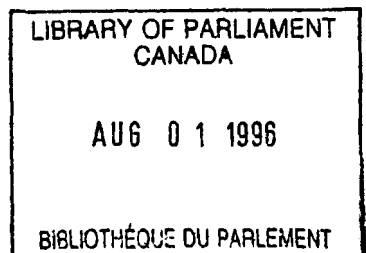


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*Selection of a Premier in Nunavut  
and Related Issues*

*A Report of the  
Nunavut Implementation Commission*

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Nunavut Hivumukpalianikhaagut Katimayit  
Nunavut Implementation Commission  
Commission d'établissement du Nunavut

July 10, 1996

The Hon. Ron Irwin,  
Minister,  
Department of Indian Affairs  
and Northern Development,  
Ottawa, Ontario

The Hon. Don Morin,  
Premier,  
Government of the Northwest Territories,  
Yellowknife, NWT

Mr. Jose Kusugak,  
President,  
Nunavut Tunngavik Incorporated,  
Iqaluit, NWT

Dear Mr. Irwin, Mr. Morin and Mr. Kusugak,

On behalf of the Nunavut Implementation Commission, I am pleased to supply you with a report of the Commission entitled **Selection of a Premier in Nunavut and Related Issues**.

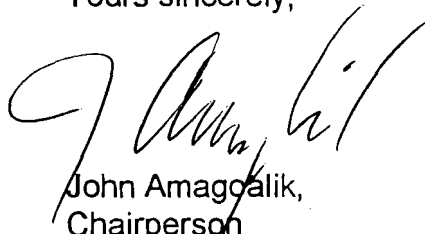
The report deals with an issue that has come up on numerous occasions in community consultation and other work of the Commission, namely, the use of a system of direct election to select a Premier in Nunavut. In doing so, it addresses a number of matters that, while they might appear at first blush somewhat tangential, cannot be severed from the issue, such as the role of party politics, the frequency of elections, and concepts of ministerial responsibility and accountability.

I would like to point out that the report identifies and evaluates a number of options but does not make any definitive recommendations with respect to them. The Commission intends to supply you with such recommendations in the fall as

part of a larger set of recommendations dealing as well with the size and make-up of the Nunavut Legislative Assembly.

I would be pleased to discuss this report with you, or any other work of the Commission, at a time convenient to you.

Yours sincerely,



John Amagoalik,  
Chairperson

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## **Part I. Introduction**

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### **Section 1.1 A Few Words About the NIC**

The Nunavut Implementation Commission ("NIC") is a statutory body that was created under Part III of the Nunavut Act to give advice to the Government of Canada, the Government of the Northwest Territories ("GNWT"), and Nunavut Tunngavik Incorporated ("NTI") --- known as the "three parties" --- on the "establishment of Nunavut" in general and, more particularly, in relation to matters set out in paragraph form under section 58 of the Act. The NIC came into existence in December, 1993, and is mandated to continue its work up to the coming into existence of the Nunavut Territory and Government on April 1, 1999. The Commission is made up of ten Commissioners appointed by the Governor in Council, three of whom are recommended by each of the parties, and a Chairperson acceptable to all three parties. The Commission is headquartered in Iqaluit and employs a small staff. It has published a number of reports since coming into operation. Copies of these reports are available from its main office in Iqaluit and its subsidiary offices in Ottawa and Yellowknife.

### **Section 1.2 A Few Words About This Discussion Paper**

#### **1.2.1 Origins of this Discussion Paper**

In December, 1994, and January, 1995, the NIC visited each of the communities of Nunavut. During community visits, NIC Commissioners and staff met with municipal councils, hunters and trappers associations, and students from junior and senior grade levels. A focal point of each community visit was an evening public meeting, often drawing a significant proportion of the community's population and often running past midnight. Meetings were usually conducted in Inuktitut, with interpretation into English being provided. At public meetings, written and oral information was supplied about the work of the NIC and community residents were invited to offer views, and pose questions, about a wide variety of topics touching on the creation and operation of the Nunavut Government.

