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CONSTITUTIONAL DEVELOPMENT  
STEERING COMMITTEE

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## **THEMES AND ISSUES**

**in the Constitutional Process  
for a New Western Territory**

**Constitutional Development Steering Committee  
Western NWT**

**November 1994**

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## TABLE OF CONTENTS

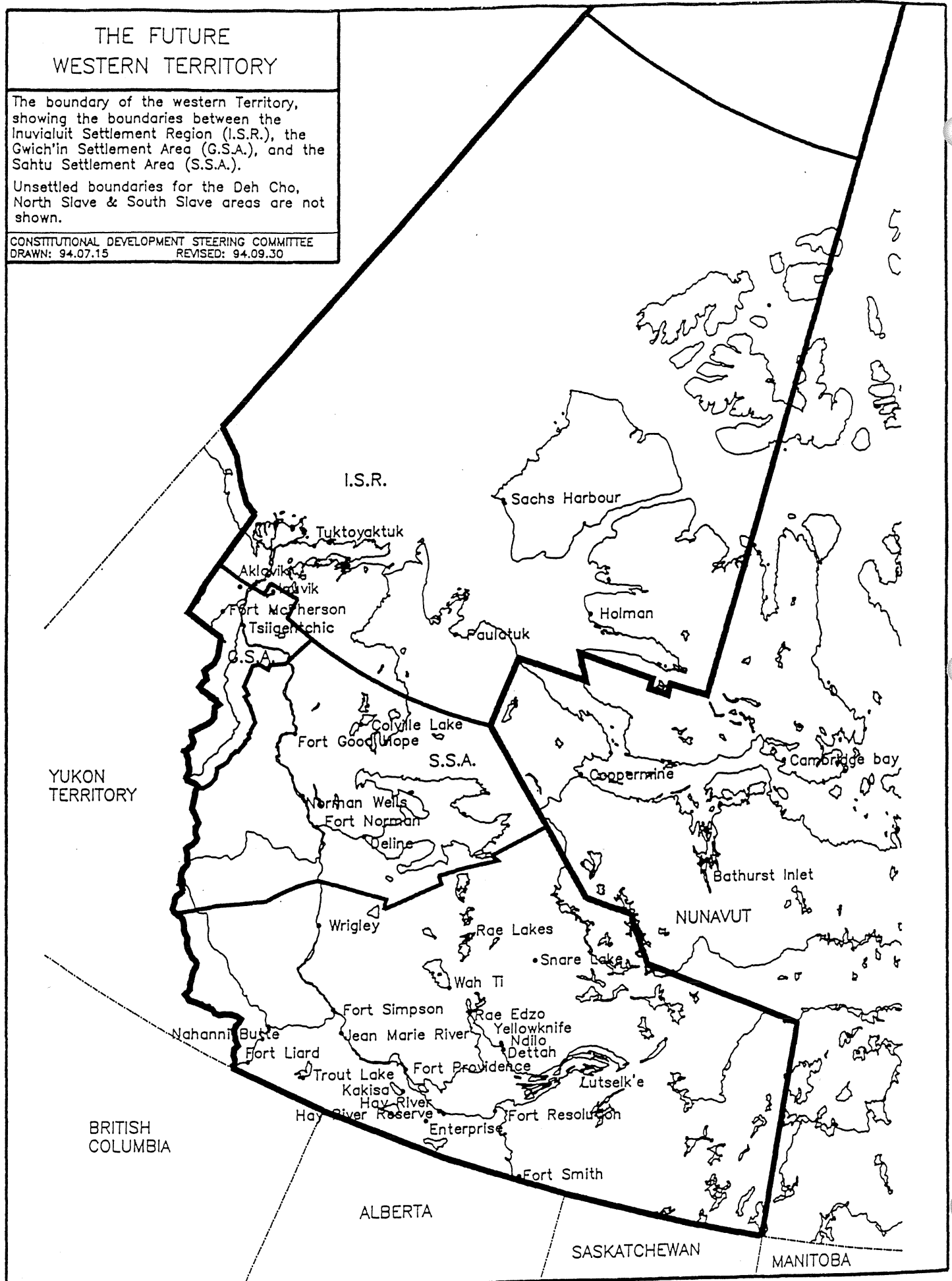
<b>Map and Introduction</b>	
<b>CDSC Draft Principles</b>	<b>1</b>
<b>Themes and Questions</b>	<b>3</b>
<b>Process</b>	<b>5</b>
<b>Principles</b>	<b>11</b>
<b>Structures</b>	<b>19</b>
<b>Powers</b>	<b>25</b>
<b>Representation</b>	<b>31</b>

# THE FUTURE WESTERN TERRITORY

The boundary of the western Territory, showing the boundaries between the Inuvialuit Settlement Region (I.S.R.), the Gwich'in Settlement Area (G.S.A.), and the Sahtu Settlement Area (S.S.A.).

Unsettled boundaries for the Deh Cho, North Slave & South Slave areas are not shown.

CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE  
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*In 1999 the Northwest Territories will divide and become two new territories, Nunavut in the East and a new western territory.*

*In November of 1992, the political leaders of the western NWT formed the Constitutional Development Steering Committee with a mandate to guide the development of a constitution and structure of government for the new territory.*

*The CDSC consists of leaders representing aboriginal organizations, tax based municipalities and two women's organizations, as well as the fourteen western members of the Legislative Assembly of the Northwest Territories.*

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During 1993, the aboriginal organizations, tax based municipalities and women's organizations were funded to undertake research on how self government can be accommodated in the new constitution and government structure. The CDSC has recently published the final research reports submitted by each group, together with the text of the 1987 Iqaluit Agreement and the 1992 report of the Bourque Commission on Constitutional Development. It has also published summaries of these reports for broad public distribution.

The research reports are the starting point in identifying the major themes and issues to be discussed at a first constitutional conference in January of 1995. The conference will bring together community representatives and political leaders from across the western NWT. The themes and issues arising from the reports will allow the conference participants to provide general direction for the major elements of the future constitution. The CDSC and its member groups will consult the residents of the western NWT about the results of the first conference and convene a second constitutional conference in 1995. The second conference will provide specific direction and recommend a process for drafting and ratifying a new constitution and structure of government.

This document summarizes the major issues arising from the research reports, grouped under five main themes:

- **Process**
- **Principles**
- **Structures**
- **Powers**
- **Representation**

Under each of these themes, a number of questions are identified which will have to be addressed in developing a constitution and structure of government for the new western territory.



# CDSC DRAFT PRINCIPLES

In December of 1993, the Constitutional Development Steering Committee adopted the following twelve principles to guide the constitutional development process for the new western territory.

