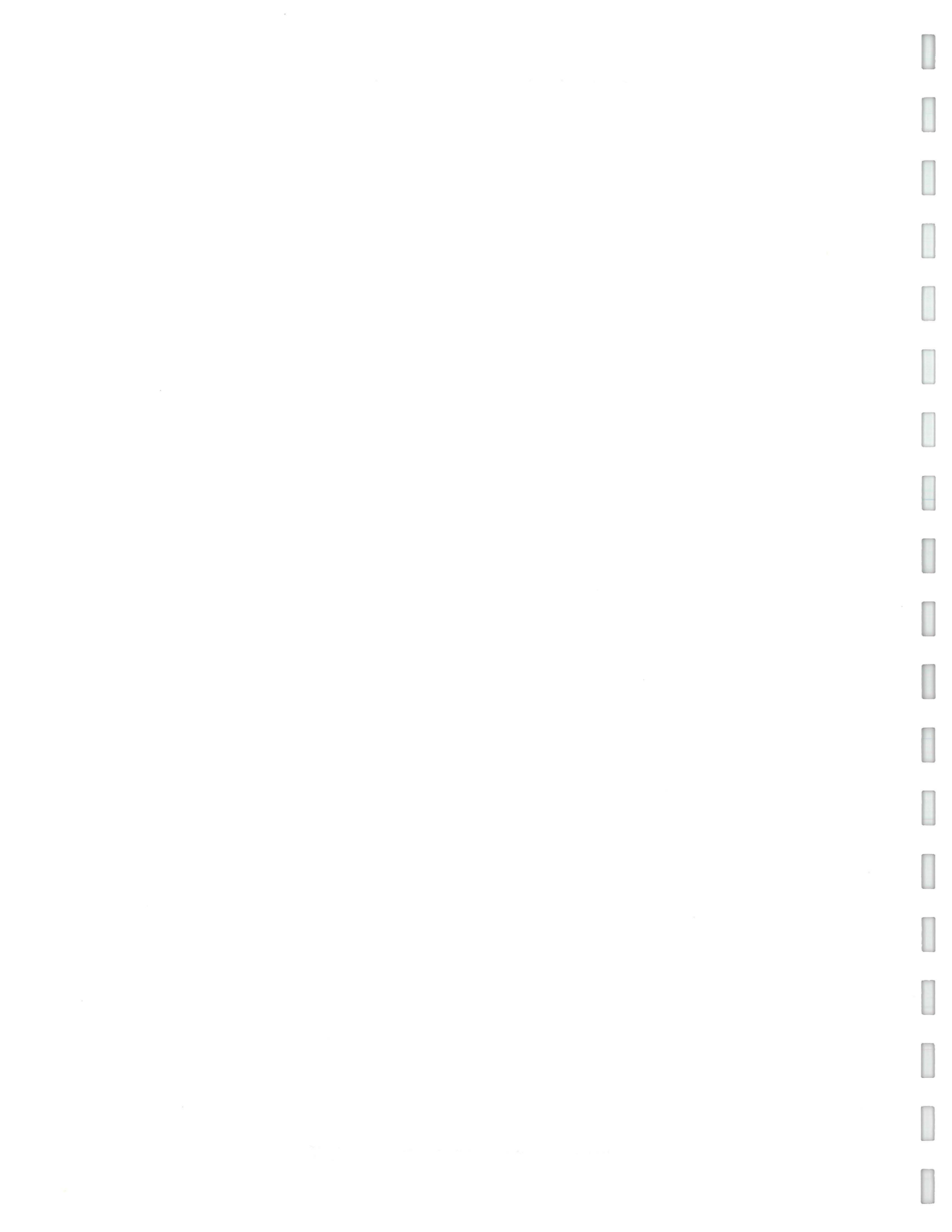
These trends and issues signal fundamental changes to many aspects of the way the Legislative Assembly and GNWT now do things, including:

- law-making
- policy-making
- government decision-making
- government operations, including program and service delivery
- human resources management
- land and resources management
- financial management including budgeting and appropriations
- raising revenues through taxation and other means
- capital spending for facilities and other assets
- lines of accountability, and
- intergovernmental relations.

In practice we think the staggered processes of negotiation and implementation will give rise to gradual and practical changes. Nonetheless, the GNWT and Legislative Assembly may well face the prospect of ongoing reorganization and restructuring for the next 10 to 15 years as self-government agreements come into effect in the regions and communities.

The recommendations contained in this report are only a starting point. We have suggested there is a need for a more coordinated and systematic examination of the changing face of governance in the NWT. Good leadership will be a critical factor in the legitimacy and effectiveness of our new systems of governance.

We want to encourage a territory-wide conversation about what all NWT residents can expect in the future. The futures of all NWT communities will be linked together even more closely than they are today. The new relationships that will develop among our northern governments will depend on our attitudes, and our relationships with each other.



# The Circle of Self-Government

## PART I: INTRODUCTION



When the resident territorial government was established in 1967, it came with a federal government promise of greater self-government. However, as the *Royal Commission on Aboriginal Peoples* has documented, while the system of territorial government in the Northwest Territories (“NWT”) has been better than most in Canada in responding to Aboriginal peoples’ cultures and values, it has not gone far enough. A central purpose of self-government agreements is to ensure that Aboriginal peoples gain more control over decision-making on matters that affect them.

“The “self” and the “public” are circles that can be drawn as widely or as narrowly as we choose. On one level these words can refer to our individual responsibilities within a community, on another they can help us define the size of the “community” itself. We have chosen in this report to view the circles of self-government and public government as including and affecting all residents of the NWT.”

We have examined the new systems of government that are emerging from self-government negotiations. It is important that we all understand these agreements so that we have a sense of how things will change for the Legislative Assembly and the Government of the Northwest Territories (“GNWT”), but more importantly so we can have a territory-wide conversation about what all NWT residents can expect in the future.

Self-government agreements, and other related documents, are often long and technically complicated. In this Report we have tried to avoid technical language so that it will be more accessible to the average reader. However, we acknowledge that discussing self-government in general terms can be problematic, because the details are important.

We have deliberately avoided using the phrases “public government” and “Aboriginal self-government”. These phrases suggest clear distinctions that will not likely be reflected in practice. In our view, this terminology tends to imply separate realities or watertight compartments. From our work to date, we have concluded that governments in the NWT will not be easily categorized as “Aboriginal” or “public”. The governance systems that will be established as a result of self-government agreements will probably not fit neatly into one box or the other.

For example, the territorial government in Nunavut is sometimes called an

## The Circle of Self-Government

expression of Aboriginal self-government, but in the NWT the territorial government is usually referred to as the public government. The draft *Gwich'in and Inuvialuit Self-government Agreement in Principle*, and the *Tlicho Agreement* are products of self-government negotiations but will provide mechanisms to deliver programs and services to all residents in many situations. The *Deh Cho First Nations Framework Agreement* states that a Deh Cho government will be a "public government" based upon Deh Cho First Nations laws and customs and other Canadian laws and customs.

In this Report we simply use the phrase "self-government" by itself. We think this describes the type of government all NWT residents want. From this perspective "self-government" can be seen as a statement about the capacity of NWT residents to make decisions for themselves, rather than as a reference to a particular model of government that applies to a particular group of people.

Similarly, we use the phrases "community government" and "regional government" to indicate the approximate geographical area in which a particular government will operate, regardless of how they might be established. We are aware that the composition, structure, and powers of community and regional governments might vary considerably from agreement to agreement.



"Self" government has meaning for all of us. We all want to be self-governing. We all want to keep our identities as individuals and groups. However, we must keep in mind that we live closely together, and to one degree or another, are dependent on each other. Together we make up the communities of the NWT and the governments that serve them.

In our view, this is the starting point for understanding the systems of governance that have evolved in the NWT in the past, and for examining what potentially lies ahead as a result of implementing new systems of governance in the Northwest Territories in the future.

A single self-government agreement is sufficiently complex that confident forecasts about its implementation are not entirely credible. When two, three, six, seven or more self-government agreements are involved in the equation, the process of predicting implications is considerably more difficult.

Even though self-government agreements are generally quite detailed, these documents, and the other legal and political side agreements required for their implementation, will in all likelihood only provide a broad framework, rather than a detailed script, for governance in the NWT. The literal wording of every provision of every self-government agreement will probably not be fully implemented.

This does not mean these agreements will lose their legal or political force. Simply put, over time practical approaches will have to be taken by all governments in the NWT if governance is to be effective. In fact, this is how the Constitution of Canada itself has evolved.

So while the situation is not entirely predictable at this point, a clearer picture is emerging as each new agreement is concluded. These agreements will result in fundamental changes to many aspects of the way the Legislative Assembly and GNWT now do things, including:

- law-making
- policy-making
- government decision-making
- government operations, including program and service delivery
- human resources management
- land and resources matters
- financial management including budgeting and appropriations
- raising revenues through taxation and other means
- spending on capital assets and other facilities, and
- intergovernmental relations.

Many people, in many organizations and levels of government, are

## The Circle of Self-Government

thinking about these potential changes, and are trying to plan for the potential implications. They are looking for practical ways to manage a smooth transition.

There will be fundamental changes in the relationships among the community, regional and territorial levels of government. Responsibilities for law-making and for the delivery of several programs and services will change. Self-government agreements often involve systems for delivery of programs and services to all residents. The people we will hold accountable will consequently change. Governments will be required to consult more with each other and to coordinate and cooperate in their activities.

Government is simply the way we organize ourselves to achieve our common goals. We are all involved. We share responsibilities for finding common objectives and addressing competing interests. This is why we so often hear people talking about “partnerships”, “stakeholder cooperation”, “co-management”, and “shared jurisdiction”.

The practical issues surrounding implementation of self-government agreements are not always easy to determine from simply reading the agreements. In fact the expression “implementation of self-government” can be misleading. Describing the evolution of a system of governance in this way makes it sound like a process that is done once or that can be completed in a specific time. Would we describe the political, economic and social processes that go on continuously in Canada as “implementing public government”? It is important to remember that change will occur over many years rather than completely and suddenly on a given date.

There was a time in the NWT, and across Canada, when communities were relatively self-sufficient and self-governing. One of the strongest trends in the 20<sup>th</sup> century was the increasing involvement of many levels of government in virtually every aspect of our daily lives. How did this happen?



One reason is that collectively we have chosen to organize ourselves in ways to improve the standards and conditions in which we live. Most of us now expect governments to deliver a broad range of important programs and services such as health, social services, education, transportation, housing and so on. If these roles and responsibilities are not carried out, we blame "the government".

But who is the "government"? **We** are. In the NWT, with its small population and close-knit communities, the "government" is potentially every one of us, our friends and our neighbours. We, the residents of the NWT, make up all northern "governments", whether it is the territorial government, the band councils, the Aboriginal Councils, the land claim institutions, the community governments, or the regional boards and agencies.

How can you help? In delivering this Report, we want to encourage an ongoing dialogue or conversation about how we can work together to make the NWT a better home for all residents. Most of us think we would do things differently if we were in charge --- if we were the government. What would you change and what would you want to stay the same?

Imagine you have the opportunity and responsibility to make such choices --- because in fact you do. This is what self-government involves, for all of us. Self-government agreements will place the emphasis back on the communities and the people. The futures of all NWT communities will be linked together even more closely than they are today. The new relationships that will develop among our northern governments will depend on our attitudes, and our relationships with each other.



## PART 2: ABOUT THE SPECIAL COMMITTEE

### Mandate

**T**here were two distinct tasks in the terms of reference given to the *Special Committee on the Implementation of Self-Government and the Sunset Clause*: 1) a review of a specific provision of the *Legislative Assembly and Executive Council Act* commonly referred to as the “Sunset Clause”; and 2) a much broader review of the potential implications arising from the implementation of self-government. The terms of reference of the Special Committee can be found in Appendix I.

This Report covers the second task in our mandate relating to the implementation of self-government. The Special Committee submitted its report and recommendations on the Sunset Clause in June, 2002.

### Methodology

In addition to meetings during the late summer of 2002, the Committee held two planning workshops during the fall of 2002, another in mid-February 2003, and a briefing session in early May, 2003. At these workshops the Committee reviewed research, discussed issues and provided direction to Committee staff. The Committee sent letters to northern leaders in December, 2002 indicating their desire to engage in discussions about implementing self-government [Appendix II]. In March, 2003 a brochure was made available to the public to provide an update on Committee activities and encourage input [Appendix III].

### Documentation

In preparing this Report we have based our analysis on a range of documents which have emerged from self-government processes in the NWT to date [Appendix IV], and on other governmental and academic materials [Appendix V].

Understandably, negotiated documents do not give a complete picture of self-government. In some cases they are process documents to guide further negotiations that may take years to complete.

In other cases, there may be important details yet to work out even though an agreement is near completion. For example, financial arrangements and legislation will be required to implement most agreements.

For these reasons alone, any study of potential implications of self-government at this time will be incomplete. Therefore, we must stress that our conclusions only represent **potential** implications. However, even if all the agreements were in final form, the full practical implications would still be somewhat uncertain. Agreements, no matter how detailed, cannot address every issue that will occur as new systems of governance evolve and adapt.