A summary of this public consultation process is set out in **Appendix A-9 ("Report on the NIC Community Consultation Tours. December 1994 - January 1995: A Summary of What Was Said)** of the NIC's comprehensive report to the Government of Canada, the Government of the Northwest Territories (GNWT) and Nunavut Tunngavik Incorporated (NTI), dated March 31, 1995, and entitled "**Footprints in New Snow**".

One matter that surfaced early on in the community visits, and attracted considerable interest throughout the community consultation process, was the issue of how Nunavut would select its Premier. Although people were not critical of the job done by successive Premiers in the Northwest Territories (NWT) ---- indeed, a number were sympathetic to the difficulties of the role --- many thought that there might be a better way of filling and defining the job under the Nunavut Government. Specifically, considerable public interest was shown in the possibility of some form of direct popular election of the Premier as a means of both reinforcing accountability to the public and of strengthening the hand of a Premier operating in a "non-party" system. It should be noted that the degree of public interest in the possibility of a directly elected Premier did not translate into a similar level of interest in relation to the introduction of "party politics".

Evidence of public interest in the idea of a directly elected Premier has not been confined to the NIC's community visits. The idea has come up in other forms of public consultation involving the NIC, most notably the large public meeting, attended by representatives from across Nunavut, convened by the NIC in Iqaluit in February, 1995. Reactions to the idea have varied. While a majority of those commenting on a directly elected Premier have favoured the idea in principle, many have identified practical difficulties that would be associated with actually putting the idea into effect. In particular, there have been concerns in relation to how a directly elected Premier could work in harmony with the Nunavut Legislative Assembly and in relation to the cost of instituting such an approach.

In carrying out their work preparatory to completion of "**Footprints in New Snow**", Commissioners were conscious that various issues associated with the creation of Nunavut needed to be sorted out according to different timetables. Because of their centrality to further decision making and implementation work, a number of key issues ---- administrative design, infrastructure, training and education, and related financial considerations --- received priority of attention in the "**Footprints**" report. Other issues, such as the precise size and structuring of the Nunavut Legislative Assembly and the method of selecting the Premier, were seen as less pressing and lending



themselves to further analysis and discussion. **“Footprints in New Snow”** contained the following specific recommendation in relation to Nunavut's Premier:

***“The NIC recommends that it should actively pursue, through a program of research and consultation, issues associated with***

- 1. the precise size of the Nunavut Legislative Assembly;**
- 2. two-member constituencies;**
- 3. guarantees of male and female representation on the Assembly;**  
**and,**
- 4. *the direct election of the Nunavut Government Leader.*”**

***(ed. note - emphasis added)***

This discussion paper has been developed, and is being disseminated, in follow up to that earlier recommendation.

### **1.2.2 Status of This Discussion Paper**

In addition to its broad mandate to advise on “the establishment of Nunavut”, the NIC is enjoined to give particular advice with respect to a number of more detailed topics, including “the process for the first election of the members of the Assembly” and “the administrative design of the first Government of Nunavut”. The manner of selection and role of an elected Premier fall within the generality and detail of the NIC's mandate. Accordingly, the NIC has developed this discussion paper mindful of meeting its responsibilities under its enabling legislation.

The NIC hopes that this discussion paper will assist in both the informed public debate and the detailed three-party consultations that are needed in order for the best decisions to be made about the design and implementation of the Nunavut Government. Two aspects of this discussion paper deserve emphasis. The first is that all of the NIC's work, including this discussion paper, is advisory in nature: decisions concerning the ultimate shape of the Nunavut Government will be made by the political actors who bear responsibility. The second is that the NIC does not carry out its work in the expectation that there will be complete support, either among political leaders or with the public at large, for the

analysis, alternatives or advice set out in its various documents. Rather, the NIC's intentions is to provoke reasoned and timely debate, consultations and decision-making with respect to key choices bound up with the successful creation of Nunavut.

