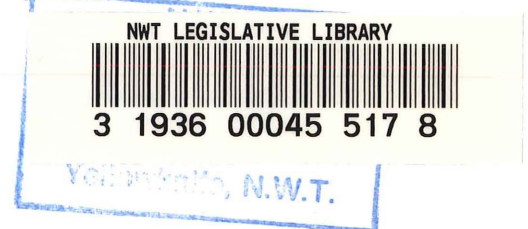


Frances Widdowson  
18-4508 49th Avenue  
Yellowknife, NT X1A 1A7  
Telephone - 669-7973

February 6, 1997



Mr. Seamus Henry  
MLA - Yellowknife South  
P.O. Box 1320  
Yellowknife, NT X1A 2L9

Dear Mr. Henry:

On November 8, 1996 I wrote a letter the Premier, the Honourable Don Morin, detailing the concerns that I had with the western constitutional process. In the letter I posed a number of questions which required resolution before a workable document could be put forward and suggested that the whole constitutional process should be abandoned.

Mr. Morin answered my letter on December 17, 1996 (see attached). In his letter, the Premier not only failed to answer many of my questions about the proposal, but also absolved the government of responsibility for the constitutional process by stating that it was driven by western MLA's, aboriginal leaders, and the federal government. In order to ensure that my concerns are taken seriously, I am now putting forward these questions to you and request that this letter be tabled in the Legislative Assembly so that these issues can inform public debate.

On November 5, 1996 I attended a public meeting on the draft constitutional package prepared by the Constitutional Working Group. At the meeting, Mr. Jake Ootes (MLA - Yellowknife Centre) told the crowd that they were lucky to participate in such an endeavour since most people in the world would never get the chance to help build their own constitution.

I am writing this letter to inform the government that I do not consider myself "lucky" to be participating in the making of the territorial constitution. In fact, I think that the whole process should be abandoned since there has been no attempt to show how constitutional development will alleviate the tremendous social problems facing many communities in the NWT. It is my contention that the monies devoted to this exercise would be better spent on existing territorial government programs and services which are already suffering from federal government restraint.

Before the government can ask the question "what kind of constitution should the western territory have", it should first inquire as to whether a constitution is necessary in the first place. The NWT currently has the worst social problems in Canada. Its aboriginal peoples suffer from the highest unemployment rates and lowest educational levels of all Canadians. How will a territorial constitution solve these problems? Will the new constitution stop FAS children from being born? Will suicides be prevented? How will spousal abuse and child neglect be deterred?

The western NWT is comprised of fewer than 40,000 people. Surely the millions of dollars which will be spent on this exercise can be put to better use through funding programs designed to help aboriginal peoples directly. Unfortunately, the most likely beneficiaries of a new constitution will be the many constitutional lawyers, accountants and consultants who are paid to develop the document, not the impoverished people residing in the communities.

The Constitutional Working Group is also misleading territorial citizens by claiming that this "constitution" is necessary to prevent the formation of seven aboriginal governments and to decrease our dependence on the federal government. The new constitution is in reality nothing more than a federal statute that will be passed by the House of Commons. And although it is argued that a territorial constitution is needed because the 1982 *Constitution Act* has entrenched the right to self-government, this is a federal issue which should be resolved through processes which already exist. It is likely that the federal government's negotiation of the inherent right will go on for years (if the current land claims negotiations are any indication) and it would be unwise for the territorial government to complicate this undertaking. The most sensible approach, therefore, would be to amend the *Northwest Territories Act* so that it will be consistent with the requirements of division.

However, given the territorial government's preoccupation with form over content, and a concentration on process rather than on the achievement of objectives, it is likely that constitutional development will continue to be a priority. If this process does continue, I think that there are three major problems with the draft constitutional package which must be addressed. These problems include the inconsistency of the proposal with the *Charter of Rights and Freedoms*, the need to define aboriginal peoples' "inherent right to self-government", and the current fiscal realities of governments.

### **Inconsistency with the *Charter of Rights and Freedoms***

Page four of the draft constitutional document states: "the constitution of the western territory will be consistent with the Constitution of Canada, including the Charter of Rights and Freedoms".

It seems unlikely that the proposal for a separate Aboriginal Assembly will survive a challenge under the *Charter of Rights and Freedoms*. Section 15(1) of the *Charter* states that "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability". How will consistency with the *Charter* be ensured if one of the mechanisms for achieving equality under the law - equal access to lawmakers through equivalent votes - is denied, and that this denial is made on racial grounds? Moreover, the issue is not only that non-aboriginals receive fewer votes than aboriginal peoples. Non-aboriginals will also be governed by a body which they cannot remove from office and subsequently the Aboriginal Assembly will be unaccountable to the majority of the electorate.