Governments are living things: they change and grow. Agreements only capture a snapshot of intentions as of the date they are signed, but their implementation must occur in the context of changing circumstances over long periods of time.

Furthermore, in the NWT there will not just be one or two self-government agreements. There could be seven or more. In addition to the objectives set out in the agreements, the dynamics among all northern governments will generate numerous unanticipated and unpredictable implications.

To date there have been a number of self-government agreements in Canada. A range of self-government models is emerging. Elements of the *Nisga'a Final Agreement* or the self-government agreements with Yukon First Nations can act as precedents for self-government arrangements in the NWT. Similarly, the *Tlicho Agreement* or the *Draft Gwich'in and Inuvialuit Self-government AIP for the Beaufort-Delta Region*, or some aspects of them, might act as precedents in other regions in the NWT. Or they might not. Given the differing circumstances from region to region, each set of negotiations usually produces variations on the earlier agreements.

Even given such uncertainty, a study of the potential implications is an important step to be taking at this time, and on an ongoing basis, so that NWT residents and governments can understand and prepare for the changes that might come.

## The Circle of Self-Government

### This Report

In this report we have not attempted to explain why land claims and self-government agreements are being negotiated with Aboriginal peoples in the NWT. Nor do we review the political and legal history that has led to negotiations. This information is available from a number of other sources [Appendix V].

Instead, the starting point for this report is the assumption that a number of self-government agreements will be negotiated, ratified and implemented. Therefore, based on our understanding of the situation in the NWT today, we attempted to identify the broader implications which implementation of these self-government agreements is likely to have for governance institutions, laws, policies, programs and services, and other government processes and operations in the future.

This report should not be seen as standing alone. Other recent studies are also relevant and may provide additional insights and details to inform the broad trends and issues identified here.

Even a single legal, political or financial issue could be the subject of a lengthy analysis and report.

However, the objective of this study is not to analyze all the possible legal interpretations of the agreements to date, nor to speculate on the potential provisions of future agreements. There are many ways to conceive of self-government, and even more ways to implement self-government in practice. There is no finite set of implications, and implications are not confined to one separate period of time. They will be on-going and will vary in response to changing circumstances.

In our work we have reached the conclusion that self-government agreements will not likely lead, as some might believe, to a clear separation of government functions. Instead, it appears these agreements will generally require all levels of government in the NWT to work even more closely together than is currently the case.



This report is really intended to test these and other preliminary conclusions. We sincerely hope it will contribute to a better understanding of our evolving systems of governance and promote a positive approach to our shared future in the NWT. Our goal is to encourage a discussion of practical ways to reach accommodations within NWT society for the changes that are coming, and to realize benefits for all residents of the NWT.

### **Consultations**

We are interested in ongoing relationships and the evolution of NWT society in the context of changing roles and responsibilities among governments.

It is not entirely clear at this time what form meaningful consultations with the public and with other stakeholders and governments should take. In Part 4 of this Report we have made some observations and recommendations regarding these issues.



## PART 3: THE FIVE C's

### Trends and Issues

**T**he Committee has identified five broad trends and issues that appear to be emerging from self-government negotiations and agreements in the NWT.

What do we mean by “trends and issues”? For purposes of this Report, a “trend” is a particular pattern or direction we have identified in self-government documentation. We use the word “issue” to mean a particular requirement or matter that will need to be addressed as a result of a trend.

The three trends we believe will be the major drivers of change are: 1) changes to the status and powers of **communities**; 2) **concurrency** of law-making powers; and 3) formal **consultation** requirements imposed on all governments. Two important ongoing issues, in our view, will be 4) the need for **coordination**, and 5) **cooperation** among governments.

For convenience, we will call these the Five C's.

In addition, all northern governments, including the GNWT, will need to address questions of capacity when considering the potential implications flowing from the Five C's.

Determining the implications of self-government agreements in the NWT is not a precise science. However, we believe the 5 C's in particular will provide a useful framework for studying and planning for the implementation of self-government agreements. These trends and issues signal fundamental changes to many aspects of the way the Legislative Assembly and GNWT now do things, including:

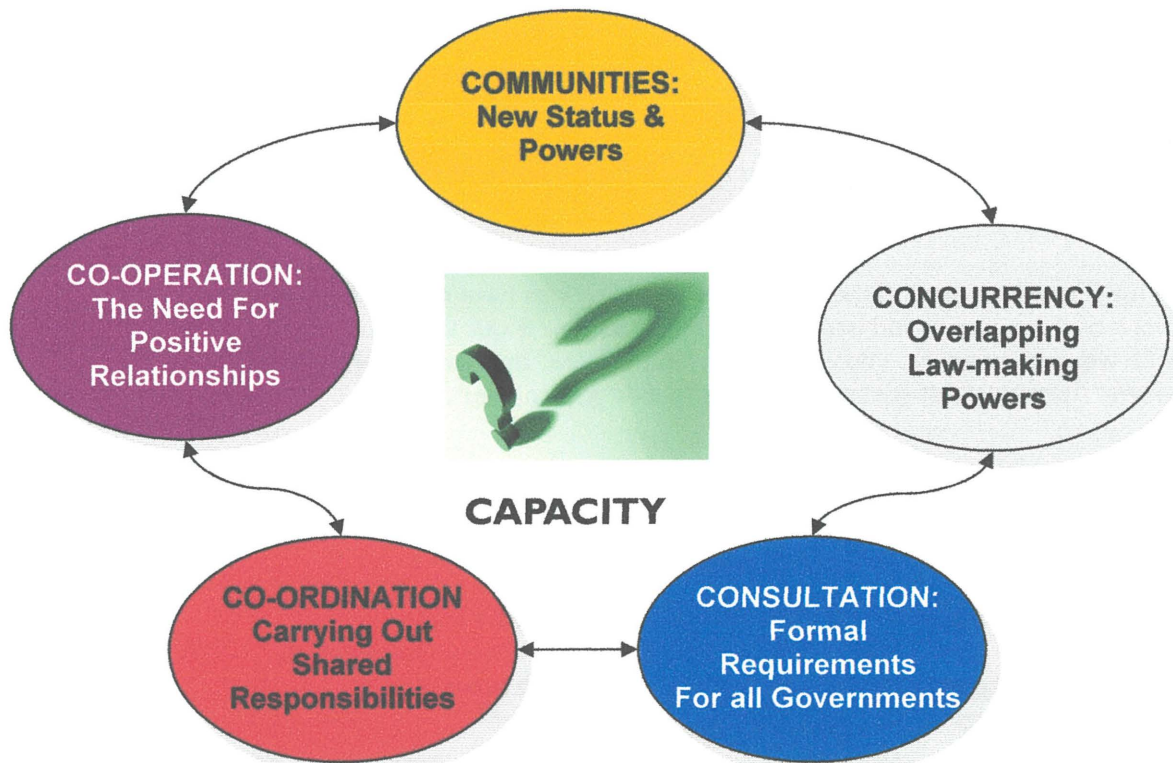
- law-making
- policy-making

- government decision-making
- government operations, including program and service delivery
- human resources management
- land and resources management
- financial management including budgeting and appropriations
- raising revenues through taxation and other means
- spending on capital spending for facilities and other assets
- lines of accountability, and
- intergovernmental relations.

Responsibilities for law-making and for the delivery of several programs and services will change. Self-government agreements often involve systems for delivery of programs and services to all residents. The people we will hold accountable will consequently change.

Governments will be required to consult more with each other and to coordinate and cooperate in their activities. Therefore, there will be fundamental changes in the relationships among the community, regional and territorial levels of government.

**Figure 1: The Five C's Driving Change in the NWT**



## The Circle of Self-Government

### Negotiations are at Different Stages

The Committee has tried to be cautious when speculating on trends and issues, because negotiations are at different stages. The Salt River First Nation concluded a *Treaty Settlement Agreement* in 2002 and implementation is proceeding. While negotiations on the *Tlicho Agreement* are now completed, the Agreement has not yet been formally ratified and put into effect. The *Draft Gwich'in and Inuvialuit Self-government Agreement-in-Principle* ("AIP") might require several more years of negotiation before a final agreement is concluded and implemented. The *Deh Cho Framework Agreement* has set May, 2006 as the target date for an agreement-in-principle and May, 2008 for a final agreement. Deline had set 2000 as the target date for an AIP, but as of 2003 negotiations are still in progress. The Deline AIP will include a target date for a final agreement. In the Akaitcho process, the target date for an AIP is July 2003. The South Slave Metis (now called the Northwest Territory Metis Nation) *Framework Agreement* signed in 1996 set a target date of 1997 for an Agreement-in-Principle on a range of matters, but self-government was not to be addressed until the second stage of negotiations. As of 2003, the Parties to this process are still negotiating an Agreement-in-Principle.

Experience shows that in most negotiation processes there are inevitably slippages in target dates. This is not surprising given the complex and important issues under negotiation.

### Public Government and Aboriginal Self-Government

The Five C's are not new. Other reports and publications have referred to one or more of these trends and issues. What might be new is our view that, in the NWT, we will need to reconsider the distinctions that are often made between "Aboriginal self-government" and "public government".

As the *Royal Commission on Aboriginal Peoples* has documented, government institutions in Canada often do not do enough, or do not operate in a way that is sensitive to Aboriginal cultures and values. A central goal of self-government agreements is to ensure that Aboriginal peoples gain more control over decision-making in matters that affect them. The objective is to improve both the level and quality of programs and services, while at the same time strengthening Aboriginal societies.



Self-government agreements are intended to change the relationships and responsibilities among governments operating in the NWT and to empower Aboriginal peoples. We do not doubt that this will occur. However, we often hear references to “public government” and “Aboriginal self-government” as though they were separate realities or watertight compartments. But what do these words mean? Who do we mean when we say “self-government”? Who do we mean when we say “public government”?

The “self” and the “public” are circles that can be drawn as widely or as narrowly as we choose. On one level these words can refer to our individual responsibilities within a community, on another they can help us define the size of the “community” itself. We have chosen in this report to view the circles of self-government and public government as including and affecting all residents of the NWT. In this sense public government and self-government blend together and must be assessed on the basis of performance in meeting the needs of all residents of the NWT.

### **What, and Who, is “Government”?**

Any discussion about relationships between “Aboriginal self-government” and “public government” also raises other questions. What do we understand the word “government” to mean?

The word “government” conjures up different images for different people. Textbooks and dictionaries define these words “government” and “governance” as follows:

“government” means a system of governing; a body or bodies of persons governing a state; an administration or ministry.

“governance” means the act, manner, fact or function of governing.

However, we are of the view that such definitions are too impersonal. They tend to hide the fact that in the NWT, with its small population and close-knit communities, the “government” is potentially every one

## The Circle of Self-Government

of us, our friends and our neighbours. We, the residents of the NWT, make up all northern governments.

Government is simply the way we organize ourselves to achieve our common goals. Government institutions at the federal, provincial, territorial, regional and community levels deliver social services, health, education and many other programs and services.

In fact, in Canada governments are involved in virtually every aspect of our lives, and the NWT is no exception. Some of the roles we have come to expect government to play include:

- *Protective functions*, such as defence, policing, public safety (e.g. fire fighting), public health, sanitation, and environmental protection
- *Social services*, such as education, welfare, hospitals, seniors services, parks and recreation
- *Cultural services*, such as language preservation & development, religious institutions, artistic and cultural celebration, and education in relation to traditional knowledge
- *Physical services*, such as roads, airports, and public utilities (light, power, water, sewer)
- *Economic functions*, including planning, development licensing and regulation, traditional pursuits, borrowing and attracting investment.

Governance, or the **process** of governing, involves making choices about allocation of scarce resources. There are rarely enough resources to achieve all political, social, economic and cultural goals. We are all involved because of shared responsibilities for addressing common objectives or competing interests. Governance is the process of searching for and finding balance among competing interests.

The pressures to make these choices will continue in the NWT, but the number and range of governments with valid claims to involvement in governance processes is likely to increase. Consequently, decision-making is likely to be more complicated than under the current system of territorial, community and band governments. Governments will

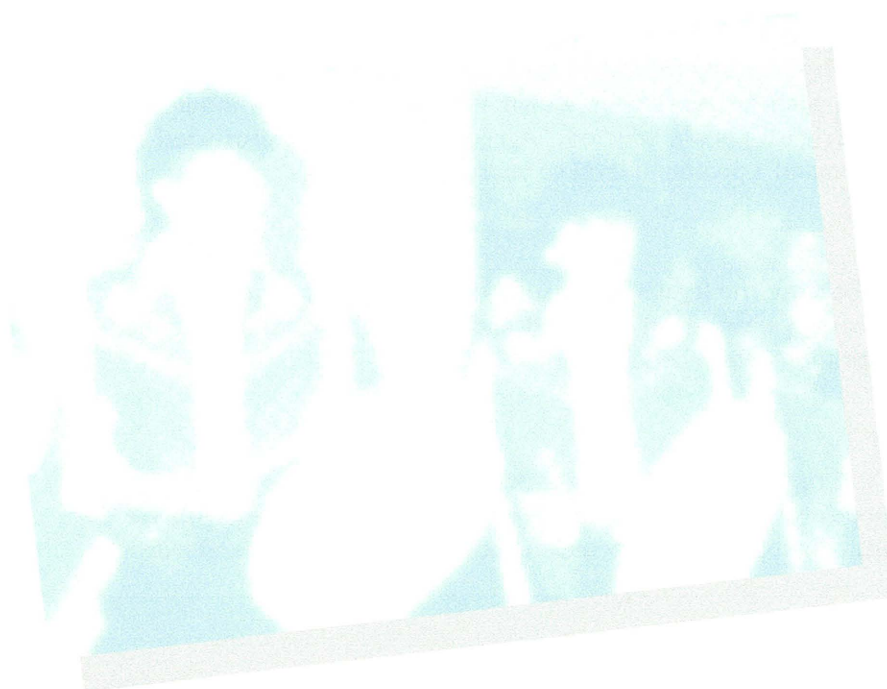
need to cooperate and coordinate to address these complexities.