### 1.2.3 A Few Words About Terms

With the evolution in responsible government in the NWT and Yukon, there has been a corresponding evolution in the vocabulary employed to describe basic institutions and features of territorial government. Some of this evolution in vocabulary has occurred in the absence of any relevant statutory text, some of it flies in the face of relevant statutory text. Some of this evolution has not been contentious, some of it has been very much so. For the purpose of this discussion paper, the NIC has chosen to employ the following terms:

**"Cabinet"** is used, rather than the more formal "Executive Council", as it is more familiar to the Nunavut public and emphasizes the common parliamentary footings of political life north of 60 and south of 60;

**"convention"** is used in a broad sense to include all well-established practices within government, not just those practices that are conventions in a legal sense;

**"Government"** is used, depending on context, in two different senses, referring either to an entire body of public administration within a jurisdiction (the GNWT; the Government of Nunavut) or to a Cabinet holding office in that jurisdiction;

**"Legislative Assembly"** is used in relation to the NWT Legislative Council and the Nunavut Legislative Assembly alike, as being most consistent with contemporary usage by both the public and by legislative drafters;

**"Parliament"** means the Parliament of Canada; and,

**"Premier"** is used, rather than Government Leader, as it is more consistent with intergovernmental and popular usage.

## Part 2. Constitutional Context

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### Section 2.1 Existing NWT Constitution

#### 2.1.1 Statutory Sources

The "Constitution" of any jurisdiction can be viewed as a set of fundamental laws and conventions, written or unwritten, which provide primary definition to the foundation, allocation and exercise of legislative, executive and judicial authority within that jurisdiction, and against which the validity of all secondary laws and conventions can be tested. In this light, it is possible to refer to the "Constitution" of the NWT, notwithstanding the absence of a single document or set of documents that purport to define constitutional arrangements for the NWT.

As is the case with the rest of Canada, and much of the English speaking world, the Constitution of the NWT is rooted partly in explicit statutory text and partly in the uncodified conventions that accompany and animate that text.

The most basic statutory underpinnings to the Constitution of the NWT are found in the statutes enacted by the Parliament of the United Kingdom ("Westminster") in the period 1867 to 1982 in relation to Canada. A number of such statutory provisions are of obvious and express relevance. For example, section 146 of the **Constitution Act, 1867**, indicates

**"146. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council ( ... ) on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union ( ... )."**

While the **Constitution Act, 1867** anticipated the early geographic expansion of Canada, the **Constitution Act, 1871** equipped the Canadian Parliament with broad authority to make laws in relation to new territory added to Confederation:

**“4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.”**

While these sections of the 1867 and 1871 statutes are expressly focused on the gift of legislative authority in relation to territories, it is important to remember that many other provisions of the **Constitution Acts, 1867 to 1982** help to define the nature, shape, and behaviour of governing institutions in relation to the NWT, both those institutions --- such as Parliament --- that have a geographic jurisdiction that subsumes the NWT, and those institutions --- such as the NWT Legislative Assembly --- that have a geographic jurisdiction that conforms to the NWT.

There are many examples of such provisions. The opening recital of the 1867 Act reveals two essential characteristics of Canada --- its status as a federation, and its status as a constitutional monarchy. The recital states that the constituent parts of Canada are “to be federally united into one Dominion under the Crown ( ... ) with a Constitution similar in Principle to that of the United Kingdom.” The reference to Canada having a “Constitution similar in Principle to that of the United Kingdom” is an important one, and has figured, among other things, in litigation setting limits on the accountability of public officials.

Other parts of the various **Constitution Acts, 1867 to 1982** are of obvious and central importance to the governing of the NWT. A further example of the 1867 Act is the power of Parliament to make laws for “the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the classes of Subjects ... assigned exclusively to the Legislatures of the Provinces”, and also to make laws for the classes of subjects specifically enumerated in section 91. In more recent years, the changes incorporated into the Constitution at the time of its “patriation” in 1982 have had major impacts on the NWT, as they have had for all Canadians.

Notable in this regard has been the coming into effect of the **Canadian Charter of Rights and Freedoms**. With the Charter, legislators in Canada must take into account evolving judicial interpretation of enshrined individual and collective rights or risk seeing their legislative measures overturned in the courts. Some observers would also suggest that the Charter has altered Canada’s civic psychology by making citizens more “rights conscious” and litigious.