The draft constitutional package also notes that "Aboriginal governments would exercise legislative authority in relation to Aboriginal lands and affairs in implementation of their inherent right of self-government" (p.19). It is not clear whether these laws made specifically to govern aboriginal peoples will be subject to the *Charter*. Governments cannot assume that the aboriginal leadership will respect the *Charter* since one of the demands made consistently by native leaders is that spiritual beliefs be incorporated into various government initiatives. For example, Dogrib Chiefs and delegates at their meeting in Wha Ti on February 15, 1995 passed a resolution stating that the new *Education Act* should allow school prayer and school programs on spirituality so that Dogrib children could "develop respectful relationships with ...the Spiritual World". What about the Dogrib children who do not share these spiritual beliefs? Would laws contravening Section 2(a) of the Charter - the fundamental freedom of conscience and religion - be allowed if they applied only to aboriginal peoples?

### Defining the "inherent right to aboriginal self-government"

Page four of the draft constitution states: "The constitution of the western territory will recognize, affirm and accommodate existing Aboriginal and Treaty rights, including modern Treaties and Aboriginal peoples' inherent right to self-government".

Before the government expects territorial citizens to agree with this statement, it is necessary to define what is meant by an "inherent right to self-government". According to the Oxford Concise Dictionary, inherency is defined as "existing in or in something, especially as a permanent or characteristic attribute". How can rights be "inherent" if they are socially granted? What will aboriginal peoples have an inherent right to, and what will be the basis for granting this right?

At the public meeting on the constitution on November 5, 1996, Mr. Roy Erasmus (MLA - Yellowknife North) stated that the inherent right had been determined by international law. Besides the fact that a right granted by international law negates its inherency, Mr. Erasmus' view contradicts statements made in the federal government's *Policy Guide on Aboriginal Self-Government*. According to the *Guide*, "The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation, and ensure that Aboriginal peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society" (p. 4).

The view of the federal government, then, is that the "inherent right" is granted under Section 35 of the constitution and the details of this right will be "negotiated" with aboriginal peoples. If this right is granted under the Canadian Constitution and is to be negotiated, how can it be inherent?

The only explanation which has addressed the basis of the inherent right was articulated by Nisga'a Chief James Gosnell who argued that this right was given to aboriginal peoples by "The Creator". At the 1983 First Ministers' Conference, Chief Gosnell stated that "It has always been our belief...that when God created this whole world he gave pieces of land to all races of peoples throughout this world, the Chinese peoples, Germans and you name them, including Indians. So at one time our land was this whole continent right from the tip of South America to the North Pole...It has always been our belief that God gave us the land...and we say that no one can take our title away except He who gave it to us to begin with". Does the territorial government see "The Creator" as the basis for the inherent right to self-government? If not, what makes this right inherent?

The idea of an "inherent right" based on original occupancy of the land does not take into account the historical movements of the human race. Anthropological and archeological evidence strongly suggests that all people (including aboriginal peoples in North America) arose out of a common ancestry originating in what is now known as Africa. Furthermore, aboriginal peoples in North America today not only came from somewhere else (evidence shows that they travelled over a land bridge formed during the Ice Age from what is now known as Siberia), but have migrated continuously throughout their history on this continent. Some of the more recent migrations of aboriginal peoples which challenge the idea of the "inherent right" are the migrations of some Treaty 8 peoples (Cree, Mohawks and Metis) from Alberta and Saskatchewan. The ancestors of modern Inuit (the Thule) were also immigrants. Their gradual migration from Alaska in 900 A.D. resulted in the extermination of the Dorset people (who were the "first peoples" of what is now Nunavut). If these aboriginal groups immigrated from other areas, how do they have an "inherent right" to self-government in the western territory based on the fact that they were given this land by "The Creator"?

Looking at the previous paragraphs, it is clear that the concept of the inherent right to self-government has not been thought out and is fundamentally flawed. It would be irresponsible and unwise for the territorial government to adopt such a concept in its new constitution.

### **Current Fiscal Realities**

Page twenty-eight of the draft document states: "Fiscal realities must be taken into account", "the administration must be affordable and workable", and "resources put into programs must be maximized".