In the future, we believe it will be more important to look at governments from the perspective of NWT residents:

- What can residents expect in terms of programs and services?
- Who should they look to for delivery of these programs and services?
- Who should they hold accountable?
- How will their interests be represented in government?
- How will current roles and responsibilities change among northern governments that deal with local, regional and territorial issues?

These are just a few of the questions that are the subjects of self-government negotiations.

Matters like education, health care and social services affect everyone. The challenge in practice will be to find an appropriate balance between the influence and control of the various governments involved.



## PART 4: A CLOSER LOOK AT THE FIVE C'S

In this part of the Report we provide additional details in order to provide some explanation as to why we believe each of the trends and issues we have called the "Five C's" is important.

### I. Communities: New Status and Powers

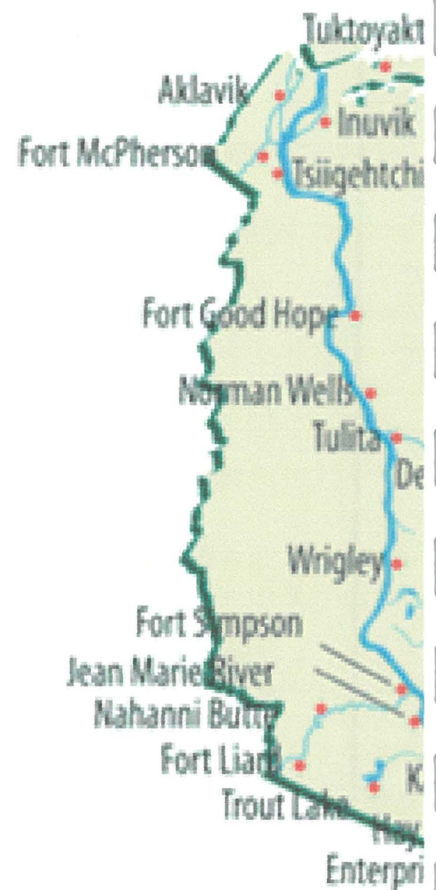
Provisions of self-government agreements signal a fundamental change in the relationships between the law-makers in the Legislative Assembly and those in communities and regions.

Self-government agreements are fundamental elements of the constitutional makeup of the Northwest Territories. Together with land claims agreements, they recognize and affirm a wide range of rights of Aboriginal peoples in relation to land, resources and governance.

Agreements currently being negotiated in the NWT might be given constitutional protection as treaties under the Constitution of Canada. This would mean that some or all of the provisions of these agreements would be protected from infringement by federal or territorial laws. It would also ensure that in most cases such an agreement would not be amended without the consent of the Aboriginal people affected. Agreements that are protected as treaties would command a profound level of constitutional respect.

This is significant because the legal and constitutional status of self-government agreements can have a bearing on the legal and constitutional status of the governmental institutions described in them.

Currently, local and regional governmental bodies in the NWT are created by, and have powers delegated to them under legislation enacted by the Legislative Assembly. (Bands may exercise by-law making powers under the federal *Indian Act*.)



Not only are local or regional laws subject to territorial legislation, courts in Canada have generally taken a restrictive interpretation to the scope of powers delegated to local or regional governments.

However, in the NWT the trend in self-government negotiations is to recognize greater scope and flexibility for the powers to be exercised by community and regional governments. Self-government agreements will establish institutions, systems and processes that have as their objective greater local or regional control.

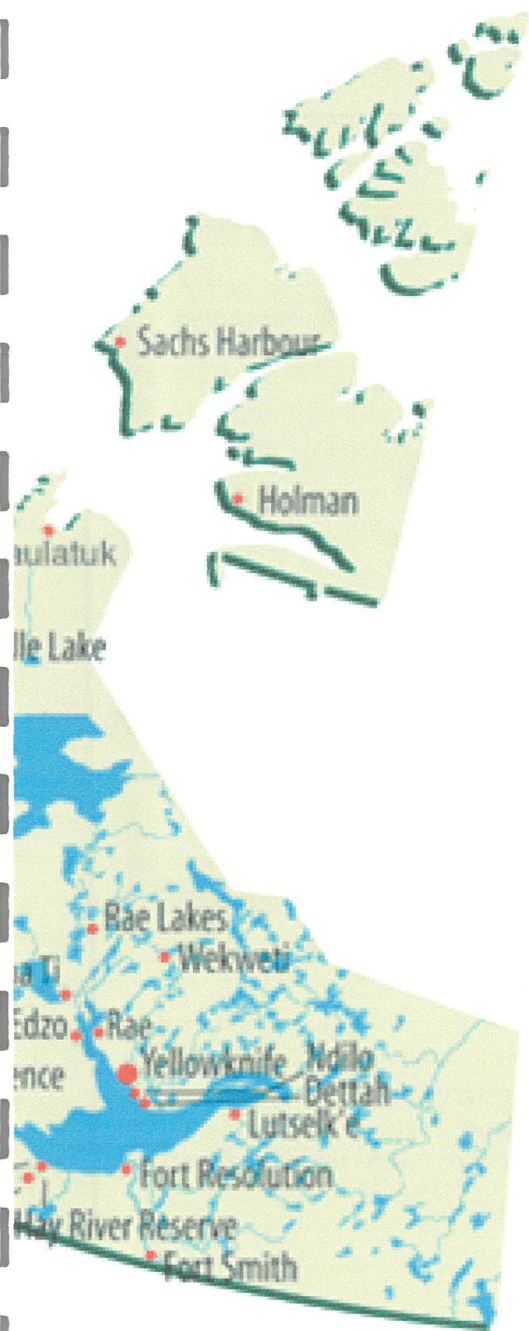
Under some self-government agreements the community governments may be established by territorial legislation based on a framework set out in the self-government agreement, but there may be restrictions on the ability of the Assembly to amend this legislation in the future.

In other cases the status and existence of community governments might flow directly from the self-government agreement itself. Therefore, once the self-government agreement comes into effect the Assembly may have limited legislative authority over the structure and powers of such communities.

In order to make way for the new community structures and powers, some existing communities established under laws of the Legislative Assembly will be 'dissolved'.

However, these agreements do not create closed systems. Self-government arrangements in any particular community or region will affect, and will be affected by, other governance systems in the NWT.

Implementation of self-government agreements could bring fundamental changes to the legal relationships between the Legislative Assembly/GNWT, and many, if not most, communities in the NWT. Table I sets out the communities which are currently directly affected by some form of self-government process. Even the few communities not directly involved in a self-government process will ultimately be directly or indirectly affected by the new governance systems.



**Table 1: Communities and Self-Government Negotiation Processes**

Communities Not in a Process	Salt River	Tlicho	Beaufort-Delta	Sahtu	Deh Cho	Akaiitcho	NWT Metis Nation
Fort Good Hope	Fort Smith	Wekweti	Inuvik	Deline	Wrigley	Dettah	Fort Smith
Colville Lake		Gameti	Aklavik	Tulita	Ft. Simpson	NDilo	Hay River
Norman Wells		Behchoko	Holman		Jean Marie	Lutsel K'e	Ft. Resolution
Yellowknife		Wah Ti	Tuktoyaktuk		Ft. Providence	Deninu Kue	
			Fort McPherson		Hay River		
			Paulatuk		Enterprise		
			Sachs Harbour		Kakisa		
			Tsiigehtchic		Trout Lake		
					Ft. Liard		
					Nahanni Butte		

## 2. Concurrency: Overlapping Law-Making Powers

The general trend in self-government processes in the NWT is to negotiate agreements that recognize “concurrent” law-making powers. This means that the community and regional governments established by self-government agreements will have overlapping jurisdiction with the Legislative Assembly on a number of matters.

“Concurrent powers” means, in practice, that more than one level of government can validly make laws and carry out programs and services in relation to the same matters. When we use the word “validly” in this context, we mean valid from a legal perspective. In other words a court would find such a law to be a valid exercise of power. (Political legitimacy is a different issue which is not considered in this report.)

Under the current *NWT Act*, the Legislative Assembly is given law-making powers over numerous subject areas. The laws enacted under these powers form the basis for virtually all authority exercised by the Government of the NWT.

Some of these subject areas are very broad. For example, the law-making power over “property and civil rights” is probably the most important head of territorial and provincial power. The phrase “property and civil rights” is so broad, in fact, that almost any territorial statute could potentially fall within this law-making power.

Table 2 contains a summary of the main law-making powers of the Legislative Assembly, together with a typical list of areas of jurisdiction that may be the subject of self-government negotiations.

This Table helps illustrate why the trend toward concurrent law making powers, as between the Legislative Assembly and law-making authorities at the community or regional levels, is so significant. Once self-government agreements are in effect, there could potentially be overlapping jurisdictions and responsibilities among institutions at the community, regional and territorial levels.

Where two law-making bodies have overlapping jurisdiction there is always a possibility that they might make laws which conflict with each other. The decision as to whether or not a conflict exists in any particular situation will generally be up to the courts. If a conflict exists, there are various legal rules that are applied by the courts to determine which law prevails. Self-government agreements contain provisions that set out a range of such rules. There is no single rule that will cover every circumstance.

In all situations federal laws prevail over laws of the Legislative Assembly.

In most, but not all situations, federal laws prevail over laws made by law-making bodies provided for in self-government agreements.

In other situations, laws made by community or regional law-making

## The Circle of Self-Government

bodies provided for in a self-government agreement will prevail over laws of the Legislative Assembly. This may occur where the matter involved is a core function for the community or regional self-government body.

**Table 2: Comparison of Law-making Powers**

Legislative Assembly Powers Under the NWT Act	Typical Subject Matters for Self-government Negotiation Tables Based on Deh Cho First Nations Framework Agmt.
<ol style="list-style-type: none"> <li>1. Direct taxation</li> <li>2. Establishment territorial offices</li> <li>3. Municipal institutions</li> <li>4. Elections of members to the Legislative Assembly</li> <li>5. Licensing to raise revenue</li> <li>6. Incorporation of most but not all territorial companies</li> <li>7. Marriage</li> <li>8. Property and civil rights</li> <li>9. Administration of justice</li> <li>10. Prisons, jails or lock-ups</li> <li>11. Issuing of licences or permits to scientists or explorers</li> <li>12. Tax on furs</li> <li>13. Preservation of game</li> <li>14. Education</li> <li>15. Management and sale of certain lands and forests</li> <li>16. Roads and trails on public lands</li> <li>17. Intoxicants</li> <li>18. Hospitals</li> <li>19. Agriculture</li> <li>20. Expenditure of territorial money</li> <li>21. General territorial matters</li> <li>22. Fines, penalties, imprisonment or other punishments</li> <li>23. Other matters conferred by the federal government</li> <li>24. Official languages</li> </ol>	<ol style="list-style-type: none"> <li>1. Settlement area and tenure of land</li> <li>2. Legal status and capacity of self-government</li> <li>3. Constitution of self-government</li> <li>4. Models of governance</li> <li>5. Intergovernmental relationships</li> <li>6. Government liability</li> <li>7. Aboriginal citizenship and eligibility</li> <li>8. Natural resources management &amp; land use planning</li> <li>9. Environmental matters</li> <li>10. Forestry</li> <li>11. Wildlife harvesting and management</li> <li>12. Fisheries harvesting and management</li> <li>13. Education and training</li> <li>14. Social services</li> <li>15. Child welfare, guardianship and adoption</li> <li>16. Health</li> <li>17. Housing</li> <li>18. Heritage resources</li> <li>19. Enforcement and adjudication of laws</li> <li>20. Gaming</li> <li>21. Wills and estates</li> <li>22. Economic development</li> <li>23. Taxation</li> <li>24. Resource revenues, including resource royalties</li> <li>25. Aboriginal language and culture</li> <li>26. Transportation</li> <li>27. Public Works</li> <li>28. Dispute resolution</li> <li>29. Financial payments</li> <li>30. Review and amendment process;</li> <li>31. Ratification</li> <li>32. General provisions</li> <li>33. Clarification of rights (certainty in relation to s.35 rights)</li> <li>34. Access</li> <li>35. Expropriation</li> <li>36. National Parks</li> <li>37. Protected areas</li> <li>38. Constitutional protection for elements of final agreement</li> <li>39. Fiscal arrangements for self-government</li> <li>40. Implementation and transitional arrangements</li> <li>41. Overlaps and rights of other Aboriginal people</li> <li>42. Aboriginal organizations' loans</li> </ol>



There will also be situations where laws of the Legislative Assembly will prevail in the event of a conflict with laws made by a body provided for in a self-government agreement.