Another part of the **Constitution Act, 1982** that has had a significant effect on the Constitution of the NWT is Part II of the 1982 Act, which deals with the rights of the aboriginal peoples of Canada. Given the demographic weight of aboriginal peoples in the NWT, section 35 of the 1982 Act, as amended in 1983, has been of particular importance:

**“35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.**

**(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Metis peoples of Canada.**

**(3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.”**

Section 35 has had both direct and indirect effects on the Constitution of the NWT. Direct, insofar as the federal and territorial governments have had considerable incentive --- the risk of their laws being ineffective in the face of conflicting aboriginal rights --- to convert imprecise aboriginal rights into more precise “treaty rights” in the form of land claims agreements (which are, in turn, Constitutionally protected). Indirect, insofar as the lack of a complete set of land claims agreements blanketing the geographic entirety of the NWT has inhibited the federal government from negotiating the transfer of broad proprietary and legislative powers over Crown lands to Yellowknife.

The **Constitution Acts, 1867 to 1982**, provide a “first order” statutory definition of the NWT’s Constitution. There are two other statutory sources to the NWT Constitution. The first is the body of statute law adopted by Parliament specifically in relation to the make-up and operation of governing institutions for the NWT. The second is the body of written law adopted by the NWT Legislature pursuant to legislative powers granted by Parliament.

While the NWT is referenced in a great number of federal statutes, the core statute dealing with public government within the NWT is the **Northwest Territories Act**. This statute establishes the main institutions of government within the NWT, namely, the Commissioner, the Legislative Assembly (Council), the NWT Consolidated Revenue Fund, and the NWT Supreme Court. It further deals with the relationship between the Commissioner and the Minister of the Department of Indian Affairs and Northern Development, the legislative powers of the Legislature (Commissioner in Council) in terms roughly analogous to the powers of provincial legislatures under section 92 and related sections of the **Constitution Act, 1867**, and restrictions on the law-making powers of the

Legislature with respect to such things as borrowing and hunting for food by Indians and Inuit.

Consistent with the grant of powers set out in the **Northwest Territories Act**, the NWT Legislative Assembly has formulated fundamental rules and laws to govern key aspects of procedure and function. While these rules and laws are not "entrenched" --- that is, they are not immune to amendment in the normal course of business --- they do represent a codification of procedures and functions that are central to the efficient operation of the legislative and executive activities of government. A specific set of rules and statute are pivotal in this respect: the **Rules of the Legislative Assembly of the Northwest Territories**. These are the rules under which the Assembly conducts its affairs on a day to day basis. They deal with such things as the sittings of the Assembly, rules of debate, and the role of the Speaker and other Assembly officers. The **Legislative Assembly and Executive Council Act** has a dual function. The first part of the Act deals with a number of policy and administrative matters connected to the election, privileges, and reimbursement of members of the Assembly, committees of the Assembly, and officers of the Assembly. The second, and much shorter, part of the Act, has a number of provisions dealing with the make-up and role of the Cabinet (Executive Council). The key provisions are as follows:

**"55. (1) There shall be an Executive Council of the Northwest Territories composed of persons, appointed by the Commissioner, whom the Legislative Assembly recommends to the Commissioner for appointment to the Executive Council.**

**(2) The persons appointed under subsection (1) hold office during the pleasure of the Legislative Assembly.**

**56. The Executive Council shall be responsible for the overall management and direction of the executive government of the Northwest Territories, including matters of policy.**

**57. There shall be a Government Leader chosen by the Legislative Assembly.**

**58. The Commissioner, on the advice of the Government Leader, may appoint under the Seal, from among the members of the Executive Council, the Ministers of the executive government.**

**59. One Minister may be appointed to have authority over more than one department or to hold more than one title."**

In rather pithy fashion, and without definition of key terms employed such as "Government Leader", "Ministers" and "executive government", these provisions summarize the state of play in the evolution of Cabinet government in the NWT, most notably with respect to the relationship between elected Executive Council members (Ministers) and the Commissioner, and the relationship between the Premier and other Ministers.