1. The Constitutional Development Steering Committee (CDSC) is working towards establishing an innovative constitution and structure of government for a western territory
2. The new government will represent and serve all residents of the western territory
3. There will be community, central and regional government institutions
4. The constitution of the western territory will be consistent with the Constitution of Canada, including the *Charter of Rights and Freedoms*
5. The constitution of the western territory will recognize and affirm, and accommodate to the maximum extent possible, existing Aboriginal and Treaty rights, including modern Treaties and Aboriginal peoples' inherent right of self government
6. The new system of government will include Aboriginal government institutions as well as public government institutions
7. The new government will recognize self government agreements negotiated by Aboriginal peoples and Canada
8. A division of powers will be developed with a view to allowing authority to be exercised by the level of government which is able to deliver a service most efficiently and effectively
9. Based on public involvement and direction, and the support of Aboriginal governments and the Legislative Assembly, the CDSC will continue to guide the constitutional process to its conclusion
10. The public will be involved through information distribution, community meetings, regional workshops and constitutional conferences, and residents of the western territory will have the opportunity to ratify a final constitutional package
11. The CDSC is committed to having a new constitution and structure of government for the western territory in place for the division of the Northwest Territories planned for 1999
12. The Federal government will enact legislation to implement the territorial constitution and Aboriginal self government agreements, and therefore, it must be involved in the western constitutional process





## THEMES AND QUESTIONS

### PROCESS

- How can this process accommodate the needs and aspirations of all peoples in the western Northwest Territories?
- How can we achieve consensus on effective structures of government we can all live with and afford?
- What is the connection between this process and aboriginal self government negotiations?
- Can we build compatible public and aboriginal government structures that accommodate each other?
- How should transfers of power from the federal government to the GNWT be handled between now and 1999?
- Who should write the new constitution?
- How should the new constitution be approved?
- What steps do we need to take to complete the constitutional process and develop a new structure of government before April 1, 1999?

### PRINCIPLES

- Should individual and collective rights be recognized and protected in the new constitution?
- Should aboriginal rights be recognized and protected?
- What governing institutions should there be: central? community? regional? aboriginal?
- Which governing institutions should be recognized in the constitution?
- Which individual human rights might be included and which might be addressed in other laws such as a Human Rights Code?
- Should a Social Charter be included and, if so, what should it cover?
- Should the constitution be long and detailed, or short and general?

### STRUCTURES

- What should be the roles, if any, of central, community, regional and aboriginal governing institutions?
- What kind of governing bodies are needed to make laws or decisions about policy, programs and services?
- What executive and administrative structures are needed to carry out decisions and deliver programs and services?
- What structures are needed to enforce laws and administer justice?
- Will we have the financial resources to support these structures?
- What aboriginal government structures will there be?
- What will be the relationship between public and aboriginal government structures?

## Themes and Questions

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### POWERS

- What powers should each level of government have?
- What powers will aboriginal government structures have?
- Which of these powers should be exclusive and which should be shared?
- Should one level of government be able to delegate its powers to another level?
- What powers to raise revenues, including taxation, should each have?
- What transfer payments would each level of government require and from whom?
- Which levels of government should own or control land and resources?
- What considerations of cost and efficiency affect the division of powers?

### REPRESENTATION

- How should individual residents and groups be represented in government decision-making?
- Are there aboriginal rights to guaranteed representation in public government which must be recognized?
- Should there be guaranteed representation of women and men, aboriginal and non-aboriginal peoples in our structures of government?
- Can we balance guaranteed representation with individual rights to vote and run for office?
- What is required to amend the constitution?

## PROCESS

### QUESTIONS

- How can this process accommodate the needs and aspirations of all peoples in the western Northwest Territories?
- How can we achieve consensus on effective structures of government we can all live with and afford?
- What is the connection between this process and aboriginal self government negotiations?
- Can we build compatible public and aboriginal government structures that accommodate each other?
- How should transfers of power from the federal government to the GNWT be handled between now and 1999?
- Who should write the new constitution?
- How should the new constitution be approved?
- What steps do we need to take to complete the constitutional process and develop a new structure of government before April 1, 1999?

### INUVIALUIT/GWICH'IN

- Constitutional development is a complex process
- Consensus may be difficult to achieve by 1999
- Development of a regional public government should not be delayed if consensus is not achieved
- Will participate as active partners in CDSC process
- Will focus on public government in this process to avoid confusion and maintain a clear distinction between public government and aboriginal self government initiatives
- Will also pursue self government through negotiation with Canada

### GWICH'IN TRIBAL COUNCIL

- Involved in four self government processes: CDSC/western constitutional development, Joint IRC/GTC Regional government proposal, Gwich'in self government negotiations, GNWT community transfer initiative

### TAX BASED MUNICIPALITIES

- Division provides a unique opportunity to create innovative structures of government
- We should not be bound by precedent
- Constitutional development must be founded on consensus building
- It must accommodate the reasonable aspirations of all peoples
- The AWTBM is committed to working with all peoples of the new western territory through the CDSC process
- The new constitution will likely be federal legislation replacing the NWT Act and not part of the Constitution of Canada
- Aboriginal self government should be addressed by aboriginal people outside the CDSC process

### NATIVE WOMEN'S ASSOCIATION/STATUS OF WOMEN COUNCIL

- We have an opportunity to make positive changes in the North through the constitutional process
- The process must successfully conclude in a new constitution that meets the needs and aspirations of all northerners
- We may never have another chance
- Communities must heal before they can govern themselves
- Communities will not be able to successfully take more control and responsibility until our young people are educated and we have northern professionals who are more culturally sensitive
- Northern women have unique experiences and must be heard in the constitutional process
- Northern women are under-represented in the CDSC process and this must be changed

### NWT TREATY 8 TRIBAL COUNCIL

- The *Indian Act and Northwest Territories Act* are violations of Treaty 8 imposed without the consent of Treaty 8 Dene
- The federal government and the GNWT have violated the nation to nation relationship between Treaty 8 and Canada
- Treaty 8 Chiefs do not wish to be considered only as Northerners participating in public government
- This ignores their special, bilateral relationship with Canada and may be a method of assimilation

### **NWT Treaty 8 Tribal Council (continued)**

- The CDSC process is detrimental to the interest of Treaty 8 First Nations
- Treaty 8 and Treaty 11 First Nations have established a Treaty First Nations Committee to promote and maintain the spirit and intent of aboriginal and treaty sovereignty and to facilitate the constitutional development of Denendeh