This new reality is likely to have implications for procedures that the Assembly currently follows to prepare, debate and enact its laws. It also has implications for policy-makers in the GNWT who have a significant role in developing the content of legislation and directing the government's legislative agenda.

The nature and scope of the implications arising from self-government agreements will, of course, depend on the formal and informal relationships which will exist between and among the various levels of governments exercising these concurrent powers and responsibilities.

Among the significant changes that can be fairly anticipated from this trend are:

- New responsibilities for programs and services at the community and regional levels
- New lines of accountability for these programs and services
- New mandatory consultations and interactions among governments
- New structures and processes for the GNWT and Legislative Assembly
- New procedures and processes for conducting intergovernmental relations
- New expectations among citizens.

Law-making powers, by themselves, do not necessarily bring more financial resources into a government's coffers. Governments use their assets and their taxing powers to raise revenues and generally supplement this through borrowing or transfers from other governments.

At present and in the future, financial capacity is likely to be a critical factor in the exercise of law-making powers by local or regional institutions, as well as for the GNWT. It will likewise have a bearing on programs & services and other operations over time. Perennial

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financial issues for northern governments typically include:

- capacity to raise own source revenues
- external funding sources (e.g. transfers from other governments)
- borrowing/debt repayment capacity.

The *Report of the Special Joint Committee on Non-taxed Based Community Affairs* provides insights into some of the challenges currently facing many of our small and medium-sized communities. Self-government agreements could mean some of these same communities would be taking on even greater responsibilities than today.

The GNWT is also faced with the ongoing challenges of raising revenues to finance its operations, programs and services.

### 3. Consultation: Formal Requirements

Self-government agreements have begun to define the term “consultation” and have imposed formal consultation requirements on the GNWT and on self-governments at the community or regional level. The range of matters requiring consultation could be quite extensive and this would likely necessitate formal and informal intergovernmental mechanisms to ensure compliance.

Typically, the definition of “consultation” sets out formal requirements such as the following:

"consultation" means

- (a) the provision, to the person or group to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that person or group to prepare its views on the matter;



- (b) the provision of a reasonable period of time in which the person or group to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the person or group obliged to consult; and
- (c) full and fair consideration by the person or group obliged to consult of any views presented.

These consultation obligations and other undertakings in relation to legislative, executive and administrative processes could have a significant impact on territorial structures and processes. This is particularly true in a system of consensus government where the Assembly and its committees play a significant role in the development and review of the budget and business plans of the GNWT, as well as in relation to the legislative agenda of the government.

Obligations to consult that are imposed on both the GNWT and self-governments carry with them formal requirements for notification, information exchange and dialogue. In practice, these obligations will likely require governments to find formal and informal mechanisms to coordinate a range of activities including planning, policy-making, law-making, programs and service delivery, and enforcement.

The intergovernmental forums and procedures to ensure compliance with these consultation provisions will need to be designed and implemented, presumably on the basis of cooperation and consultation among governments. As each new self-government agreement is concluded, it can be expected that the consultation requirements will increase for the GNWT. There may also be provisions which require self-government bodies to consult with other bodies in other regions.

The mechanisms, time and resources to manage all these formal consultation processes could be considerable once all self-government agreements are in force. Unlike many current consultation processes which are discretionary on the part of the GNWT, the consultation provisions of self-government agreements will potentially have more political and legal force. A failure to meet the requirements could be a breach of a constitutionally-protected agreement.

Therefore all northern governments must take these consultation

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requirements very seriously. There will be a need for governments to agree on consultation mechanisms and procedures, if these details are not provided in a self-government agreement.

In addition, all governments will need to determine what levels of time and resources should be dedicated to consultations; how multiple or overlapping consultation processes should be managed, how conflicting input can be reconciled; and how, ultimately, the input from consultations should be integrated into each government's policy-making and law-making.

Consultation requirements, whether they apply to the GNWT or to a community or regional government, can be expected to create leverage on issues and linkages among issues. In any given set of circumstances this might be a positive or a negative influence.

### **4. Coordination: Carrying Out Shared Responsibilities**

All northern governments will need to be mindful of the laws, policies and activities of other governments with which they share concurrent powers and a range of interrelated program and service functions. In some cases governments might even share facilities. Consequently, practical realities will require some level of coordination among governments to ensure efficient and effective governance, to reduce overlap and duplication, to achieve the best program and service delivery for all NWT residents, and to ensure that lines of accountability are clear.

We believe this will be an increasingly important process in a political environment where several governments may be "competing" for human and financial resources, as well as for public support on the political issues of the day. The need for strategic planning and close coordination will likely increase because the scope for independent action could be constrained by consultation or consent requirements in self-government agreements. Clear lines of accountability in this sort of environment might be difficult to find.

The following questions illustrate issues that make coordination among governments important:

- **Capacity:** Where there are shared jurisdictions and responsibilities, how will all northern governments determine the appropriate level of capacity each is to maintain?
- **Legitimacy:** Government performance may play a significant role in whether residents treat a particular government body as relevant or legitimate. How should all northern governments coordinate their activities to ensure that each is fulfilling their role in meeting shared responsibilities?
- **Accountability:** How will all northern governments coordinate and balance their accountability to all NWT residents where these governments have concurrent jurisdiction and shared responsibility for a particular matter?
- **Accessibility:** How will all northern governments coordinate to ensure accessibility to programs and services to all NWT residents where governments have shared responsibilities for a matter?
- **Sustainability:** How will all northern governments coordinate their activities and spending to ensure that all northern governments, and the programs and services they deliver, are sustainable?

Coordination issues in relation to the legislative process will be of particular interest to the Legislative Assembly. Potential issues can be grouped into four categories: legislative jurisdiction; legislative content; legislative process and appropriations.

Legislative jurisdiction will be affected, not because powers are added or taken away, but because self-governments will begin to exercise law-making powers in some of the subject areas where currently only the Legislative Assembly makes laws (technically Parliament can also make laws in all fields of territorial jurisdiction but generally this does not occur).

In other words, there will be some overlap in the matters for which the Assembly and self-governments can validly enact legislation. This “concurrent” jurisdiction has the potential to result in conflicts among pieces of legislation. In practice, the legal definition of “conflict” will probably mean that such conflicts are rare. But the result of any

## The Circle of Self-Government

conflict will render one of the pieces of legislation “inoperative”.

Clearly there can be political, social and economic consequences if the legislation supporting an important program or service is rendered inoperative. Dialogue and coordination will be required among governments to prevent conflicts when laws are being enacted.

While governments may be the primary players in finding solutions to any apparent conflicts, it is citizens who often feel the effects of conflicting laws. In cases where laws conflict, a citizen might challenge one or both laws, or might seek some clarification as to which law should be obeyed. Governments in the NWT will obviously want to be very cautious about forcing the time and expense of legal actions on NWT residents.

To avoid court actions, governments will need to find mechanisms to minimize the enactment of conflicting laws at the front end, and at the same time find ways to quickly reconcile laws that create conflict once these come to governments' attention.

As a party to self-government agreements, the GNWT may commit to introduce and support certain types of legislation relating to ratification, implementation of self-government agreements, and so on. The commitment to enact legislation can have ripple effects throughout the legislative agenda of the GNWT and the Legislative Assembly. For example, it might mean amendments to existing legislation, allocation of drafting time by government officials, and rescheduling other new legislation or amendments. These activities would require human and financial resources, and time for committee work and debate.

In addition, self-government agreements will not only have impacts on the timing of legislation but also on other aspects of the processes for preparing, passing and amending legislation. Agreements contain at least two types of commitments in this regard. Self-government agreements may contain provisions that require certain criteria to be met by the Legislative Assembly when enacting a particular piece of legislation. These commitments have important impacts on the content of legislation. Governments may be politically and legally required to live up to these commitments.

In other cases negotiators might take the matter even further by preparing, usually with government involvement, draft bills that contain the understandings of the parties. Such commitments have the collateral impact of requiring some rethinking of the traditions and rules that have governed legislative processes in the Legislative Assembly.

In particular, while principles regarding non-confidence will continue to apply as a general rule, members of the Assembly may feel bound to pass legislation over which they have little or no control because of negotiated arrangements that are considered by the parties to be conditions precedent to a self-government agreement. Such scenarios can be foreseen where there have been protracted and expensive negotiations leading up to the introduction of a piece of legislation.

Alternatively, it might be that NWT legislators reject such legislation by refusing to pass it, or substantively change the understanding of negotiators by introducing amendments to bills tendered for passage. One scenario in these situations is for the parties to go back to the negotiation table. Another is for Parliament to pass the legislation and make it binding on the NWT.

Where the agreements contain specific commitments to undertake actions, it would be expected that a government would not deliberately breach the obligations. Some of these obligations will require funds to be spent and therefore some appropriations are implied. A government cannot build facilities or run programs and services without funding. Similarly new or more comprehensive consultation obligations require activities on the part of government officials and politicians.

Related to the commitments of governments to pass certain pieces of legislation, and to the issue of legislative timing, are commitments to consult, or to obtain consent in certain circumstances, on the preparation, enforcement, or amendment of laws. In these situations the formal processes required for consultation and coordination under the self-government agreements can become lengthy and expensive, especially where parties start from different understandings.

## 5. Cooperation: The Needs for Positive Relationships

We assume that cooperation among our northern governments will be a practical necessity if there is to be effective and efficient governance in the NWT.

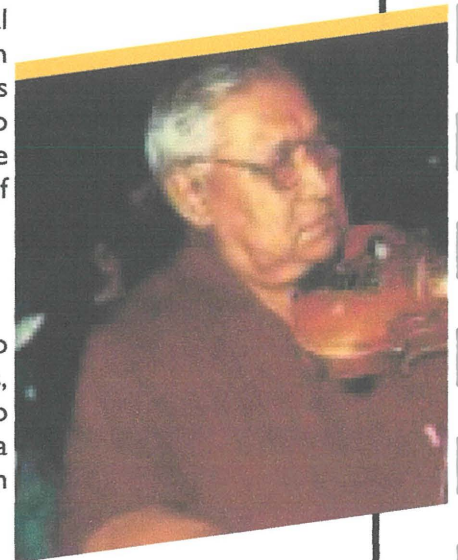
As a result of self-government agreements, community and regional governments in the NWT will likely have greater powers and responsibilities in relation to some or all of the so-called "social envelope" programs. This includes programs such as health, education, social services, housing, and so on. These programs tend to be very expensive. In Canada generally, it is the social envelope programs which account for the largest percentage of territorial and provincial spending.

The capacity of all northern governments will be challenged to fund and to provide these sorts of programs and services. Many northern governments, including the GNWT, face "economies of scale". This issue is not unique to communities in the NWT. Many, if not most, rural communities in Canada also share these capacity issues. This is not a new phenomenon. It has been observed in many analyses over many decades:

"Many units of local government are too small, either in area or in population, to be effective units of administration for the present day services required of local governments." [Corry 1960s]

"Local government, as it has developed in Canada, fulfills primarily a service delivery function, although it can also perform law enforcement and get involved in economic development and other activities. Preservation of Canadian, provincial, regional and ethnic cultures has become a concern of federal and provincial governments, and even with their immense resources they find it a difficult and challenging task." [C.E.S.Franks 1980s]

"Even with full powers of direct taxation, most Aboriginal communities lack the tax base that would enable them to raise enough revenue to provide services at a level that is appropriate for Canadian citizens.



*"...implementation of self-government agreements needs to be seen as an ongoing process. From this perspective, self-government agreements are not final agreements, they are beginning agreements."*



This is also true of the “have not” provinces and both the territories, all of which are net beneficiaries of federal transfer payments.” [Hogg and Turpel 1990s]

There is an expectation that economies of scale can be overcome through aggregation of resources and cooperation among governments. The degree to which this view is, or is not, accurate will have a significant bearing on the on-going implementation of self-government agreements in the NWT.

All northern governments will require ways to secure cooperation from other governments both in areas within their jurisdiction, and in areas beyond their control which may significantly affect their community or region.

### Summary

Self-government agreements will empower communities and regions with new law-making powers. They will also have responsibilities for program and service delivery in relation to some matters of critical importance to NWT residents. The futures of all northern governments will be linked together even more closely than they are today. The new relationships that will develop among our communities and our northern governments will depend on our attitudes, and our relationships, with each other.



## PART 5: CONCLUSIONS & RECOMMENDATIONS

**T**he Committee has concluded that the range and scope of potential impacts of self-government agreements on the structures and operations of the GNWT and Assembly could be all encompassing. Fully implemented self-government agreements could potentially have implications for every facet of government in the NWT. We also believe NWT residents are open to change but will also expect stability.

The trends and issues we have identified in Parts 3 & 4 of this Report are, we believe, the ones most likely to have significant long-term implications for the Legislative Assembly and the GNWT.