### 2.1.2 Unwritten Sources

Much of the NWT Constitution can be found in express statutory text. Much of it, however, has not been the subject of detailed legislative activity. It is revealing, for example, that the dramatic diminution over the last twenty years in the financial, administrative and personnel powers of the Commissioner in favour of elected Ministers has been accomplished without any facilitating amendments to the **Northwest Territories Act**. Indeed, a person reading the **Northwest Territories Act** with no understanding of contemporary political realities in the NWT could easily be led to think that the Commissioner runs the whole show; the Act is effectively silent on the executive role played by today's Ministers. Part of the explanation for this discrepancy has been the difficulty of legislating a modernization of the Act when the long-term political future of the NWT --- or, since the enactment of the **Nunavut Act**, at least the western part of it --- has remained contentious. Another part of the explanation, however, rests in the very large role habitually reserved for unwritten convention in the working life of constitutional monarchies. If the casual observer might think that the text of the **Northwest Territories Act** gives a very different impression as to who is running the show than is really the case in the NWT, then the same could be said of Canada as a whole. Notwithstanding the amendments to the Constitution made surrounding patriation from Westminster in 1982, a first-time reader of the **Constitution Acts, 1867 to 1982** might conclude that real political power rests firmly in the hands of the sovereign.

The NWT Legislature has tried to consolidate the evolution of a number of conventions associated with the operations of territorial government in the form of Part II of the **Legislative Assembly and Executive Council Act**. Despite such black letter law, large pieces of the government puzzle in the NWT can only be filled in by way of reference to unwritten convention. The following examples are relevant:

- the mechanics of choosing a Premier;
- the mechanics of choosing other Ministers;

- the relevance of geography in the make-up of the Cabinet;
- the emergence of a Deputy Premier;
- the periodic review or replacement of Ministers; and,
- the dynamics of how decisions are made within Cabinet.

Unwritten convention allows for a considerable degree of flexibility and innovation in the day to day operation of the written, obligatory portions of the NWT Constitution, and with respect to those matters where relevant statutory text is largely silent. Too much flexibility and innovation, however, can create a lack of predictability or reliability. In examining any proposal for change in the way in which Cabinet government operates in the North, such as the introduction of a system of direct election of Premier, it is important to canvas the opportunities for reform through express rules and laws having binding force, and, alternatively, through the development of informal conventions having political currency and moral persuasiveness but not necessarily legal weight.

### **2.1.3 The Relationship Between the Executive and Legislative Branches: How It Works in Practice**

While the **Northwest Territories Act** has not been substantively amended for many years, the NWT has witnessed a rapid evolution in its political life since the GNWT was moved from Ottawa to Yellowknife in 1967, notably with respect to the respective roles of the Commissioner and elected members of the Assembly serving as Ministers. This evolution has occurred in measured, incremental steps. For example, in 1974, two elected members of the Legislative Council were appointed as Executive Council members for the first time. In 1975, the first fully elected NWT Legislative Council took office, and soon began styling itself the Legislative Assembly. Between 1979 and 1989, under Commissioner John Parker, elected Executive Council members assumed the title of Minister and took over administrative control of all GNWT departments and agencies. During this period, the Commissioner gave up chairing, and then even attending, Executive Council (Cabinet) meetings, leaving it to an elected member of the Assembly chosen as Premier to direct Cabinet meetings. By the mid-1980s, the office of the Commissioner had evolved into a role similar to that of a provincial Lieutenant Governor.



By the middle of the 1990s, the evolution of the political system had arrived at a point that is economically summarized in a recent publication entitled **Northern Governments in Transition** by Kirk Cameron and Graham White (The Institute for Research on Public Policy, Montreal, 1995):

**"The institutions of public government in the NWT represent an unusual, indeed unique, blend of British parliamentarianism and northern political culture.**

**(...) Perhaps the most distinctive aspect of the GNWT is the absence of political parties in the Legislative Assembly. Most Canadian municipal governments also operate without parties, but the territorial legislature differs fundamentally from them in that it adheres to the principles of British-style "responsible government", essentially as they are practised in the House of Commons and provincial legislatures (and in the Yukon Assembly). Thus the territorial cabinet retains office only so long as it maintains the "confidence" of the House; in turn, the Cabinet enjoys a constitutional monopoly over the introduction of spending and taxing measures into the Assembly and a host of formidable executive powers, including control over the territorial public service.**

**In the NWT, MLAs exercise an unusual degree of policy influence and generally command far more power over the Cabinet than do elected members in southern Canada. To be sure, the Cabinet wields substantially more power than the so-called "ordinary MLAs", but Ministers --- collectively and individually --- are much more accommodating to the suggestions and requests of ordinary MLAs than is the case in the south.**