The draft document does not seem to abide by the financial principles stated above. How can the western territory go from fourteen MLA's to twenty-two and expect to cut costs? These costs will be increased not only by additional salaries to politicians and support staff, but also by the administrative requirements of two separate houses. Mechanisms will have to be developed to coordinate the activities of the two houses and subsequently the development of legislation and government policy will be more cumbersome and expensive.

It is my understanding that the federal government has stated that it will not provide any more funding to administer two territories than it is currently providing for the whole NWT. Since economies of scale dictate that it costs *more* money to have two administrations instead of one (i.e. Nunavut and the western territory will each have to run a government with half the budget which exists now), we will already have a fiscal crisis on our hands. To add even more administrative costs by developing complex public and self-government arrangements means that even *less* money will be available for programs and services. What programs and services will be given up in order to fund these new administrative arrangements?

The time-line which has been provided for the development of the constitution is also far too optimistic. When one considers that it can take up to ten years to draft one statute, it is hard to imagine that a whole constitution, complete with a ratification process, a "Companion Aboriginal Self-government Agreement" and unique political structures, will be completed in two years. The Government of the Northwest Territories should therefore pose the following question to itself: How many constitutional lawyers, accountants and consultants (each making hundreds of dollars a day) does it take to meld aboriginal self-government with public government? The answer: it depends upon the depth of government coffers.

In conclusion, I would like to say that responding to the draft constitutional package has put me in a difficult position. Because the Constitutional Working Group has separated territorial citizens on the basis of racial rights rather than on human need, my criticism of the draft constitution will be seen as an attack upon the aspirations of aboriginal peoples. Although I sympathize with the plight of aboriginal peoples, I must protest the undemocratic, conceptually flawed and fiscally irresponsible sections of the document. The Constitutional Working Group has not shown how constitutional development will help the majority of aboriginal people in the western territory and it is my hope that continuous criticism will result in the territorial government abandoning this wasteful and damaging exercise. The territorial government can then focus its attention and resources on the real problem - satisfying the needs of aboriginal peoples.

Sincerely,



Frances Widdowson

- c. The Honourable Don Morin, Premier
- The Honourable Jim Antoine, Minister Responsible for Aboriginal Affairs
- Mr. Jake Ootes, MLA - Yellowknife Centre
- Mr. Roy Erasmus, MLA - Yellowknife North

Attachment



OFFICE *of the* PREMIER

DEC 17 1996

Ms. Frances Widdowson  
# 8 - 4508 - 49TH AVENUE  
YELLOWKNIFE NT X1A 1A7

Dear Ms. Widdowson:

Thank you for conveying your thoughts on constitutional development in the western Northwest Territories.

The Constitutional Working Group, a partnership of the Aboriginal leaders and the western MLA's which operates independently from government, takes the lead on western constitutional development and I have forwarded your letter. I suggest you contact the Constitutional Working Group offices directly to offer your input on the issue and participate fully in public consultation about the "Draft Constitution Package."

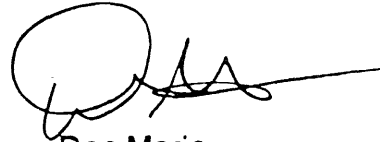
In addition, I would like to share some thoughts with you about this government's role. Most important, you must realize that it is not the Government of the Northwest Territories decision as to whether or not work proceeds on developing a western constitution. For many years, this initiative has been lead on a cooperative basis by the western MLA's and Aboriginal leaders. It is driven by the federal government agreement to divide the Northwest Territories as well as its policy to negotiate aboriginal rights, including the inherent right of self government.

The Government of the Northwest Territories has an obligation to protect the interests of all residents and so has recognized these priorities and participates to ensure that the two new territories created in April 1, 1999 are viable.

I sympathize with your view that there are other important issues to be addressed, particularly social priorities, but I do not believe that the importance of one issue negates the importance of another. Indeed, many problems in the North stem from the provisional nature of our government and the lack of accommodation for the political rights of aboriginal people. Surely, by developing a sound political system based on partnership we are also developing a healthy society.

I hope you will continue to participate actively in the establishment of a government system which can see the western Northwest Territories into the 21st Century. I can assure you that this government will want to ensure public support for any new arrangements.

Sincerely,

A handwritten signature in black ink, consisting of a large, rounded initial 'D' followed by a series of loops and a long horizontal stroke extending to the right.

Don Morin  
Premier

c: Constitutional Working Group Secretariat  
The Honourable Jim Antoine, Minister, Responsible for Aboriginal Affairs