In the following pages our conclusions are organized according to the terms of the Committee's mandate. Our recommendations include structural and action-oriented matters. These recommendations are only a starting point in an effort to provide a basis for a more coordinated and systematic examination of the changing face of governance in the NWT. Some changes may take a decade or more to unfold.

As we noted in the Introduction to this Report, the expression "implementing self-government" can be misleading. Describing the emergence of new systems of governance in this way can make it sound like a process that is done once or that can be completed in a specific time.

We believe it is important to stress that implementation of self-government agreements needs to be seen as an ongoing process. From this perspective, self-government agreements are not *final* agreements, they are *beginning* agreements. It is important to remember that change will occur over many years rather than completely and suddenly on a given date.

In practice we think the staggered processes of negotiation and implementation will give rise to gradual and practical changes. Nonetheless, the GNWT and Legislative Assembly may well face the prospect of ongoing reorganization and restructuring for the next 10 to 15 years as self-government agreements come into effect in the regions and communities.

Owing to time and resource constraints, we were unable to undertake a full and detailed review of every potential impact on existing legislation, or on particular programs or services. Nor was it possible to go into extensive detail on possible implications for all current governmental practices and procedures.

In the nine months which the Committee has been examining these issues, we have barely skimmed the surface. The Committee believes ongoing work is required. We recommend that the appropriate bodies continue in depth analysis on most elements of the current mandate and we have provided recommendations in this regard.

The conclusions and recommendations reflect what we think is possible at this stage of the implementation process. We believe it is imperative that future Assemblies and governments continue to analyze and prepare for the changes that will flow from the trends we have identified in this Report. We recommend that future Assemblies return to and build upon the issues presented in this Report at regular intervals as implementation processes come into effect and as circumstances warrant.

Complex legislative, operational and financial issues have to be carefully evaluated, and the necessary time and resources have to be dedicated to planning and carrying out transition measures.

Responsibility for planning and preparing for the implementation of self-government does not fall upon the GNWT and the Legislative Assembly alone. The federal government and Aboriginal governments are partners in this process and we encourage early attention to enhancing existing forums, and to promoting and establishing new forums, where appropriate, to ensure ongoing dialogue on implementation issues.

## **CONCLUSIONS RELATING TO SPECIFIC MANDATE ISSUES**

### **Providing Information and Opportunities for Input**

#### **A) *Aboriginal Governments:***

In considering and carrying out its mandate the Special Committee determined that at this stage in self-government negotiations and implementation, the Legislative Assembly is not in the best position to provide information to Aboriginal governments on issues emerging from self-government processes.

## The Circle of Self-Government

Indeed much of the material studied during the preparation of this report flowed from documents prepared by or in collaboration with Aboriginal organizations. The details of negotiation sessions are generally confidential and not open to the public.

Aboriginal organizations are engaged in negotiations and have their own processes for informing their constituents and the public. For example, plain language summaries have been made available to the public in respect of the *Tlicho Agreement* and the *Beaufort Delta Self-Government Agreement in Principle*. Similarly, framework agreements and various process agreements in relation to other processes have also been made available.

Numerous community workshops and information sessions have been provided by the Aboriginal parties alone, as well as in cooperation with other governments. During the self-government phase of the Committee's mandate letters were sent to Aboriginal leadership to invite input into the Committee's process [APPENDIX II]. No representations were received from Aboriginal governments or organizations.

We believe that as implementation of self-government agreements proceeds it will become increasingly important to identify formal and informal ways to improve on-going discussions among northern governments on operational and other practical issues. Forums for such on-going dialogue should be flexible and should occur away from the negotiation tables. One objective should be to consider and plan practical ways to build awareness of practical implementation issues among all northern governments and the public to ensure a smooth transition as self-government agreements come into effect. Another objective should be to begin developing the positive intergovernmental relationships that will be necessary to prevent governmental gridlock in the NWT.

The GNWT, along with the federal government and Aboriginal governments, has a role to play in meeting these objectives. In our recommendations below we have called for an action plan to be developed by the GNWT to help foster intergovernmental dialogue, to build awareness among NWT residents, and to better prepare for the changes that will flow from self-government agreements.



**B) Stakeholder Groups, Elected Bodies and the General Public:**

The Committee published a brochure that invited input on issues related to the implementation of self-government [APPENDIX III]. In addition, our Interim Report, which is the substantive basis for this Final Report, was tabled in the Legislative Assembly in March, 2003. Our Interim Report also invited and encouraged input.

Given the range and complexity of issues, and the different models for regional and community governance emerging from negotiations, meaningful public consultations for a study such as the present one have been difficult to organize and carry out in the timeframes available.

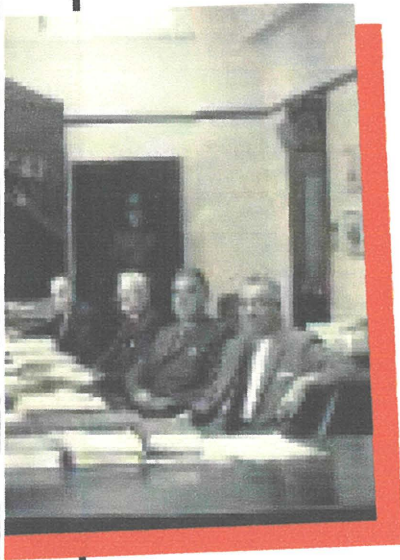
We have been primarily concerned with issues relating to the machinery and processes of government. Many of the issues considered were technical in nature. Consequently, in May, 2003 some technical briefings were sought and received from GNWT officials on issues relating to implementation of self-government.

No representations were received from stakeholder groups, elected bodies or the general public. The NWT Association of Communities indicated ongoing interest in issues relating to implementation of self-government and further liaison with community governments is warranted.

Future Legislative Assemblies and the GNWT will need to carefully consider how best to engage the public and other stakeholders in consultations relating to the implementation of self-government. The issues involved are of concern to all residents of the NWT.

However, we do not recommend simply requesting public input on long, legalistic documentation, as this does not provide an appropriate context for constructive discussion. A functional or "result-oriented" approach could be considered in which northern governments jointly communicate and explain to residents how key programs and services will be delivered during transition periods and over the longer term.

These matters could also be addressed in an action plan to be developed by the GNWT, as mentioned above and in our recommendations.



## Impacts in the Areas of Legislation and Appropriations

These issues received considerable attention from the Committee. To summarize, the trends and issues described in Part 3 of this Report are likely to result in a broad range of implications for the Legislative Assembly and the GNWT in respect of:

- law-making
- policy-making
- government decision-making
- government operations, including program and service delivery
- human resources management
- land and resources matters
- financial management including budgeting and appropriations
- raising revenues through taxation and other means
- capital assets and other facilities, and
- intergovernmental relations.



There will be an ongoing need to identify options for carrying out legislative responsibilities in circumstances where territorial, regional and community law-makers will have concurrent jurisdiction.

In our view, the new NWT will need more intergovernmental forums for policy development and operational dialogue. New forums and processes will need to be developed for northern governments, leaders and officials to better coordinate and cooperate on law-making and on program and service delivery.

Consideration could also be given to enhancing existing forums so that they can broaden their activities in relation to implementation planning. In addition, as self-government negotiations proceed, the parties to negotiations will have to undertake activities to increase the awareness of, and inform residents about, changes anticipated from implementation of self-government.

The Legislative Assembly does not have within its committee structure an ongoing, focused approach to analyzing and responding to the implications of implementing self-government agreements. Our Special Committee's mandate will cease with the tabling of this Final Report.

An analytical framework needs to be developed for determining the legislative dimensions emerging from self-government agreements. This framework should include an examination of the fields of jurisdiction currently set out in self-government agreements, agreements in principle, or framework agreements.

An ongoing issue will be how best to deploy existing capacity within the Legislative Assembly and GNWT as the anticipated division of responsibilities changes among governments.

Regular briefings should be provided to Assembly members on the likely timing and consequences of self-government legislative measures particularly in the context of:

- the content of legislation specifically required for implementation;
- the processes for preparing and enacting such legislation;
- processes for amending such legislation in the future;
- the consequences of any failures to meet the legislative commitments in self-government agreements; and
- any issues relating to appropriations which can be anticipated in light of this legislation.

Implementation of self-government agreements should be integrated into the planning and budgeting exercises of the GNWT and the Assembly as soon as possible. Action is required to better prepare for the changes that will flow from implementing self-government agreements, and planning for this action should be done now so that the new Assembly in the fall of 2003 can review and approve plans and budgets as a first order of business.

Both the Government and the Legislative Assembly could begin to develop action plans for integration into the budget planning process as soon as practically possible.

In our recommendations below we have called for an action plan to be developed by the Legislative Assembly so that it is in a better position to monitor and plan for changes resulting from the implementation of self-government agreements which will affect the internal operations of the Assembly.

## Models for Implementing Self-Government in the NWT

The Committee reviewed the broad parameters of the governance models being negotiated in self-government agreements, as well as the range of implementation processes contemplated by the current documents [APPENDIX VI].

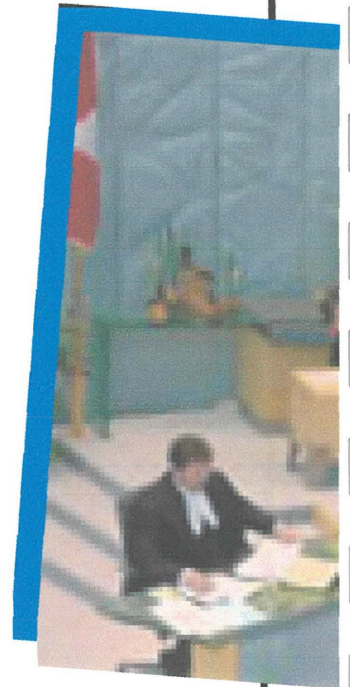
This Report does not contain a detailed description of each governance model being negotiated. This information is available in the plain language summaries developed by Aboriginal, federal, and territorial governments and is generally available on websites, some of which have been listed in APPENDIX VII for convenience.

Implementation planning is an integral part of each negotiation process. Detailed task and activity sheets are negotiated separately for each self-government agreement. Tripartite committee structures may be established to monitor and guide implementation. Funding levels, and the party responsible for funding particular activities, are also determined by negotiations. Typically, the federal party attempts to minimize funding requirements while the Aboriginal party and the GNWT attempt to secure sufficient sustainable funding to fully implement self-government agreements.

Financing self-government is a shared responsibility among federal, territorial and Aboriginal governments. The GNWT has committed to contribute the resources currently allocated to deliver existing programs and services and has developed a system of geographical tracking of expenditures so that it is better able to quantify these resources in relation to each of the self-government processes.

Implementation issues are tightly intertwined with financial issues. Predicting future funding requirements is not an exact science and negotiation processes produce many disagreements about the definition of incremental costs and the magnitude of these costs as a result of implementing self-government agreements.

Funding issues will be of critical importance to the success or failure of self-government agreements. Without adequate and sustainable funding, effective implementation of agreements will be difficult if not impossible. Incremental costs could be substantial and ongoing processes for engaging with the federal government and Aboriginal governments on these issues will be required.





## Impacts on Legislative Assembly Operating Structures and Procedures

Over the longer term self-government may influence everything from the boundaries of territorial electoral districts, to the development of legislation, to the operations of committees of the House.

The details of self-government agreements will evolve as negotiations and implementation proceed; however, the Committee has already identified in Part 3 of this Report some significant trends which will impact on the Assembly's structures and procedures. The combined effects of these trends will undoubtedly create structural and procedural issues for the Legislative Assembly.

The section in Part 3 entitled "Consultations" suggests that the GNWT will also need to be aware of, and comply with, a range of formal consultation requirements. These consultation requirements will in turn have implications for the structures and operating procedures of the Legislative Assembly.

In particular certain pieces of legislation, such as the community government legislation required to implement the *Tlicho Agreement*, once enacted by the Assembly, can only be amended with the consent of the Tlicho Government. In order to comply with this requirement the GNWT and the Assembly will need to work with the Tlicho Government to develop appropriate mechanisms and procedures for obtaining and validating their consent.

There is a need to maintain an ongoing monitoring of self-government implementation bodies and procedures in order for the Legislative Assembly to adjust its own structures and operations in ways that will assist in the coordination and cooperation which will be necessary for self-government to succeed.

Ongoing evaluation of the current structures and procedures will be required to determine whether they are adequate to deal with the range of implementation issues in the short and longer term.

In particular, the Legislative Assembly should conduct a detailed study of the implications of consultation and consent requirements in self-government



## The Circle of Self-Government

agreements to identify possible options or mechanisms to comply with these requirements and to determine how these requirements will affect current practices and procedures in the Assembly.

In addition, options will need to be identified for coordinating and harmonizing legislation where the Assembly and self-governments have concurrent fields of jurisdiction. Self-government agreements usually contain provisions which encourage harmonization in some sectors, but in other sectors that will not be the case.

## Legislative Initiatives to Implement Self-Government Agreements

We can identify three distinct categories of legislative initiatives that relate to implementation of self-government agreements.