**All candidates for territorial office --- even ministers seeking re-election --- run as independents. After the election, the 24 MLAs gather to select a Speaker, a Premier and the Cabinet. A convention has developed by which four cabinet positions are allocated to the Eastern Arctic and four to the Western Arctic (this is the perhaps most noteworthy illustration of the carefully nurtured political balance between east and west that features prominently in territorial politics). MLAs first elect the Premier, then the balance of the Cabinet by secret ballot. In this way, ministers owe their position in Cabinet to the MLAs rather than to the Premier. These selection procedures are not enshrined in legislation, nor are they set out in the Assembly's rules of procedure, but are practices worked out over time by territorial MLAs. As such, these practices continue to evolve.**

**The ordinary members have not yet exercised their power to vote non-confidence in, and thus depose, the entire Cabinet. In the absence of political parties, a more realistic option lies with the MLAs' authority to remove ministers from office, an authority they have exercised on occasion. Since the Cabinet lacks the solid phalanx of party supporters that southern cabinets enjoy, it faces what is, in effect, a permanent 15 - 8 minority situation (the Speaker votes only to break a tie). Reducing the politics of the Assembly to raw numbers in this way is, however,**

misleading, not least because it presumes that the dynamic of the Legislative Assembly is primarily one of opposition and confrontation. To be sure, conflict does occur between the Cabinet and ordinary MLAs; but accommodation and cooperation are also common. Conflict also occurs between ordinary MLAs.

Although in both legal and political terms the Cabinet retains final authority, ordinary MLAs are far more deeply involved in the development of government policy than is the case in other Westminster systems. As a matter of course, for example, the Minister of Finance forwards his draft annual expenditure budget to a legislative committee, which reviews it in detail and often makes significant recommendations for change that the government often accepts before finalizing and making public the budget. MLAs also participate in the development of the government's capital budget, which is of such crucial significance to territorial communities and to the stimulation of economic development throughout the NWT.

The authority of the territorial Premier (...) is much more constrained than that of southern first ministers. Like the rest of the Cabinet, she is subject to more direct and effective control by MLAs. Moreover, since she does not choose her own ministers, her authority over them is limited. The trend in recent years has been toward enhancing the Premier's power over the Cabinet. In addition to assigning ministers to portfolios, for example the (past) Premier received signed, undated letters of resignation from several ministers. Subsequently, she requested and received the resignation of one minister who had apparently lied to the House and another minister accused of improper behaviour. Still, the Premier's ability to discipline or to remove ministers --- one of the most formidable powers held by first ministers in Westminster systems --- is quite limited and, more generally, so is her capacity to impose her political will upon the Cabinet and legislature.

Two unique structures in the NWT Assembly, caucus and Ordinary Members' Committee (OMC) strongly affect not only patterns of political interaction among MLAs but also public policy. Caucus is a regular, private gathering of all 24 MLAs to discuss political problems. It represents not the formal exercise of power, which remains concentrated in the Cabinet, but a sharing of ideas and information and an attempt to chart directions on important political issues. Caucus meets weekly when the legislature is in session and has recently begun to hold two or three-day strategic planning workshops outside Yellowknife to develop ideas on critical issues such as western constitutional development and the allocation of assets between Nunavut and the western territory.

When the House is sitting, OMC meets every day, in private, to coordinate MLAs' activities and to develop House strategy. Although it is here that MLAs decide whether to "take out" ministers, OMC differs substantially from a southern opposition. It lacks any capacity to discipline its members, and thus often lacks coherence. More significantly, it does not attempt to present either an alternative government or alternative

**policies. Moreover, its actions (like those of caucus) are more often aimed at resolving problems than at scoring political points or advancing MLAs' political interests."**

**(pages 53-55)**

It is against the backdrop of this evolution, and of the current status quo, that options in relation to the direct election of Premier must be identified and assessed.