### **DEH CHO TRIBAL COUNCIL**

- An integrated model of aboriginal and public government underestimates the complexity of self government and land claims
- Self government and land claims cannot be accommodated in a centralized public government system
- Euro-Canadian processes of decision-making and values have been detrimental to Dene society
- Deh Cho First Nations want a constitutional relationship with Canada which recognizes aboriginal title to their traditional lands and the establishment of a Deh Cho government based on Dene law
- Devolution of federal responsibility to the GNWT
  - undermines the Indian/Crown relationship
  - violates existing aboriginal claims
  - is inconsistent with the inherent right of self government
  - does not have the consent of Deh Cho First Nations
- Devolution should be to a Deh Cho First Nations Government

### **DOGRIB TREATY 11 COUNCIL**

- The Dogrib Treaty 11 Council supports the CDSC process and principles and intends to participate fully
- Constitutional change will occur in two ways
  - through the CDSC process
  - through self government negotiations with Canada as part of land claims
- Constitutional reform and self government must complement and support each other
- Regional and community governments in the Dogrib area must be addressed through self government negotiations, not the constitutional process
- The constitution should be drafted by an elected or appointed constituent assembly, with substantial guaranteed representation for the Dogrib Treaty 11 Council
- The final constitutional proposals must be approved in a territory-wide referendum by a majority of voters in each region
- GNWT devolution initiatives could pre-empt or undermine the CDSC process

## Process

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### Dogrib Treaty 11 Council (continued)

- Dogrib prefer that there be no further devolution from Ottawa to the GNWT until agreement on a constitutional framework is reached.
- If devolution does proceed, the aboriginal members of the CDSC should approve any further transfers and be involved in all stages of negotiation and implementation

### SAHTU SECRETARIAT

- The Sahtu claim includes a commitment to negotiate self government and guarantees Sahtu Dene and Metis participation in the NWT constitutional reform process
- Sahtu Dene and Metis support the CDSC process to define public government for the western NWT
- The self government and CDSC processes are mutually exclusive, yet dependent on each other
- Self government negotiations are the senior process
- Positions taken in the constitutional process will be drawn from self government negotiations
- Self government and public government mechanisms must accommodate each other
- GNWT initiatives to transfer programs and services to the community level are premature
- The authorities communities acquire as a result of self government or constitutional development should be defined first

### METIS NATION - NWT

- The Metis have an unprecedented opportunity to ensure their place in society is recognized and their aboriginal rights are entrenched and protected through:
  - the western constitutional process
  - the negotiation of land, resources and self government agreements with the government of Canada
- All land, resources and self government agreements which define Metis rights should be settled before a new territory is established
- Aboriginal justice systems must be included as part of self government discussions
- The federal government has been responsible for all legislation concerning the NWT, must be involved in changing it, and therefore must be invited to participate and take an active role in the discussions on the western NWT constitutional process as early as possible to ensure that a new constitution is developed before 1999

## THE IQALUIT AGREEMENT

- In developing a new constitution, non-aboriginal residents must accept the need to address Dene, Metis and Inuvialuit concerns within the context of a public government system based on democratic principles
- The constitutional process will be successful if it results in a constitution which, together with provisions in land claims agreements, defines aboriginal self government in the western territory
- That definition must fully reflect the self government rights of the Dene, Metis and Inuvialuit
- Canada must provide adequate funds to ensure that after division the level and quality of services available to NWT residents and the rate at which capital needs are met are at least maintained
- The further transfer of powers and jurisdictions from Ottawa should be vigorously pursued, in the context of aboriginal self government and without prejudice to land claims negotiations

## THE BOURQUE REPORT

- This process may be the last chance to accommodate public government combined with aboriginal government in a new western territory
- Aboriginal First Nations have the right to opt out of this process completely and seek a direct link with the federal government
- There are a variety of legal instruments which set limits on what we can do, including: Treaties 8 and 11, modern land claims agreements, and the Canadian Constitution, including the Charter of Rights and Freedoms
- Some guarantees people are seeking are already found in the Canadian Constitution, including the Charter of Rights and Freedoms and the protection of existing aboriginal and treaty rights
- New territorial laws and social programs, and improved enforcement of existing laws may offer more immediate solutions to problems of equity and caring than constitutional proposals
- The new western territory constitution should be entrenched as a schedule to the Constitution of Canada
- The ratification process for the new constitution should guarantee a public information and consultation process, provide for the consent of Aboriginal First Nations and provide for approval by residents in a plebiscite or referendum

### The Bourque Report (continued)

- When the constitutional process is finished, the people of the new western territory will know a little better who they are and who their neighbours in the territory are, and will have said what they think they can reasonably expect from each other and their governments
- An NWT Human Rights Code should be enacted prior to the coming into force of a new constitution

### THE NWT TODAY

- The Northwest Territories Act establishes the territorial government and sets out its basic powers
- The NWT Act is a federal Act, which can only be changed by Parliament
- The federal government must therefore agree to introduce legislation amending or replacing the NWT Act to provide the basis of a new constitution and structure of government for the western Northwest Territories
- Much of the constitution of the present NWT is either in territorial legislation or handled by unwritten convention
- Territorial legislation establishes an Executive Council and sets the number of MLAs and their electoral districts
- It also establishes other levels of government such as municipal councils and divisional boards of education
- These can be changed by the Legislative Assembly
- Unwritten convention guides the selection of the Cabinet and Premier
- These conventional practices can be changed by the MLAs
- Other federal legislation such as the Indian Act and acts to implement land claims agreements affect government in the NWT
- Parliament has passed the Nunavut Act to create an eastern territory on April 1, 1999
- It has also amended the NWT Act so that it will apply only to the remaining, western portion of the NWT
- Unless the NWT Act is further amended or replaced, the present structure of territorial government will continue in the western NWT after April 1, 1999



## PRINCIPLES

### QUESTIONS

- Should individual and collective rights be recognized and protected in the new constitution?
- Should aboriginal rights be recognized and protected?
- What governing institutions should there be: central? community? regional? aboriginal?
- Which governing institutions should be recognized in the constitution?
- Which individual human rights might be included and which might be addressed in other laws such as a Human Rights Code?
- Should a Social Charter be included and, if so, what should it cover?
- Should the constitution be long and detailed, or short and general?