In the first category is the need for amendments to the *NWT Act* to ensure that the Assembly has appropriate jurisdiction to enact legislation required for implementation. For example, both the *Yukon Act* and the *Nunavut Act* contain provisions which speak directly or in part to this matter, but the *NWT Act* does not:

### *Nunavut Act:*

**25.** For greater certainty, the Legislature may make laws under any other provision of this Act for the purpose of implementing the land claims agreement entered into by Her Majesty in right of Canada and the Inuit on May 25, 1993 or any other land claims agreement with an aboriginal people as may be designated by order of the Governor in Council.

### *Yukon Act:*

**21.** Despite subsection 20(1), the Legislature may, in exercising its powers under sections 18 and 19 for the purpose of implementing aboriginal land claim agreements or aboriginal self-government agreements, make laws that are in relation to the matters coming within class 24 of section 91 of the *Constitution Act, 1867*.

The Committee has been advised that some limited amendments to the *NWT*

Act are being considered to allow for the implementation of the *Tlicho Agreement*. The nature and scope of these amendments will need to be considered by the Assembly to ensure that they meet the anticipated legislative needs in the coming years.

The second category involves legislation which must be enacted in order to carry out specific obligations contained in self-government agreements. One such example that has already been cited is the need for the Assembly to enact community government legislation to establish the community governments in accordance with the terms of the *Tlicho Agreement*.

The close linkage between this type of legislation and the terms of a particular Agreement raise difficult questions respecting the appropriate procedural and substantive dimensions. As described above in Part 3 of this Report, members of the Assembly may feel bound to pass legislation over which they have little or no control because of negotiated arrangements that are considered by the parties to be conditions precedent to a self-government agreement. Such scenarios can be foreseen where there have been protracted and expensive negotiations over many years leading up to the introduction of a piece of legislation.

Alternatively, it might be that NWT legislators have been involved in “pre-screening” of legislation in order to reduce the prospects of the Assembly rejecting such legislation by refusing to pass it, or substantively changing the understanding of negotiators by introducing amendments to bills tendered for passage.

The third category involves a range of legislative impacts arising from the general trend of self-government agreements to provide more scope for community or regional laws in certain sectors which are currently occupied only by territorial legislation.

Amendments to existing legislation may be required so that the spirit and intent of self-government agreements is realized by a realignment of roles and responsibilities. For example, in some negotiation processes it is contemplated that the territorial level will provide a broad framework of “standards” in some sectors, while the regional and community level of government will make laws within this framework of standards.

The first category of legislation, namely amendments to the *NWT Act*, is of course a matter for the Parliament of Canada, but such amendments clearly

## The Circle of Self-Government

have consequences for territorial legislators and government officials. The Legislative Assembly will require adequate opportunities for consultation with and input from members on any such amendments. In addition, in the longer term, the broader issue of revising and updating the *NWT Act* will need to be revisited in light of implementation of self-government.

Of particular interest to legislators will be the second category of legislation mentioned above. The Assembly needs to consider how to standardize its approach to drafting, introducing, debating and passing such legislation so as to avoid conflict in the late stages of self-government negotiations.

The third category of legislative initiatives is somewhat more speculative and will be subsumed in the day to day operations of the Assembly over time.

## Legislation, Policies and Practices & Concurrency of Jurisdiction

As above sections have noted, the on-going demands of coordination, consultation and harmonization of legislation will require new structures and procedures to make the situation workable. The challenges of working with seven or more self-government arrangements is likely to be quite daunting for the GNWT and the Legislative Assembly. Developing generally applicable territorial legislation may be difficult or impossible where there are pressures for differential treatment in each region. Coordinating and consulting in these circumstances can be time consuming, costly, and ultimately frustrating.

There is no simple formula for determining how existing and future legislation, policies and practices of the Legislative Assembly and GNWT should be amended to reflect concurrent jurisdiction. Governments are not bound to exercise their jurisdiction, but if they do decide to exercise it, there is also discretion to act within the scope of that jurisdiction in accordance with whatever priorities and policies a government might have.

In other words, the GNWT and the Legislative Assembly cannot know in advance how a particular self-government might choose to exercise its powers, and vice versa. As Part 3 of this Report describes, self-government

agreements contain rules of paramountcy which will operate in the event that there is a conflict between a self-government law and a territorial law. There is not a single rule that applies in all situations.

However, perhaps the more difficult situations will arise, not when there is a conflict between laws, but where there is a shortage of resources or a difference of priorities that affects programs and services within a particular subject matter.

In summary, the implications of self-government for territorial legislation, policies and practices will be highly dependent on the quality of the relationships at any given time among the self-governments and the territorial level of government.

### **Budgetary Process and the Duality of Interests**

Budgetary and financing issues are one of the more complex and indeterminate issues surrounding implementation of self-government. Financing is probably the single most important factor in the success of new systems of governance in the NWT. Not only will financing affect the capacity of northern governments to operate and deliver programs and services, it is also likely to be a perennial irritant in political relationships within the NWT and with the federal government.

Financing agreements associated with self-government agreements often have relatively short terms (5 to 10 years). Disagreements about the nature and extent of incremental costs often go unresolved and take-it-or-leave-it negotiation tactics are not uncommon. Uncertainty about funding flows and expectations about post-implementation levels of programs and services further complicate the picture.



The GNWT is currently dedicating considerable efforts towards dealing with revenue sharing and budgetary issues in consultation and cooperation with the Aboriginal Summit.

Future Legislative Assemblies and the GNWT will need to consider, on an ongoing basis, how best to monitor and respond to the critical financing and

## The Circle of Self-Government

budgetary issues associated with implementation of self-government. These issues fall into five categories:

- funding levels
- funding flows
- incremental costs
- taxation
- debt management.



The Assembly should receive regular reports on the status of on-going talks on financing and budgetary issues.

In Part 4 of this report we observed that community and regional governments in the NWT will likely have greater powers and responsibilities in relation to some or all of the so-called “social envelope” programs. This includes programs such as, education, social services, housing, health and so on. These programs tend to be very expensive. The capacity of all northern governments will be challenged to fund and to provide these sorts of programs and services.

We have also suggested elsewhere in this Report that there is not likely to be any clear “duality of interests” in the NWT in the future. We have concluded that the phrases “Aboriginal self-government” and “public government” do not really capture the hybrid nature of the emerging systems of governance. The shift in status of communities and regions, and the recognition of concurrent law-making powers among northern governments will more likely lead to a multiplicity of interests which will be defined by a mixture of local, regional and territorial interests.

## Transitional Measures

The Committee has identified some significant trends which are described in Parts 3 & 4 of this Report. The trend towards “entrenched” community and regional governments is unique in Canada and is likely to significantly affect political, economic and legislative dynamics within the NWT.

Elsewhere in this Report we also suggest there is a need for a more coordinated approach to implementation issues within the GNWT. In addition, greater attention has to be given to potential impacts and issues which will affect the powers, structures and operations of the Legislative Assembly.

One of the factors that appears to postpone in-depth analyses of implementation impacts in the NWT is the fact that self-government negotiations are gradual processes which may not have significant practical consequences for several years.

However, there are models and practices that could be reviewed for their relevance and utility to self-government implementation. For example, while the planning and implementation approach used during the establishment of Nunavut has a number of distinguishing features, there are lessons to be learned from this process.

Regular and more systematic approaches to implementation planning should be instituted within the GNWT and the Legislative Assembly in respect of structures and functions. For example, the type of transition review undertaken by the GNWT prior to each general election could be conducted at regular intervals with a focus specifically on implementation issues as they relate to the GNWT and the Legislative Assembly.

### **Impacts on GNWT Policy, Programs, Services, Financing & Administration**

Perhaps the most immediate issue that will affect the GNWT is the matter of capacity. This is a two-pronged issue. On the one hand is the shared responsibility the GNWT might have for building community and regional capacity so that the expectations from self-government agreements can be met. On the other hand, there is a delicate balance that must be maintained when the GNWT reduces its capacity in a particular sector as a self-government body assumes responsibility for that function.

The staggered negotiation and implementation of self-government agreements makes this an ongoing issue for the GNWT for the foreseeable future. Of particular concern in a system of concurrent jurisdictions is the issue of ultimate responsibility if one or both levels of government occupy or withdraw

## The Circle of Self-Government

from a particular activity, program or service.

The Committee has had the benefit of reviewing a recent study by Deloitte & Touche entitled *Government of the Northwest Territories—Review of the Departmental and Headquarters Organization Structure*. The GNWT will be considering this and other important structural and organizational issues covered in the Deloitte & Touche review. As this review points out:

“...responsibility for preparing the GNWT and the communities of the NWT for implementation of Aboriginal self-government is shared between various departments....[H]owever, the GNWT has yet to formally designate a sole point of accountability for developing the process of implementation as well as overseeing this transition within regions and communities, and there continues to be confusion within the organization in relation to the assignment of leadership responsibilities for this process, despite the priority of ...implementing self-government agreements.”

We agree with this assessment. We would like to see a coordinated approach to implementation which factors in the Legislative Assembly and all departments. In reviewing headquarter functions, the GNWT should ensure that the appropriate structures are in place to allow for a coordinated implementation approach.

As is noted in the Deloitte & Touche review of GNWT headquarters structures and operations, the GNWT will need to be increasingly flexible and innovative to manage the impacts from implementation of self-government agreements. Additional resources will need to be dedicated to finding new approaches to developing and managing policies, programs and services, and to financing administrative structures in the context of multi-level governance. Some of the tools provided by new information and communication technologies will become increasingly relevant.

Issues relating to the implementation of self-government will increasingly need to be integrated into labour market studies, capital planning, and reorganization of GNWT structures and operations generally.



## Impact on Authorities in the NWT Act and Territorial Statutes

Owing to time and resource constraints, the Committee was unable to undertake a full and detailed review of the potential impacts of self-government agreements on the *NWT Act* and all territorial legislation. However, it is possible to extrapolate some implications from the broad trends and issues identified in Part 3.

Three main authorities in the *NWT Act* can be identified for further study at this stage.

First is the set of powers and authorities relating to revenue generation. The limited authority which the GNWT and Assembly possess in relation to the majority of lands and non-renewable natural resources in the NWT is a key factor in economic development in the territory, and in the territorial government's capacity to generate revenue to meet the needs of northern governments. Devolution talks may resolve some of these issues, but there will be ongoing issues about revenue sharing, fiscal offsets, spending levels and the appropriate assignment of responsibilities, particularly in shared fields of jurisdiction, such as those involving social envelope issues.

Second are the provisions in the *NWT Act* which require federal approval prior to borrowing by the GNWT. Restrictions on borrowing could affect the overall financing picture for the territorial level of government. By comparison, federal approval may or may not be required for borrowing by self-governments under the terms of self-government agreements.

Third is the general rule in the *NWT Act* that all territorial legislation is subject to federal legislation. This legal requirement means that federal legislation which ratifies and implements self-government agreements may substantially affect the interpretation of the *NWT Act* and territorial legislation flowing from it.

In addition, constitutional entrenchment of all or part of a self-government



## The Circle of Self-Government

agreement can also have a bearing on the exercise of authorities under the *NWT Act* and on territorial legislation generally. One such issue identified in Part 4 is the requirement for consultation, and in some cases consent, prior to enactment of territorial legislation or amendments to such legislation. To the extent these are commitments in constitutionally-protected treaties, they might have a bearing on the operation or validity of legislation which has failed to meet such consultation or consent requirements. In our recommendations we suggest that the practical implications of consultation and consent requirements be given further study.

### Impacts on Public Governing Structures

We have observed in this Report that there appears to be a blurring of the line between self-government and public government in the NWT.

We have also concluded that the concepts of “self” and “public” are circles that can be drawn as widely or as narrowly as we choose. On one level “self” can refer to our individual responsibilities within a community, on another level it can help us define the size of the “community” itself.

We have chosen in this Report to view the circles of self-government and public government as including and affecting all residents of the NWT. In this sense public government and self-government blend together and must be assessed on the basis of performance in meeting the needs of all residents of the NWT.

Leadership will be a critical factor in the legitimacy and effectiveness of any system of governance in the NWT. The full challenges of implementing self-government agreements, once all agreements are in effect, will fall increasingly on the shoulders of the next generation of territorial leaders. Therefore consideration needs to be given to developing a leadership institute or program, in cooperation with Aboriginal governments and the federal government, to prepare our youth specifically for the sorts of governance opportunities and challenges they will face in the NWT 10 or 15 years from now.

## Recommendations

Based on the conclusions we have outlined above, we make the following recommendations:

1. **The Standing Committee on Rules and Procedures should be given responsibility for monitoring and reporting on the implications which implementation of self-government agreements will have on the powers, structures and procedures of the Legislative Assembly.**
2. **The GNWT should formally designate a sole point of accountability for developing a comprehensive action plan for implementation. This department, Ministry or agency should prepare the GNWT and NWT communities for implementation of self-government agreements and should oversee this transition within the regions and communities.**
3. **A cooperative, arms-length research body or think-tank should be created which is dedicated to the study of governance systems and practical operational issues associated with the implementation of self-government agreements in the NWT.**

The Standing Committee on Rules and Procedures (with a new mandate) should:

4. **Conduct a comprehensive study of the legislative powers of the Assembly, and those set out in self-government agreements and relevant documents, in order to provide a framework for analyzing potential areas where overlap is most likely and where amendment or harmonization can reasonably be anticipated.**
5. **Examine options for formal or informal structures and procedures for coordinating and harmonizing legislation, policies and practices among northern governments, where no such mechanisms have been identified in a self-government agreement.**

**6. Review current legislative procedures and processes to identify issues and options respecting:**

- consultations among governments on their respective legislative initiatives
- informing the Assembly of on-going legislative initiatives required to implement self-government agreements
- possible mechanisms relating to consent of an Aboriginal party to territorial legislation, where such a requirement is set out in a self-government agreement, and
- the appropriate role of the Assembly in any such consultation and consent processes.

