



Aboriginal Self-Government in the Northwest Territories

Supplementary Booklet 2

The Constitutional Development of the Northwest Territories

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What is a Constitution?

A constitution is the basic laws and rules that set out how a nation, people, region or group is governed. The *Constitution Act* of 1982, describes the Constitution of Canada as "the supreme law of Canada".

Some writers use the term "constitution" in a wider sense than others. One of Canada's constitutional experts, the late Eugene Forsey, describes Canada's constitution as "the set of arrangements by which we govern ourselves." In this sense, documents like the *Constitution Acts* of 1867 and 1982 are "the skeleton, not the whole body." This view is consistent with that of the NWT's **Constitutional Working Group** which, in *Partners In A New Beginning*, describes the constitution of the NWT as made up of:

- The *Northwest Territories Act (NWT Act)*
- Political traditions, called 'conventions'
- Important territorial acts like the *Elections Act*
- Treaties
- Aboriginal land claim agreements
- Aboriginal traditions and practices
- Other federal acts (e.g. *DIAND Act, Territorial Lands Act*)
- Principles established by the courts.



The first permanent Legislative Assembly building of the NWT (opened, 1993).

photo: Jiri Hermann

Described in this way, the "constitution" of the NWT is not rigidly fixed. It changes frequently and includes federal, territorial and Aboriginal authorities, institutions and practices. Nevertheless, the *NWT Act* is of particular importance for setting out the legal framework of the Government of the Northwest Territories (GNWT).

Confederation

In 1867, the British Parliament passed the *British North America Act* (now known as the *Constitution Act, 1867*) to set up the Dominion of Canada. The *Act* set up the basic institutions of our national system of government, and outlined the powers of the federal and provincial governments.

Note: Key words are identified in BOLD text and defined in a listing of Key Words and Ideas on page 8 of this booklet. Other key words are defined where they occur in the text.

The Transfer of Rupert's Land

In 1870, Great Britain transferred Rupert's Land and the **North-Western Territory** to Canada. As well as the present NWT, this area included Yukon, Alberta, Saskatchewan, most of Manitoba, northern Ontario, northern Quebec and most of Nunavut. The Arctic Islands were added in 1880. The NWT's present borders were set by the creation of Yukon (1898), Alberta and Saskatchewan (1905), and Nunavut (1999).

Federal Jurisdiction

Federal responsibility for the northern territories is contained in the *Constitution Act* of 1871. This makes the federal government responsible for the administration, peace, order and good government of the North. The *NWT Act* was passed by Parliament as part of this responsibility.

The Early Government of the Northwest Territories

From 1897 to 1905, the NWT had an elected government resembling a province. But in 1905, after the provinces of Saskatchewan and Alberta were created, what was left of the NWT slipped back to the status of a "colony". For the next 60 years, a Commissioner and an appointed **Territorial Council** ran the NWT from Ottawa.

In the 1950s, a return to an elected government for the NWT began. In 1951, the *NWT Act* was changed to permit three elected Members from the Mackenzie District to join the four appointed Members and the Commissioner on the Territorial Council. At this time, the Council also began



to alternate its sittings between Ottawa and the NWT. Between 1955 and 1966, the powers of the Territorial Council were gradually increased and by 1966 elected Members formed the majority on the Council. In 1975, the Territorial Council became a fully elected body and its Members began to call it the "Legislative Assembly" the following year.

NWT 6th Council. First Opening of the Council in Yellowknife, November 13, 1967.

photo: NWT Archives

Devolution

In 1965, following consultations across the territories, the federal "Carrothers Commission" recommended a gradual increase in territorial responsibility through the setting up of a working territorial government. The Carrothers report had a lot of influence. In 1967, Yellowknife was made the capital of the NWT and the first Commissioner to be permanently based in the NWT was appointed. Many province-like responsibilities were taken over from the federal government in the following years. These included such things as education, housing and social services. Other responsibilities, like health care, forest management and fire suppression were taken over in the 1980s. Crown lands, oil, gas and mineral resources continue to be administered by the federal government.

Responsible Government

Responsible government gradually developed after 1975. In that year, the first two MLAs were appointed to the Commissioner's "Executive Committee". The Executive Committee later became the Executive Council or Cabinet of the NWT. In 1986, Commissioner Parker turned over his last Cabinet responsibilities to elected MLAs, a step that was authorized by the Minister of Indian Affairs and Northern Development under the *NWT Act*. This step marks full responsible government.



Dan Norris, Commissioner of the NWT from 1989 to 1994. Commissioner Norris was the first NWT Commissioner to serve strictly in a role like that of a provincial Lieutenant Governor.

photo: NWT Archives

Consensus Government

MLAs in the Legislative Assembly of the NWT are not, at present, split along party lines. This means that, following an election, MLAs in the NWT formally vote to choose the Premier and Ministers. In all the provinces and Yukon, by contrast, MLAs are organized along party lines and the leader of the party which has the most MLAs is the Premier.

The NWT and the Provinces

Although the NWT is not a province, its government is similar to that of a province. For example, Section 16 of the *NWT Act* sets out the powers of the Legislative Assembly and these are similar to the powers of provincial legislative assemblies.

The main limits on the powers of the GNWT are:

- Although the NWT has similar law-making powers to a province, these powers are not constitutionally protected. Territorial laws are overridden if they conflict with federal laws, even if they deal with a territorial responsibility.
- The federal government controls most Crown lands in the NWT, whereas provincial governments control most Crown lands in southern Canada. This means that the GNWT cannot collect royalties from resources taken from Crown lands or regulate many aspects of development on such lands.