### INUVIALUIT/GWICH'IN

- Democratic principles should be incorporated in the institutions of public government
- The special rights of aboriginal peoples must also be recognized
- The mixed population in the Beaufort-Delta region and the accepted tradition of territorial and municipal public government must be recognized
- Strong regional government is preferred over strong central government
- Concern for self, family and community takes precedence over concern for region or territory

### GWICH'IN TRIBAL COUNCIL

- Gwich'in have the inherent right to establish aboriginal government institutions so as to determine and control their development as peoples
- Gwich'in have the right to exercise legislative authority in areas of aboriginal jurisdiction
- Gwich'in may choose to work with or adopt public institutions, laws, programs and services

### TAX BASED MUNICIPALITIES

- Prefer strong central government over strong regional government
- A new system of government should not preclude the possibility of future provincial status
- The constitution should not be overly complex
- It should not create several new "territories"
- It should reflect attitude and philosophy of the people

## Principles

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### Tax Based Municipalities (continued)

- It should affirm existing and future aboriginal and treaty rights
- It should affirm or repeat major sections of the *Charter of Rights and Freedoms*
- It should also affirm the right of residents to vote and run for elected office in municipal/district elections
- It should provide all residents with equal access to and treatment by government, subject only to reasonable limitations
- A *Social Charter* should not be included in the main body of the constitution, but a statement of social principles could be included in the preamble
- A separate *Human Rights Code* passed prior or concurrently with the new constitution would ensure discrimination is not allowed in private sector dealings

### NATIVE WOMEN'S ASSOCIATION/STATUS OF WOMEN COUNCIL

- Communities should be recognized as the basic unit of governing authority, with power flowing up to the central government
- Our elders laws guide us; sharing, caring, trust and respect are the foundation of our ideas
- Women want an equal partnership in the constitution, with a focus on holistic governing
- The constitution must establish minimum rights for all citizens regardless of ethnic origin, community or region of residence, gender, ability, or sexual orientation
- These rights must apply to all levels of government, including aboriginal
- Women's equality rights must be protected and women must be informed of their rights, including access to affirmative action
- The aboriginal right of self government must be entrenched and protected
- The right of all people to be free from violence of all kinds should be recognized, and women and children informed of their right
- The constitution and all subsequent legislation and educational materials must be drafted in gender-neutral language
- A Social Charter, or at least a Human Rights Code with community sharing as its founding principle, must be included
- It should include a statement of values and principles to guide governments in the development of social policy and the allocation of resources

## Principles

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### Native Women's Association/Status of Women Council (continued)

- It should include recognition that sharing is required across the whole western territory in order to realize the Social Charter's principles
- A Code of Conduct for MLAs and all who hold positions of public interest is required to ensure accountability

### NWT TREATY 8 TRIBAL COUNCIL

- The Dene understand Treaty 8 as a nation-to-nation agreement which did not relinquish their sovereignty or cede their land and which can only be changed by bilateral agreement
- NWT Treaty 8 Chiefs, acting as nations, insist that their consent is needed prior to altering or amending the *Northwest Territories Act* or developing a constitution for a new western territory
- First Nations government must be based on Dene values, customs, principles and laws; a Tribal Government based exclusively on these principles is desired
- The *Bourque Commission* recommendations attempted to solve some of the grievances and to write principles that would incorporate Dene laws and values into amendments to the *Northwest Territories Act* but did not deal comprehensively with the sovereignty of Treaty Nations

### DEH CHO TRIBAL COUNCIL

- The spirit and intent of Treaty 11 must be maintained including recognition of our inherent governing authority
- The Deh Cho Tribal Council seeks a constitutional relationship with Canada which recognizes Dene aboriginal title to our lands and allows Dene law and custom to stand as the basis of First Nations government
- On the basis of Treaty 11, the First Nations of the Deh Cho Tribal Council desire the creation of a new territory for the Deh Cho region through a federal *Denendeh Act*
- Deh Cho First Nations government will apply to and include aboriginal and non-aboriginal people within the Deh Cho territory
- The democratic and legal rights of Canadians guaranteed under the Charter of Rights and Freedoms will be respected but special provisions will protect aboriginal concerns
- The Spirit of Creation and the land are determining forces in the governance of Dene life; the Dene have a responsibility to govern themselves at personal, family, regional and national levels in a manner which honours and respects the land
- Maintaining this defining relationship between the Dene and the land must be done at all costs; entering any agreement which would extinguish title is therefore impossible
- Good government according to Dene law and values will bring peace back into our families and communities

## Principles

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### **DOGRIB TREATY 11 COUNCIL**

- The present system of government in the western NWT must be substantially restructured to accommodate the desire of the Dogribs and other aboriginal peoples for greater self government
- A new constitution must recognize aboriginal and treaty rights, including the inherent right to self government and rights specified in land claim and self government agreements
- It should accommodate self government arrangements which the Dogrib people negotiate with Canada
- It should respect the languages of aboriginal First Nations through official language status in the territorial assembly, courts and bureaucracy
- Constitutional arrangements must be comprehensive and flexible to accommodate aspirations of all CDSC members
- The constitutional text should be relatively simple to avoid wrangling over interpretation

### **SAHTU SECRETARIAT**

- A new constitution must recognize the aboriginal right of self government
- Self government should be accommodated within a framework of public government
- The Sahtu Dene and Metis desire to govern their own affairs as a distinct cultural entity
- The definition of Sahtu self government rights must be based on those rights traditionally exercised and the history of the Sahtu Dene and Metis as sovereign people
- As one expression of aboriginal self government, the new constitution must recognize the community as the senior level of government
- Government is the people and institutions of government exist only to serve the people
- A Social Charter should be included in the constitution to recognize individual and collective rights, aboriginal rights, and the rights of women, children and the handicapped
- The rights of women include the right to live without violence and discrimination and to participate fully in social, cultural and political activities
- The rights of children include the right to live without being impacted by family violence, to learn their culture and history, and to learn the language of their land

### **METIS NATION - NWT**

- Parliament should recognize the authority of aboriginal and public bodies instead of delegating authority to them
- A strong central government is necessary to ensure representation of western NWT interests in southern Canada

## Principles

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### Metis Nation - NWT (continued)

- Division will affect the current balance of power among the various groups in the western NWT
- The new constitution must recognize and entrench the rights of each group
- It should recognize existing aboriginal and treaty rights, including recognition of the Metis as an aboriginal people of Canada
- It should protect self government rights negotiated by Metis through land claims and other agreements
- Metis rights include:
  - the same rights to hunt, fish and gather as Treaty First Nations
  - the right to a land base equivalent to 5 square miles for each citizen
  - the right of each Metis First Nation to exercise the inherent right of self government on its land base and to provide services to citizens not living on the land base
  - the right of each Metis First Nation to set the rules under which citizenship will be granted
  - the right to receive and administer the same program benefits received by Indians and Inuit from the Government of Canada
- The constitution should include protection of individual and collective rights through reaffirmation of the *Canadian Charter of Rights and Freedoms*
- The Metis First Nations endorse the recommendations of the Bourque Commission, in particular the entrenchment of Metis rights and the district model of government