**7. Identify current legislation and Assembly rules which are likely to require amendment as a result of implementation of self-government agreements.**

**8. Consider an appropriate role for the Legislative Assembly in building capacity for legislators at a local or regional level through joint workshops, seminars, research functions, and so on.**

**9. Prepare an action plan for the development of the Legislative Assembly's internal capacity to monitor and plan for the potential changes arising from implementation of self-government agreements.**

**10. Institute a regular and systematic approach for reviewing issues associated with implementation of self-government agreements, similar to the review of GNWT structures and functions which is undertaken as a transition measure prior to each general election.**

An existing GNWT department, ministry or agency with designated responsibility for taking a coordinated approach to implementation should:

11. **Develop an action plan for preparing communities, regions, and individuals for the implementation of self-government, including appropriate mechanisms for effective communications and consultations with these stakeholders. Such an action plan should address the need for interdepartmental and intergovernmental coordination. In addition, consideration should be given to establishing a dedicated policy unit within this department, ministry or agency to deal with transition issues and over-arching implementation issues that might affect the structures and operations of the GNWT and Legislative Assembly.**

12. **Seek to establish forums for ongoing regular dialogue with the federal government, Aboriginal governments and NWT community governments on territory-wide coordination of practical implementation matters.**

13. **Coordinate with Aboriginal, federal and community governments to establish a leadership institute or program dedicated to developing skills suited for the governance systems emerging in the NWT.**

14. **Take the lead in the establishment of the arms-length research body or think-tank referred to in Recommendation #3, and to the extent possible, collaborate with Aboriginal, federal and community governments in this initiative.**





**The Circle of Self-Government:**  
**Report of the Special Committee on**  
**The Implementation of Self-Government and the Sunset Clause**

**APPENDICES**





TERMS OF REFERENCE

FOR THE SPECIAL COMMITTEE ON THE IMPLEMENTATION OF SELF-GOVERNMENT AND  
THE SUNSET CLAUSE

WHEREAS, the Legislative Assembly has established the Special Committee on the Implementation of Self-Government and the Sunset Clause;

AND WHEREAS, the Special Committee requires the approval of the Legislative Assembly of its Terms of Reference;

AND WHEREAS, the Special Committee has given consideration as to its Terms of Reference:

NOW THEREFORE I MOVE, seconded by the Member for Nahendeh, that the following provisions be adopted as the terms of reference for the Special Committee on the Implementation of Self-Government and the Sunset Clause:

1. The Special Committee in undertaking its review, adopts the following as operating principles as articulated by the 14th Legislative Assembly in "Towards A Better Tomorrow":

- a) The Special Committee is committed to the development of a system of Government in the Northwest Territories that recognizes and protects the rights of all residents, balancing individual citizens' rights and collective aboriginal rights;
- b) The Special Committee recognizes that aboriginal and other northern leaders working together in support of a common vision and strong sense of identity is the foundation for a better future for all residents;
- c) The Special Committee holds that aboriginal people must have greater self-determination over their social, cultural, economic and political destiny;
- d) The Special Committee recognizes that aboriginal and public governments have unique, necessary and complementary roles to play in serving territorial residents; and
- e) The Special Committee recognizes the need for strong, effective aboriginal and public governments operating cooperatively;

2. The Special Committee is further committed to;

- a) providing information to aboriginal governments and seeking their input on issues related to the achievement of its mandate; and
- b) an open and public process that provides opportunities for stakeholder groups, elected bodies and the general public to receive information and input their views on issues related to the achievement of its mandate;

3. The Special Committee shall:

a) In relation to the Sunset Clause:

- i) Provide information to Northwest Territories residents concerning the intent and effect of Section 2 of the Legislative Assembly and Executive Council Act (the Sunset Clause), as to the need to address section 2 before the next election and to solicit input and options; and
- ii) Make recommendations to the Legislative Assembly concerning the Sunset Clause.

b) In relation to the Implementation of Self-government:

- i) Consider how the Legislative Assembly may be impacted by the implementation of self-government in the areas of legislation and appropriations;
- ii) Review the models for implementing self-government in the Northwest Territories currently being negotiated;
- iii) Review the impact implementing self-government agreements will have on the Legislative Assembly operating structures and procedures;
- iv) Review legislative initiatives that would implement self-government agreements;
- v) Make recommendations as to how existing and future legislation, policies and practices of the Legislative Assembly might be amended or developed to reflect the concurrency of jurisdiction between Aboriginal and partnership governments and the Government of the Northwest Territories;
- vi) Make recommendations on ways in which the budgetary process might be modified in form and process so as to reflect the duality of interests resulting from the implementation of self-government agreements;
- vii) Make recommendations on transitional measures, which could be introduced to prepare for the implementation of self-government agreements;

c) Consider how self-government may impact the Government of the NWT with respect to the functions of policy,

programs, services, financing and administration over the immediate and long term:

- i) Evaluate the impact self-government will have on the authorities contained in the Northwest Territories Act and Territorial Statutes (legislation);
  - ii) Investigate and advise on the impact self-government will have on the public governing structure of the Legislative Assembly and Government of the Northwest Territories and its powers, functions, programs, services and finances; and
  - iii) Make recommendations on transitional measures, which could be implemented to prepare for the implementation of self-government agreements.
4. The Special Committee in carrying out its terms of reference will use best efforts to ensure that its discussions and activities support, compliment and otherwise not overlap with or in any way interfere with self-government negotiations or discussions taking place at the Intergovernmental Forum;
  5. The Special Committee shall establish processes for providing information to and affording the residents an opportunity to make their views known;
  6. The Special Committee shall have access to such persons, papers and records as necessary to the conduct of its business;
  7. The Special Committee shall be provided through appropriations with adequate funds to carry out its terms of reference and assigned responsibilities;
  8. The Special Committee is authorized to employ such staff and or consultants and contractors as may be necessary to carry out its responsibilities;
  9. The Special Committee may consider other matters referred to it by the Legislative Assembly; and
  10. The Special Committee may make recommendations it considers desirable through interim and final reports.



## APPENDIX II

Letter of Invitation to Consult, December 11, 2002



Special Committee on the Implementation of  
Self-Government and the Sunset Clause

December 11, 2002

Dene Chiefs  
President of Inuvialuit Regional Corporation  
Metis Leaders  
Premier Kakfwl  
Minister of Indian and Northern Affairs Canada

### **Discussion on Future Governance in the Northwest Territories**

At the recent meeting of Dene leaders in Rae, Minister Antoine was pleased to have the opportunity to provide some comments on the ongoing work of the Legislative Assembly's Special Committee on the Implementation of Self-Government and the Sunset Clause. While the Committee's review of the Sunset Clause has now been completed, it is continuing to examine the implementation of self-government.

Following the meeting in Rae, the media reported a statement by Grand Chief Erasmus in which he said there is a need for ongoing dialogue among governments in the Northwest Territories. The Members of the Committee agree that dialogue among governments will be increasingly important in the coming months and years as self-government agreements are implemented.

The Committee recognizes that there will be changes to the responsibilities and operations of the Legislative Assembly and Government of the Northwest Territories arising from self-government agreements. Self-government agreements will change the relationships among all levels of government in the NWT and these changes will affect all residents in the Northwest Territories.

...2/

**APPENDIX II (Continued)**  
Letter of Invitation to Consult, December 11, 2002

- 2 -


The Committee also recognizes that it is not directly involved in self-government negotiations. It's mandate requires it to avoid interference with the negotiation processes. Therefore, the Committee is currently carrying out research to identify broad trends and issues that could have implications for the way the Legislative Assembly and GNWT carry out their existing responsibilities. The Committee will make recommendations so that these matters can be taken into account by the Assembly and the GNWT in their planning.

We hope Chiefs and leaders will be open to meeting with Committee Members early in the New Year to provide your perspectives and advice on possible opportunities to build good government-to-government relationships, and on ways to encourage constructive public dialogue on the evolution of governance in the NWT. The intention would be to identify and discuss processes that will help to build the positive, ongoing intergovernmental relationships, which will be necessary to make implementation occur smoothly.

We wish you a happy holiday season and look forward to an opportunity to discuss the above matters with you in the New Year.

Sincerely,

  
Sandy Lee  
Co-Chair

  
Mon. Jim Antoine  
Co-Chair

## On the Web

Information on negotiation processes and emerging agreements is available from Aboriginal negotiation teams and online. You can also contact the Government of Canada, Department of Indian Affairs and Northern Development (DIAND) for more information. Some of these websites are listed below:

<b>Beaufort-Delta Self-Government Office:</b> <a href="http://www.beaudelselfgov.org/index.html">http://www.beaudelselfgov.org/index.html</a>	<b>Federal DIAND Homepage:</b> <a href="http://www.aime-inac.gc.ca/index_e.html">http://www.aime-inac.gc.ca/index_e.html</a>
<b>Frequently asked questions about the BeauDel process:</b> <a href="http://www.beaudelselfgov.org/faq.html">http://www.beaudelselfgov.org/faq.html</a>	<b>DIAND's Plain Talk on Land and Self Government in NWT:</b> <a href="http://www.aime-inac.gc.ca/nwpt/index_e.html">http://www.aime-inac.gc.ca/nwpt/index_e.html</a>
<b>Dogrib Homepage:</b> <a href="http://www.dogrib.ca/">http://www.dogrib.ca/</a>	<b>GNWT Ministry of Aboriginal Affairs Homepage:</b> <a href="http://www.gov.nt.ca/MAA/index.html">http://www.gov.nt.ca/MAA/index.html</a>
<b>Summary Booklet of Tiicho Agreement:</b> <a href="http://www.dogrib.ca/agreement/summary_book/summary_book.pdf">http://www.dogrib.ca/agreement/summary_book/summary_book.pdf</a>	<b>MAA's Understanding Self-Government Document:</b> <a href="http://www.gov.nt.ca/publications/asg/unde.pdf">http://www.gov.nt.ca/publications/asg/unde.pdf</a>
<b>Legislative Assembly Homepage:</b> <a href="http://www.assembly.gov.nt.ca/">http://www.assembly.gov.nt.ca/</a>	<b>Info on Special Committee:</b> <a href="http://www.assembly.gov.nt.ca/committees/selfgovernment">http://www.assembly.gov.nt.ca/committees/selfgovernment</a>

## Your Views

The Committee needs your input. Please contact us if you:

- want to share your views on the evolving relationships among governments with responsibilities in the NWT
- would like to receive information about the Committee's work
- would be interested in participating in any consultation processes planned for the Committee
- would like to make a written submission to the Committee

## For more information, please contact:

Special Committee on the Implementation of Self-Government and the Sunset Clause  
Legislative Assembly of the Northwest Territories

Box 1320  
Yellowknife, NT X1A 2L9  
Toll Free Tel: 1-800-661-0784  
Toll Free Fax: 1-800-661-0679

### Committee Members

Ms. Sandy Lee, Co-chair MLA, Range Lake  
Hon. Jim Antoine, Co-chair MLA, Nahendeh  
Mr. Bill Braden, MLA, Great Slave  
Mr. Paul Delorey, MLA, Hay River North  
Mr. Leon Lafferty, MLA, North Slave

### Alternates

Hon. Vince R. Steen, MLA Nunakput  
Mr. Steven Nitah, MLA Tu Nedhe  
Mr. Michael McLeod, MLA Deh Cho

### 1-800-661-0784

If you would like this information in another official language, call us.

Si vous voulez ces informations en français, contactez-nous.

Kispin ki nitawihthin   nihiyawihk  ma  cim win, tipw sin n.

Tihch  yati k'  . Di wegodi new   , gota'o gonede.

?erihut'is dene silin  yati t'a huts'ek r xa beyiyati then  nat'a, nuwe te'en y fti.

Edi gondi dehg h got'je zhatie k'   edat' h enahdib  nide.

K' h b  got'ine xad  k'  bederi neqhtl'  yeriniw  nide d le.

Jii gwandak izhii ginjik vat'str'ijahch'uu zhit yinothhan j'i, diite' t ginohkni.

UVANITTUAQ ILITCHURISUKUKU INUVIALUKTUN, QUQUAQLUTA.

C' d  n' b'  A' LJAN'  a' D' V'L' n', b' n' d' D' c'    D' n'.

Hap'kua titiqqat pijumagupkat Inuinnaqtun, uvaqtinnut hivajarlutit.



An Update from  
The Special Committee  
on the Implementation  
of Self-Government  
and the Sunset Clause

Self Government Agreements  
Affect Everyone



Northwest  
Territories Legislative Assembly

## Self-Government is Important to Everyone

There are currently a number of negotiating tables in the NWT exploring Self-Government arrangements. Aboriginal governments are negotiating these arrangements with the Federal and Territorial Government. Each of the tables is unique and no one can be sure how they will look when completed.