Since the 1980s, the GNWT and the other territorial governments have gradually won the right to attend federal-provincial meetings along with the provinces. The GNWT now also participates in the Western Premiers' Conferences and the Annual Premiers' Conferences. However, territorial governments are not counted for purposes of a formal amendment to the Constitution of Canada under Part V of the *Constitution Act, 1982*.

Some of the important similarities and differences of the NWT and provincial governments are shown in the table on page 7.



13th Legislative Assembly of the NWT following the creation of Nunavut on April 1, 1999. *Seated left to right:* Joe Rabesca, Premier Jim Antoine, Speaker Sam Gargan, Jane Groenewegen and Minister Stephen Kakfwi.

Standing left to right: Minister Floyd Roland, David Krutko, Don Morin, Minister Vince Steen, Minister Michael Miltenberger, Jake Ootes, Roy Erasmus, Seamus Henry and Minister Charles Dent.

photo: NWT Legislative Assembly

because

the governments of the territories are set up under federal laws, it is sometimes said that they are just branches of the federal government. But in a case dealing with Yukon's official languages the Yukon Supreme Court did not accept this view. In this 1986 case, Justice Mayer said:

"The Yukon territory is not a department of the federal Parliament or of the federal government. It is, in my view, an 'infant province', with most but not all the attributes of a true province. The main distinction between the *Yukon Act* on the one hand, and the *Manitoba, Alberta and Saskatchewan Acts* on the other (all federal Canadian statutes) is that, in creating provinces, the federal

government irrevocably divests itself of certain powers, whereas in the case of the *Yukon Act*, it retains the right to amend or repeal this statute (just as the Parliament of the United Kingdom technically retained the same right until the recent patriation of the Canadian constitution...)"

In the NWT Supreme Court Justice Vertes expressed a similar view in 1999:

"...the territorial assemblies... are not acting as agents or delegates of the federal parliament when legislating within their sphere of powers... In this sense they have a sovereign-like legislative character..."

The NWT and the Provinces Compared

Government Feature

Symbolic Head

Head of Government

Selection of Cabinet

Term of Legislative Assembly

Power to dissolve Legislative Assembly for elections

Size and composition of Legislative Assembly

Main source of law-making powers

Examples of law-making powers

Relation to federal laws

Public (Crown) lands

Power to borrow money

Criminal prosecutions

Attendance at First Ministers' Meetings

Northwest Territories

Commissioner (*NWT Act*)

Premier (by convention)

By MLAs (by territorial law)

4 years (*NWT Act*)

Federal government, following consultation (*NWT Act*)

Fixed by territorial law within limits set by the *NWT Act* and the constitution

NWT Act (S. 16)

- Taxation for territorial purposes
- Territorial civil service
- Health care and charities
- Incorporation of companies
- Municipal government
- Property and civil rights
- Administration of justice
- Education
- Agriculture

Federal laws override territorial laws in the event of a conflict between them

Except for Commissioner's lands, federal ownership and control

Federal authority required

Federal

By convention

Provinces

Lieutenant Governor (*Constitution Act, 1867*)

Premier (by convention)

By Premier (by convention)

5 years (*Constitution Act, 1982*)

Lieutenant Governor, following advice of the Premier (by convention)

Fixed by provincial law within broad constitutional limits

Constitution Act, 1867 (S. 92, 92A, 93, 95)

- Taxation for provincial purposes
- Provincial civil service
- Health care and charities
- Incorporation of companies
- Municipal government
- Property and civil rights
- Administration of justice
- Education
- Agriculture
- Immigration

Provincial and federal governments each have sole law-making powers in certain areas. Federal laws override provincial laws in the areas of agriculture and immigration

Provincial ownership and control

May borrow on sole credit

Provincial

By convention

Key Words and Ideas

Aboriginal Summit

A forum for discussion made up of the elected heads of regional Aboriginal political bodies, the Dene Nation and the Metis Nation - NWT.

Constitutional Working Group

A group made up of Members of the Legislative Assembly (MLAs), representatives of the **Aboriginal Summit**, and other bodies to develop options for the constitutional development of the NWT.

Devolution

The transfer of responsibilities and authority to a more locally or regionally based government. The taking over by the Government of the Northwest Territories (GNWT) of provincial-type responsibilities from the federal government is often called devolution.

North-Western Territory

19th Century and early 20th Century legal documents refer to the "North-western Territory", the "North-Western Territories", the "North-West Territories" and the "North-west Territories". The spelling of the "Northwest Territories" became standard in the first part of the 20th Century.

Patriation

Before 1982, Canada had to get the British Parliament to make important changes to its constitution. Patriation meant making the constitution so that it could be changed by the federal and provincial governments, following certain procedures, without needing to go to the British Parliament.

Territorial Council

The *North-West Territories Act* of 1875 provided for an elected and appointed "Council", which was to be gradually replaced by a fully elected "Legislative Assembly". The elected Legislative Assembly replaced the Council in 1881. But in 1905, following the creation of Alberta and Saskatchewan, an appointed "Council" in turn replaced the Legislative Assembly. The present *Northwest Territories Act (NWT Act)* continues to refer to the NWT's law-making body as a "Council" although it is now (once again) fully elected. In 1985 a territorial law adopted the term "Legislative Assembly", but the *NWT Act* does not reflect this change. The *Nunavut Act* (the federal legislation setting up Nunavut) uses "Legislative Assembly" for Nunavut's elected law-making body.

Responsible Government

A form of government in which Cabinet Ministers must have the support of a majority of the Members of an elected Legislative Assembly.