### THE IQALUIT AGREEMENT

- A major objective of division is to improve the quality of government and the delivery of services to citizens
- Government decision-making should rest as closely as possible with those governed
- Aboriginal people will likely be a minority in the new western territory
- Their political rights, culture and future as individuals and as aboriginal peoples must be secured in the new constitution
- The overriding objective of a new western constitution is to build a system of public government which will protect the individual rights of all citizens and the collective rights of its aboriginal peoples, and whose overarching principle is one of bringing peoples together
- A new western constitution must balance two principles: protection of individual rights and protection of the aboriginal rights of Dene, Metis and Inuvialuit
- Each aboriginal cultural community must be recognized in the constitution, and mechanisms entrenched to enable each one to flourish as a distinct entity regardless of its proportion of the total population

## Principles

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### The Iqaluit Agreement (continued)

- Aboriginal rights relating to language, culture and any other political rights which are not included in claims agreements shall be entrenched in the constitution and means found to help ensure that all aboriginal rights are protected
- The constitutions of both Nunavut and the new western territory should protect non-resident aboriginal rights recognized in overlap agreements between the Dene/Metis and the Inuit
- They should also require co-operation between the two governments in decisions relating to non-resident aboriginal rights and interests, the management and use of resources and other matters

### THE BOURQUE REPORT

- First Peoples should be recognized as founding peoples and the many other people who have chosen the new territory as their home should be recognized as an integral part of its society
- The constitution should affirm that all authority to govern belongs to the people collectively and flows collectively from them to their institutions of government
- The constitution should include a statement of common values
- It should recognize the land as the source of our well-being and state our commitment to live in balance with it
- It should express respect for our distinct cultures, traditions and languages and our desire to restore balance and harmony among all our peoples
- It should express our desire to balance individual and collective rights and reaffirm the Charter of Rights and Freedoms
- It should uphold existing aboriginal, treaty and inherent self government rights of all First Peoples, including Metis
- It should uphold all present and future agreements between Aboriginal First Nations and Canada on land and resources and self government
- It should affirm that self government rights include the right to opt out of the constitutional process and seek a direct link with the federal government
- Flexible arrangements will be necessary to accommodate aboriginal self government if people want to stay together under one government in one territory
- First Peoples' languages should be recognized as official languages in public, central, district and aboriginal government institutions
- There should be a Social Charter identifying the basic necessities for the spiritual, emotional, mental, physical and economic well-being of all our people and stating government's responsibility to ensure access to social programs

## Principles

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### The Bourque Report (continued)

- Other means besides court enforcement should perhaps be found to monitor government compliance with the Social Charter
- The constitution should establish the right of a competent person of majority age to refuse medical treatment to prolong life for themselves or their minor children

### THE NWT TODAY

- The structure and powers of government in the NWT are not established or protected under the Constitution of Canada, which recognizes only the federal and provincial governments
- Aboriginal and treaty rights are protected by the Constitution of Canada
- Any agreements resulting from self government negotiations will recognize aboriginal governing institutions and affect government in the new western territory
- The federal government has exclusive legislative authority over the Northwest Territories
- Power flows from the federal government by delegation to the territorial government through the Northwest Territories Act, and from the territorial government to municipal governments by delegation through territorial legislation





# STRUCTURES

## QUESTIONS

- What should be the roles, if any, of central, community, regional and aboriginal governing institutions?
- What kind of governing bodies are needed to make laws or decisions about policy, programs and services?
- What executive and administrative structures are needed to carry out decisions and deliver programs and services?
- What structures are needed to enforce laws and administer justice?
- Will we have the financial resources to support these structures?
- What aboriginal government structures will there be?
- What will be the relationship between public and aboriginal government structures?

## INUVIALUIT/GWICH'IN

- There should be a strong, regional public government for the Inuvialuit and Gwich'in settlement areas--the Beaufort Delta region
- The regional government would create new relationships with people and institutions in the rest of the new western territory; not sever them
- The aim is to redistribute political authority between levels of government to maximize local and regional authority and improve quality of government programs and services
- The regional government would enjoy a supportive and complementary relationship with the central government
- Regional government should be an equal partnership of communities

## GWICH'IN TRIBAL COUNCIL

- Gwich'in want to determine and control their development as a people, including controlling and developing the programs and services that support a Gwich'in society
- Gwich'in First Nations should have the right to exercise or pass Gwich'in laws
- Proposes two models of community government reflecting predominantly Gwich'in populations (Tsiigehtchic and Fort MacPherson) and mixed populations (Aklavik and Inuvik)
- The Aklavik model provides for a community council with appointed aboriginal representatives and elected public participation
- In Tsiigehtchic, a predominantly Gwich'in community, the Gwich'in First Nations Council should be the sole governing institution
- Other residents would have guaranteed access to programs and services
- These models must be considered in the context of the Regional Public Government proposal for the Beaufort-Delta

## Structures

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### TAX BASED MUNICIPALITIES

- There should be a strong central government
- There should not be more levels of government than people need or can afford
- The Bourque Commission proposal for district governments more powerful than the central government would lead to intergovernmental wrangling and create extensive bureaucracies, high costs and inefficiency
- Prefer a second order of "municipal/district" government oriented toward the existing municipal structure and recognized in the constitution
- Existing municipal governments would become municipal/district governments
- This could include extending the boundary of a present municipality
- Municipal/district boundaries could correspond to the boundaries of a First Nation, if it agreed, so the aboriginal government could exercise the powers of a municipal/district government
- The number of municipal/districts and their boundaries would be included in a schedule to the constitution
- Municipal/districts would not require a full legislature; the municipal council structure would be adequate
- Municipal/district government would co-exist with bands, tribal councils, First Nations, and other land-based aboriginal groups and could enter into agreements for joint provision of services
- There should be a single judicial system, established by the central government, for the entire territory

### NATIVE WOMEN'S ASSOCIATION/STATUS OF WOMEN COUNCIL

- There should only be two levels of government recognized in the constitution, central government and community government
- Communities would have the constitutional right to form regional governments
- There should be a People's Assembly to address the need for greater control over decision making
- It would provide fairer representation of women and grass roots organizations involved in government programs and services
- It would meet publicly at the beginning of each new Legislative Assembly term to formulate priorities but MLAs would not be bound by its recommendations
- It would reconvene at the end of the Assembly's term to review progress and set the stage for the next election

## Structures

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### **NWT TREATY 8 TRIBAL COUNCIL**

- There should be an NWT Treaty 8 Tribal Government with jurisdiction over all traditional lands