We do know that these arrangements will mean a new way of doing things for all governments (federal, territorial, aboriginal, community). New relationships and structures will have to be built. None of these changes will occur overnight but it is important that everyone including various governments, groups and individuals become informed about what lies ahead. The Committee's work is simply part of the planning process to prepare for change.

## What Does the Committee Want to Do?

The Legislative Assembly has directed the Special Committee to:

- Look at the effects that Self-Government agreements will have on the Government of the Northwest Territories, the Legislative Assembly and the residents of the NWT;
- Take care to avoid interference with any negotiation processes currently underway;
- Suggest processes to build the positive relationships necessary to allow implementation to occur smoothly in the future; and
- Make specific recommendations to help the next Assembly prepare for Self-Government.

In the coming months, the Committee wants to open a dialogue between NWT residents and various governments to seek advice and explore opportunities for increased communication as things develop. The Committee feels it is important to begin a territory



*The Draft: Gwich'in and Inuvialuit Self-government Agreement-in-Principle for the Beaufort-Delta Region was initiated on October 3, 2001.*

wide, conversation about the changes that are ahead, and what they may mean. By talking, listening and exchanging views we can all gain a better understanding to prepare for a new way of doing things.

## Current Tasks and Target Dates

- Tabling a Technical Report – in the Legislative Assembly (February, 2003)
- Committee Consultation – (March - April - May)
- Tabling Final Report – in the Legislative Assembly (June 2003)

## Self-Government Processes in the NWT

The active negotiation tables in the NWT are at different stages. The processes include:

- Tlicho (Dogrib) Land Claims & Self-Government
- Beaufort Delta Self-Government
- Deline Self-Government
- North West Territory Metis Nation (South Slave Metis) Lands/Resources & Self-Government
- Deh Cho Process
- Akaitcho Territory Dene First Nations Land, Resources and Governance Process



*The Deh Cho First Nations Framework Agreement was signed on May 28, 2001.*

- Saskatchewan Denesuline Harvesting Rights in the NWT
- Manitoba Denesuline Harvesting Rights in the NWT



*Tlicho Agreement was initiated by negotiators on September 4, 2002.*

## Understanding Self-Government

To help the public understand the negotiation of Aboriginal rights, the inherent right to Self-Government, and the settlement of outstanding Aboriginal interests in the NWT, the Ministry of Aboriginal Affairs (M.A.A.) has prepared a document entitled:

*Aboriginal Self-Government in the Northwest Territories, Understanding Self-Government.*

*You can obtain a copy of this document from M.A.A. or on the Internet.*



APPENDIX IV  
Selected Self-government Documents

- Tlicho Agreement (Initialled by the Chief Negotiators)
- Tlicho Agreement, Summary Book
- What's Going On, an update on the Tlicho Agreement (September 2002)
- Draft Gwich'in and Inuvialuit Self-government Agreement-in Principle for the Beaufort Delta Region
- Beaufort Delta Plain Language Summary of the Agreement-in-Principle
- Beaufort Delta Fact Sheets (Health and Social Services; Community Governments; etc)
- Breaking Trail: Self-Government in the Beaufort Delta (September 2000)
- Deline Self-Government Negotiations Process and Schedule Agreement
- Salt River First Nation Treaty Settlement Agreement
- South Slave Metis Framework Agreement
- South Slave Metis Interim Measures Agreement
- Deh Cho First Nations Framework Agreement
- Deh Cho First Nations Interim Measures Agreement
- Akaitcho Territory Dene First Nations Framework Agreement
- Akaitcho Territory Dene First Nations Interim Measures Agreement
- Aboriginal Self-Government in the Northwest Territories: Understanding Self-government (GNWT)

## Appendix V

### Selected Governmental and Academic Materials

Other sources of information include this Committee's own *Report on the Sunset Clause* [Committee Report No. 6-14(5) Tabled June 13, 2002] which examined certain issues that have a bearing on representation in the Legislative Assembly and on the establishment of electoral districts.

The report of the Special Joint Committee on Non-Tax-Based Community Affairs *Strengthening GNWT Support to Smaller Communities*, tabled in the fall of 2002, is an important piece of work describing important issues facing some of the smaller communities in the NWT. Many of the communities examined in that report will be facing new responsibilities and challenges as self-government agreements are negotiated and implemented.

The Dogrib Treaty II Council and the Beaufort-Delta Self-government Office have produced plain-language summaries and information sheets on their respective agreements to date. Some of these are listed in Appendix 4.

Other information such as recent labour force studies may be relevant because of the need to staff new self-government institutions and bodies. Many of these can be found online: see Appendix VII.

The Government of the NWT commissioned a study by the firm of Deloitte & Touche on options for the future structure of the GNWT's departmental and headquarters operations: *Government of the Northwest Territories—Review of the Departmental and Headquarters Organization Structure* (April 30, 2003), Deloitte & Touche. This study examines various drivers of change in the NWT, including self-government processes. This report can be found online at the GNWT website: see Appendix VII.



**Appendix V** (continued)  
Selected Governmental and Academic Materials

Cairns, Alan. *The End of Internal Empire: The Emerging Aboriginal Policy Agenda* in Hayne, David, ed. **Governance in the 21<sup>st</sup> Century**. Toronto: U of Toronto, 2000.

Canada. **Report of the Royal Commission on Aboriginal Peoples**. Ottawa: Canada Communications Group, 1996. (5 volumes)

Funston, Bernard and Meehan, Eugene. *Canada's Constitutional Law In a Nutshell*, 2nd Ed, Toronto: Carswell, 1998.

Gibbins, Roger. *Engaging Local Aspects of Multilevel Federal Governance*. (A background paper for the International Conference on Federalism, Mont Tremblant, Quebec, 1999.)

Graham, John . *Getting the Incentive Rights: Improving Financial Management of Canada's First Nations*. Ottawa: Institute on Governance, 2000.

Institute on Governance. *Exploring Machinery Options In Support of Intergovernmental Fiscal Arrangements*. Ottawa: Institute on Governance, 1998.

Institute On Governance. *Aggregation Among First Nations: A Handbook for Self-government Negotiators*. Ottawa: Institute on Governance, 2001.

Kymlicka, Will. **Finding Our Way: Rethinking Ethnocultural Relations in Canada**. Don Mills: Oxford University Press, 1998.

Mendelson, Michael and Ken Battle. **Aboriginal People in Canada's Labour Market**. Ottawa: Caledon Institute, 1999.

**Appendix V** (continued)  
Selected Governmental and Academic Materials

Plumptre, Tim & Graham, John. *Governance and Good Governance: International and Aboriginal Perspectives*. Ottawa: Institute on Governance, 1999.

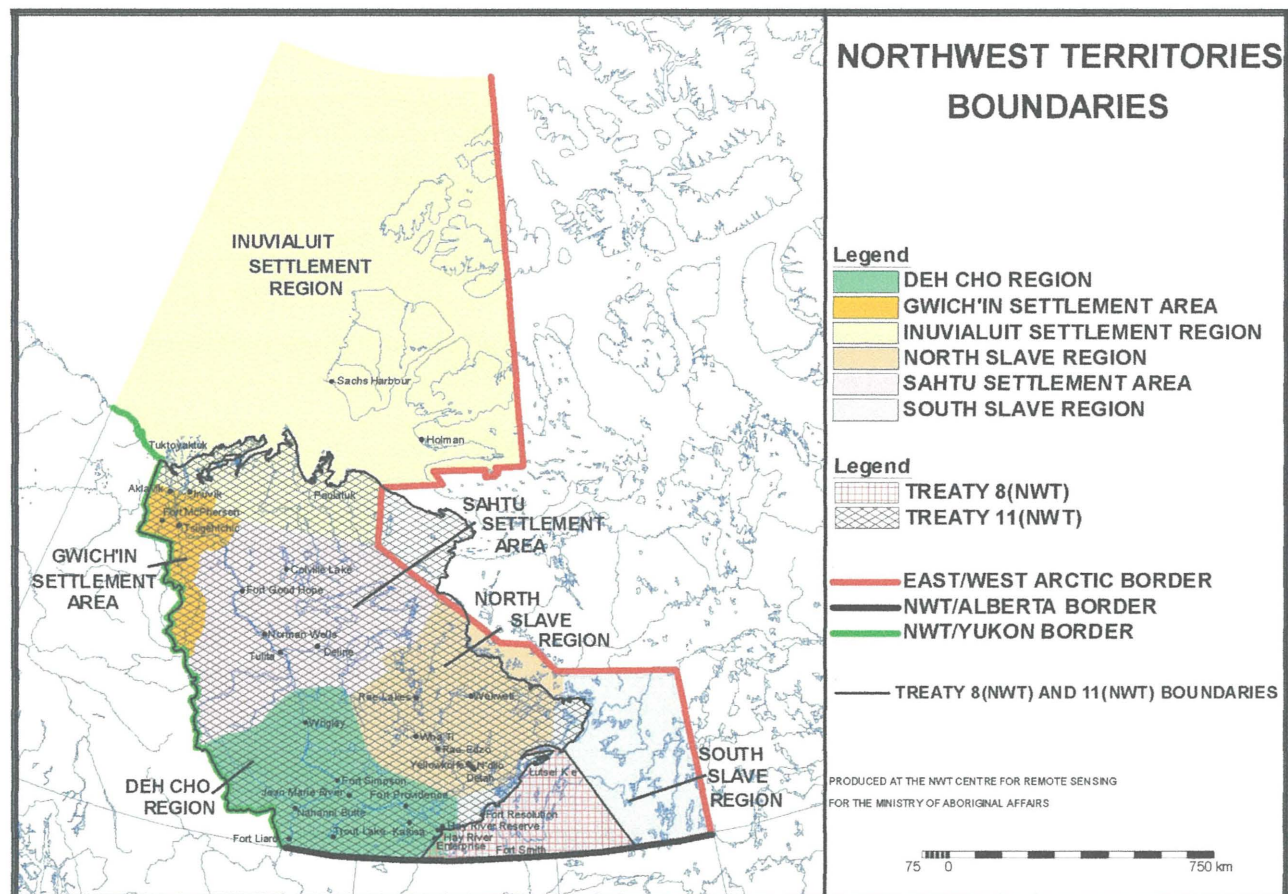
Prince, Michael J. and Abele, Frances. *Funding an Aboriginal Order of Government: Recent Developments in Self-Government and Fiscal Relations*. May, 1999

Thomas, Paul G. Change, **Governance and Public Management: Alternate Service Delivery and Information Technology**. Toronto: Public Policy Forum, 2000.

Wherrett, Jill. *Aboriginal Self-Government* (Current Issue Review 96-2E). Ottawa: Parliamentary Research Branch, 1999.

## Appendix VI Self-government Processes in the NWT

- **Tlicho (Dogrib):** Final land claim and self-government scheduled for signing in August, 2003.
- **Salt River First Nation:** Agreement completed to establish reserve near Fort Smith.
- **Beaufort-Delta (Gwich'in & Inuvialuit):** Self-government negotiations at the A-I-P stage.
- **Deline:** community self-government negotiations at A-I-P stage.
- **Akaiicho First Nations:** Target date of 2004 for A-I-P on lands and governance.
- **Northwest Territories Metis Nation:** Target date of 2004 for a lands and resources agreement with governance to follow in a second phase.
- **Deh Cho First Nations:** A-I-P negotiations anticipated to start in fall, 2003.
- **Tulita:** exploratory discussions on community-based self-government
- **Manitoba and Saskatchewan Denesuline:** negotiations on harvesting north of 60.



**Appendix VII**  
Selected Websites

**Beaufort-Delta Self-Government Office**

<http://www.beaudselfgov.org/index.html>

**Frequently asked questions about the Beaufort Delta process**

<http://www.beaudselfgov.org/faq.html>

**Dogrib Homepage**

<http://www.dogrib.ca/>

**Summary Booklet of Tlicho Agreement**

[http://www.dogrib.ca/agreement/summary\\_book/summary\\_book.pdf](http://www.dogrib.ca/agreement/summary_book/summary_book.pdf)

**Legislative Assembly Homepage**

<http://www.assembly.gov.nt.ca/>

**Federal DIAND Homepage**

[http://www.ainc-inac.gc.ca/index\\_e.html](http://www.ainc-inac.gc.ca/index_e.html)

**DIAND's Plain Talk on Land and Self-Government in NWT**

[http://www.ainc-inac.gc.ca/nt/pt/index\\_e.html](http://www.ainc-inac.gc.ca/nt/pt/index_e.html)

**GNWT Ministry of Aboriginal Affairs Homepage**

<http://www.gov.nt.ca/MAA/index.html>

**Ministry of Aboriginal Affairs: *Understanding Self-Government* Document**

<http://www.gov.nt.ca/publications/asg/unde.pdf>

**Information on Special Committee**

<http://www.assembly.gov.nt.ca/committees/selfgovernment>

**Information about the NWT work force and job opportunities**

<http://www.jobsnorth.ca/issue4a.pdf>