### **DEH CHO TRIBAL COUNCIL**

- A Deh Cho First Nations government would operate in the Deh Cho region
- It would be composed of Deh Cho First Nation Councils which would be the basic unit of government, replacing Band councils and municipal councils
- The Deh Cho First Nations Councils would each have jurisdiction over their traditional regions
- It would be recognized in a federal Denendeh Act replacing the applications of the *Indian Act* and the *Northwest Territories Act* in Deh Cho
- It would have legislative, executive and judicial branches
- A senate of elders would serve as advisors
- A Denendeh Court would be established with jurisdiction similar to that of a superior court elsewhere
- Emphasis would be placed on local government instead of central government
- Authority may be delegated to a confederacy of Deh Cho First Nations which will have jurisdiction over matters of mutual concern to First Nations Councils
- The Deh Cho First Nations Government may delegate powers to boards and tribunals

### **DOGRIB TREATY 11 COUNCIL**

- The Dogrib want independent Dogrib First Nation regional and community governments operating on equal footing with the central public government
- Dogrib self-governing institutions must co-exist harmoniously with the new public government
- Dogrib government and public government will take place in a framework of negotiated inter-governmental agreements, inter-delegations of power and sharing of resources

## Structures

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### SAHTU SECRETARIAT

- Decision-making should be as close to the community level as reasonably possible
- Community government should be the senior level and prime decision-making body
- Central government should be the second level of the decision-making process
- Regional organizations or alliances may be established by community governments but should not be defined in the constitution
- The structure and mandate of community government would be determined by the people of each community within the framework of the constitution
- The constitution should place limits on the size and future growth of the central government and provide for rigid accountability to community governments

### METIS NATION - NWT

- The Metis Nation-NWT supports the concept of regional/district governments proposed by the *Bourque Commission*
- There should also be a strong central government
- The central government would be a “Union of Regions” with power delegated from the district governments
- The cultural, economic and geographic diversity of the North makes regional or district government practical and desirable
- The term “district” can apply to aboriginal or public bodies
- District government must include recognition of communities and regions with diverse interests, concerns and ethnic populations
- Each district should be able to define its own government, recognizing each group’s traditional ways of governing

### THE IQALUIT AGREEMENT

- There would be both community and central levels of government
- There could also be exclusive aboriginal jurisdictions in limited areas of direct concern to aboriginal people
- Communities would have the right to form regional governments
- The central government would be obliged to recognize and accept them
- A number of issues must be considered, including the method of deciding whether communities wish to form a regional government, the method of establishing them, the number of consenting communities required and the terms upon which a community may withdraw
- The structure and accountability of regional governments would be determined by member communities according to democratic principles

### The Iqaluit Agreement (continued)

- Regional government would not have legislative authority unless it is delegated by the community or central governments
- Boundaries of regional governments would be based on community composition and could change as communities join or withdraw
- Funding must be fair and adequate, and include funds covering duties assumed from other governments

### THE BOURQUE REPORT

- The constitution should establish a district order of government with legislative, executive and, if necessary, judicial branches
- The constitution should also establish a central government with legislative, executive and judicial branches
- The people of a district must have a voice in determining whether the district government will be a public, exclusively aboriginal or mixed form of government
- Structures should be flexible; district assemblies or traditional forms of government may be preferred
- Communities could become district governments or choose to amalgamate into a regional district
- Aboriginal First Nations could create exclusive aboriginal district government
- Participation in a district government would not prejudice the right of Aboriginal first Nations to negotiate with the federal government regarding their lands
- District governments should encompass the entire geographic area of the territory
- The central government would include a Legislative Assembly in some form, and possibly a senate or council of elders
- The central government could appoint an ombudsperson to monitor and report on the Social Charter and regional disparities

### THE NWT TODAY

- The *NWT Act* creates only the central territorial government, with legislative, executive and judicial branches
- It establishes the Commissioner as the Chief Executive Officer and gives legislative power to the Commissioner acting with the advice and consent of the Territorial Council
- *The Legislative Assembly and Executive Council Act* passed by the NWT Legislative Assembly refers to the Territorial Council as the Legislative Assembly and establishes an Executive Council selected by the Legislative Assembly

## Structures

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### **The NWT Today (continued)**

- By convention the Executive Council operates as a Cabinet; it prepares and manages the budget, initiates legislation and sets government policy
- Courts in the NWT are established by territorial legislation, but the federal government appoints the judges for the Supreme Court as in the provinces
- Municipal governments, boards, agencies and other governing institutions are created by territorial legislation
- Band councils are recognized through the federal Indian Act; their relationship with public government is not well defined
- Land claims agreements require the establishment of land and resource management regimes with aboriginal and public government representatives

## POWERS

### QUESTIONS

- What powers should each level of government have?
- What powers will aboriginal government structures have?
- Which of these powers should be exclusive and which should be shared?
- Should one level of government be able to delegate its powers to another level?
- What powers to raise revenues, including taxation, should each have?
- What transfer payments would each level of government require and from whom?
- Which levels of government should own or control land and resources?
- What considerations of cost and efficiency affect the division of powers?

### INUVIALUIT/GWICH'IN

- The Beaufort-Delta regional government would have wide-ranging authority, including many powers now held by the GNWT and Canada
- Its main responsibilities would be making laws, setting standards, raising and distributing revenues
- It would rely on the central government to provide certain programs and services, such as the court system and the health insurance plan
- Its powers would be set out in legislation, but could not be exercised until authorized by communities through their elected representatives to the regional assembly
- Cost efficiency and practicality would determine whether programs and services are handled at the regional or community level
- Some communities could decide to assume more authority over program delivery than others, or take on more as their capacity grows
- The regional government would provide service only if a community was unwilling or unable
- Regional government would be responsible for Crown (public) lands including authority to levy real property taxes
- It would negotiate block formula funding agreements with the central government
- It could also negotiate agreements with the federal and territorial governments for a share of taxes

### **GWICH'IN TRIBAL COUNCIL**

- The Gwich'in must determine the appropriate mix of powers that will meet self government objectives
- A Gwich'in government should be able to pass laws to safeguard and develop Gwich'in language, culture, traditions, institutions and economies and to strengthen our relationship with our lands, waters and environment
- Gwich'in First Nations may also work closely with or adopt public government institutions, laws, programs and services
- Public government may have or share powers over transportation, community infrastructure, municipal services, housing, communications, post-secondary education and training

### **TAX BASED MUNICIPALITIES**

- Central government powers should approximate provincial powers and be adequate to provide services resident require
- Municipal/districts powers should approximate the current authority of tax based municipalities, and some additional powers they could exercise if they have the resources and will
- Municipal/districts should have all the powers of a natural person and not be restricted to specific powers granted to them, as with present municipalities
- The central government may not reduce or change powers granted to municipal/districts
- Powers and responsibilities would be shared in areas where both levels of government have legitimate concerns and legislative authority
- Where municipal districts may not be able to exercise certain powers and responsibilities, the central government would exercise them
- Both levels of government must have access to appropriate revenue sources
- The territorial government should have all the taxation powers of a province, including full access to revenue from natural resource development
- Provinces are restricted to direct taxation; this restriction should be removed for the western NWT
- The constitution should contain a commitment by Canada, similar to provincial equalization payments, to ensure enough revenue to provide services equivalent to those provided to other Canadians
- The constitution should require the territorial government to share revenue with municipal/district governments



### **NATIVE WOMEN'S ASSOCIATION/STATUS OF WOMEN COUNCIL**

- Legislative powers of the central government should be diminished
- Communities would control and administer programs and services that directly affect their well-being
- Women should have more control over education policy, curriculum, and support services to create experiences that reinforce positive identity
- Laws of aboriginal governments would apply to all people living within a particular jurisdiction

### **NWT TREATY 8 TRIBAL COUNCIL**

- There should be a sovereign NWT Treaty 8 Tribal Government
- First Nations governments should not be restricted to Band Councils with their present day powers

### **DEH CHO TRIBAL COUNCIL**

- The Deh Cho First Nations government would have powers similar to a province but due to aboriginal and treaty rights, it may also assume federal jurisdictions and powers
- It would have exclusive legislative jurisdiction over all lands and resources in the Deh Cho territory
- Title to Deh Cho lands would be held by the Crown in right of Denendeh, in trust for the use and benefit of the First Nations
- Deh Cho First Nations would have exclusive legislative jurisdiction over the administration of justice
- The governments of Denendeh would deliver services to all residents
- A Deh Cho Transfer Arrangement, similar to a federal-provincial transfer payment, would provide start-up and on-going funding to ensure services equivalent to those provided to other Canadians

### **DOGRIB TREATY 11 COUNCIL**

- Dogrib governing bodies would be legally empowered to operate with independent legislative authority and sufficient resources to be effective
- A significant redistribution of authority and resources away from the central government to regional and community-based governments is required
- Transfers of authority and resources from the government of Canada to regional and community governments may also be required

## Powers

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### SAHTU SECRETARIAT

- Jurisdiction of community/district and central governments would be clearly defined
- Both would involve aboriginal and public areas of jurisdiction
- Exclusive aboriginal jurisdiction would include: treaties, land claims, self government negotiations, traditional lands, wildlife harvesting
- Areas of public jurisdiction would include province-like and municipal powers
- Central government activities should be limited to those which are essential to meet the common needs of the people
- Powers of the central governments related to land and resources should be shared with districts
- Sahtu Dene and Metis must have major input and influence over the development of standards which govern activities on their aboriginal lands
- A new constitution must be flexible to allow central government coordination of initiatives and varying delivery capacity of community governments
- District governments will decide which level of government is most able to deliver programs and services affordably and effectively
- When the central bureaucracy delivers programs on behalf of district governments, it will be challenged to be more responsive to local needs

### METIS NATION - NWT

- The central government gets its authority delegated upwards from the district governments, reflecting the fundamental principle that power flows from the people
- District governments can deliver all programs except those they choose to delegate upward to the central government
- As a district is able to manage more of its own affairs it can revoke the delegated powers and re-establish control
- The central government is the clearing house for federal public government funding, has all taxing powers except property taxes and allocates funds to the districts
- Otherwise, it is restricted to powers delegated by district governments
- Communities should be able to assume responsibility for policing themselves through district government

### THE IQALUIT AGREEMENT

- People and communities should have control over those matters which affect them exclusively, and input in and influence over those decisions which affect them as well as others
- Every level of government in the new western territory must have sufficient powers, authority and resources to enable it to carry out its responsibilities
- The level of funding should be assured and predictable, and restrictions on use should be flexible
- Exclusive aboriginal jurisdictions would focus on cultural matters and the special relationship existing between aboriginal peoples and the land
- The central government should hold public lands outside community boundaries but within regional boundaries
- Territorial authority over the management of sub-surface resources should be exercised in the interests of all residents in the territory
- Regional interests could receive formal consideration in land use planning and management
- Regional governments could obtain shared responsibility, management and control over certain programs or services from the territorial or community governments
- The regional aboriginal languages and English would be the official working languages of regional governments

### THE BOURQUE REPORT

- District government would have the power to make laws and deliver their own programs rather than just administering central government programs
- District government should have broad-ranging powers, including all powers not specifically assigned to the central government
- The central government should be restricted to matters requiring territory wide standards and regulations
- Aboriginal and mixed aboriginal-public governments may have different exclusive powers according to local circumstances
- The principle of asymmetry, or unequal distribution of powers, should be recognized as acceptable among district governments
- Districts should be able to assume increased powers gradually and to temporarily assign authority to the central government at any time
- The constitution should assure an equitable distribution of financial resources to each level of government
- District governments may require more taxation authority, but there may also need to be limits on their borrowing powers
- The central and district governments will have to harmonize fiscal policy and relations through negotiated agreements for sharing financial resources

### THE NWT TODAY

- The territorial government has powers similar to those of a province, subject to any Act of Parliament which may affect or restrict those powers
- Unlike the provinces, ownership of public lands and control over land, water and non-renewable resources remains with the federal government
- The territorial government cannot have any powers greater than those of a province
- Any law passed by the territorial government may be disallowed by the federal government within one year after it is passed
- The territorial government decides which powers, if any, it wishes to delegate to community or regional governments
- Present territorial legislation gives municipalities powers similar to municipalities in the rest of Canada
- The territorial government may not pass laws which prevent Indians or Inuit from hunting for food on unoccupied Crown lands, except regarding game which the federal government has declared to be in danger of extinction
- Territorial legislation must be consistent with the terms and provisions of land claims agreements
- Band Councils, recognized through the *Indian Act*, have varying powers delegated by the Minister of Indian Affairs and Northern Development

## REPRESENTATION

### QUESTIONS

- How should individual residents and groups be represented in government decision-making?
- Are there aboriginal rights to guaranteed representation in public government which must be recognized?
- Should there be guaranteed representation of women and men, aboriginal and non-aboriginal peoples in our structures of government?
- Can we balance guaranteed representation with individual rights to vote and run for office?
- What is required to amend the constitution?

### INUVIALUIT/GWICH'IN

- The Beaufort-Delta Regional Council would be composed of 11 Councillors
  - one councillor elected for three years from each of 8 communities
  - one councillor elected at large in each of the Beaufort and Delta areas
  - a mayor elected from the whole region
- There would be a three-person executive committee
- Public meetings would be held at least quarterly
- The constitution of the regional government could be amended by a 2/3 vote of the member communities
- Communities would opt into or out of the regional government by majority vote of the residents

### GWICH'IN TRIBAL COUNCIL

- The Aklavik Community Council model would be composed of a Mayor and eight councillors:
  - 3 councillors appointed by the Aklavik Gwich'in Council
  - 3 councillors appointed by the Inuvialuit Community Corporation
  - 2 other councillors and a mayor elected at large
- The Tsiigehtchic model would be composed of the Chief and councillors chosen by the Gwich'in
- Other residents would have a right of appeal to an independent body to ensure equitable program delivery
- Public government must consult with Gwich'in First Nations prior to passing laws

## **Representation**

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### **TAX BASED MUNICIPALITIES**

- The central government should be democratically elected on a majority vote basis
- The AWTBM does not favour guaranteed representation at the territorial level for any group or interest
- The central government should be required to consult with municipal/districts before enacting legislation which affects them
- All constitutional amendments should require public consultation followed by a referendum
- Amendments relating to district government should also be approved by 2/3 of district governments having at least 50% of the population
- First Nations may require a role in approving constitutional amendments directly affecting them, but it may not be necessary given the referendum and district approval requirements
- Municipal/district councils should be elected democratically by all district residents
- Alterations to municipal/district boundaries would be by Order-in Council of the central government, and would not require a constitutional amendment

### **NATIVE WOMEN'S ASSOCIATION/STATUS OF WOMEN COUNCIL**

- Aboriginal people must be guaranteed participation in the central government
- Representation should provide an advantage to smaller aboriginal communities
- Women must be represented in all government institutions and processes
- Women should make up 50% of all government-appointed boards, agencies and commissions
- But, most women do not want guaranteed seats for women in the Legislature
- The Government Leader would be elected separately by a majority of voters, plus a majority of all communities based on the majority vote of each community
- The Speaker would be an elder appointed by the Assembly from the community at large
- Cabinet members would be selected by the Government Leader, balancing representation of men and women, aboriginal and non-aboriginal and urban and rural MLAs
- MLAs would approve the selection, but the number of appointments they could reject would be limited
- The People's Assembly would be composed of the MLAs, and the senior elected representatives of each community, aboriginal and regional government, and each incorporated society with a territory-wide membership of a minimum specified number

## Representation

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### **NWT TREATY 8 TRIBAL COUNCIL**

- Not stated

### **DEH CHO TRIBAL COUNCIL**

- Election procedures would be set out under the constitution of Denendeh
- A First Nations Election Code would provide for recognition of custom selection of leadership as well as removal of leaders
- The extended family would have a central role in the composition of boards and tribunals
- Non-aboriginal persons could hold interests in land, conduct business, participate in government councils and hold positions in the administration and courts of Denendeh

### **DOGRIB TREATY 11 COUNCIL**

- A new constitution must include and describe constitutional guarantees for Dogrib representation in the central government, including a minimum percentage of seats in the Legislative Assembly
- Representation by population is rejected in favour of a formula which includes proportion of total population, number of regions and minimum guarantees to each aboriginal group
- The constitutional amending formula must not block future changes yet must require Dogrib consent
- General amendments could be approved by a specified majority of MLAs and each aboriginal group represented in the assembly
- Amendments affecting guaranteed aboriginal and treaty rights should be approved by all aboriginal groups
- Amendments affecting the distribution of powers should be subject to a territory-wide referendum and receive majority approval in each region
- Dogrib self government institutions would be protected from unilateral amendment or repeal by either the federal or territorial government

## Representation

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### SAHTU SECRETARIAT

- The Legislative Assembly should consist of 6 MLAs, plus community/district government representatives
- There would be one MLA from each region, elected by communities according to local process,
- Representation by population requires further study
- District governments will represent both aboriginal and non-aboriginal people, but certain areas would be under the jurisdiction of the aboriginal constituents
- Decisions made by the central government on issues within its mandate must first be discussed and positions taken by district governments
- District governments would have a veto over matters affecting their district

### METIS NATION - NWT

- The interests of all groups must be protected
- A balance of power must exist so that no group feels disenfranchised
- Metis require guaranteed involvement in future decision-making
- The Legislative Assembly should have 19 members with guaranteed Metis representation in each region except the Inuvialuit region
- Metis should have the right to veto any legislation directly affecting them

### THE IQALUIT AGREEMENT

- Every bona fide resident should have the right to participate in and benefit from public institutions, programs and services according to basic democratic principles guaranteed in the constitution
- There shall be a guarantee of aboriginal participation in government and significant impact on decision-making
- Amendments to the constitution, or those parts which address fundamental principles and objectives, must have the approval of aboriginal and non-aboriginal peoples
- Residents of a region should have an equal right to participate in regional government and to benefit from its programs and services
- Programs and services and the manner of participating need not be identical for members of different cultural groups



### THE BOURQUE REPORT

- The form of each district government and the manner of appointment or election and terms of office would be set out in a charter attached to the new constitution
- Models for these institutions require further study and discussion, but whatever form they take must reflect a balance among all the cultures of the new western territory
- The option for traditional forms of representation should remain open, at least for district government, in accordance with the wishes of the residents living within a district's boundaries
- The structure of the central Legislative Assembly should be representative of the residents of the new western territory, including men and women, First Peoples and non-aboriginal residents
- Amendments to the constitution should be under the exclusive authority of the people of the territory
- First Nations, the central legislature or district governments should be able to initiate amendments
- The constitution should guarantee a public information and consultation process on all amendments
- The central legislature should be the final authority for approving amendments, but some may require ratification by a plebiscite and some will require the consent of First Nations or district governments

### THE NWT TODAY

- The NWT Legislative Assembly may have between 15 and 25 Members
- Territorial legislation sets the number of Members at 24 and defines their constituencies
- Under the Charter of Human Rights and Freedoms, every resident of the territory has the right to vote and to run for office in an election of Members of Legislative Assembly
- Under territorial legislation, there is a one-year residency requirement
- The Speaker of the Legislative Assembly is elected by the Members and must be a Member of the Assembly
- The federal government is not required to consult or obtain the consent of the residents or government of the territory before amending the NWT Act
- Representation on municipal councils is determined through territorial legislation
- Representation on Band councils is determined by the *Indian Act* which sets out election processes and also recognizes selection by traditional custom