## **Section 2.2 Constitution of Nunavut**

### **2.2.1 Fundamental Characteristics**

The Constitution of Nunavut will, in its fundamental characteristics, share many similarities with the Constitution of the NWT. Like the NWT, Nunavut will be a territory within the Canadian federation, a federation that comprises "one Dominion, under the Crown (...) with a Constitution similar in Principle to that of the United Kingdom". As is the case with the Constitution of the NWT, Nunavut's constitutional arrangements will be a product of both those constitutional laws that bind all jurisdictions in Canada ---- such as the **Canadian Charter of Rights and Freedoms** --- and those specific statutory provisions --- such as the **Nunavut Act** --- adopted by Parliament in exercise of its broad law-making powers over territories. As with the NWT's Constitution, much of Nunavut's Constitution will be set out explicitly in relevant statutory texts, such as the **Constitution Acts, 1867 to 1982** and the **Nunavut Act**; much of it will also be unwritten, representing an inheritance of conventions and beliefs.

The Constitution of Nunavut will have one fundamental characteristic that will differentiate it from the Constitutions of the NWT and Yukon. The creation of Nunavut flows from a commitment made by the Government of Canada in Article 4 of the Nunavut Agreement, the land claims agreement entered into in May, 1993 by representatives of the Crown in right of Canada and the Inuit of Nunavut. As the rights contained in land claims agreements are recognized and affirmed by section 35 of the **Constitution Act, 1982**, Article 4 gives Nunavut a constitutional underpinning that is absent in the case of Canada's two existing territories. While the precise extent and implications of this special constitutional underpinning are difficult to gauge (see the discussion on this point in Chapter 1 of the NIC "**Footprints**" report), this unique dimension to Nunavut's Constitution cannot be overlooked.

## 2.2.2 Features of the Nunavut Act

On first examination, the **Nunavut Act** looks very much like the **Northwest Territories Act** and the **Yukon Act** with some of the more archaic language of the two older statutes deleted. On closer examination, more significant differences emerge.

Significant differences are apparent in relation to executive power. The **Northwest Territories Act** is effectively silent with respect to the existence and activities of the NWT Cabinet. The executive powers of the GNWT are vested in the office of the Commissioner of the NWT; the only explicit constraint on the exercise of those powers is in the discretion reserved to the Minister of DIAND to issue instructions to the Commissioner. In contrast, the **Nunavut Act** contains two provisions absent from the older Act. Section 6 makes it clear that any instructions sent to the Commissioner of Nunavut must be tabled in the Legislative Assembly of Nunavut; this is consistent with the central, informed role of the Assembly and the need for public knowledge of the major policy parameters shaping government decision making. Section 11 secures the role of an Executive Council (Cabinet), accountable to the Legislative Assembly:

### **“Executive Council of Nunavut**

**11. There is hereby established an Executive Council of Nunavut, the members of which are appointed by the Commissioner on recommendation of the Legislative Assembly of Nunavut”.**

These two sections make the **Nunavut Act** more reflective of the evolution of responsible government that has occurred in the NWT than is the case with the old, unamended **Northwest Territories Act**. Even with such improvements, however, it is important to note that the **Nunavut Act** leaves major matters attending the workings of responsible government to convention, rather than black letter law. For example, apart from the statutory requirement for the existence of an Executive Council and the role of the Legislative Assembly in its appointment, the **Nunavut Act** is silent on the distinction between formal executive power in the hands of the Executive Council and informal executive power in the hands of the Cabinet. Similarly, the office of Premier is not referred to in the Act.

Another section of the **Nunavut Act** has direct relevance with respect to how executive authority will be allocated and administered in Nunavut. Section 29 avoids a legal vacuum in Nunavut by projecting NWT laws forward into the new jurisdiction until such time as they are changed by the Nunavut Legislature or by some other lawful method:

**"Laws Applicable in Nunavut**

**29. Subject to this Act, the laws in force in the Northwest Territories on coming into force of this section continue to be in force in Nunavut, in so far as they are not thereafter repealed, amended or rendered inoperable in respect of Nunavut."**

Through this section, the **NWT Legislative Assembly and Executive Council Act** will, unless modified by the NWT Legislature prior to April 1, 1999, or qualified by amendments by Parliament to the **Nunavut Act** in the same time period, come into force in Nunavut. Sections 57 and 58 of that Act will be of particular relevance:

**"57. There shall be a Government Leader chosen by the Legislative Assembly.**

**58. The Commissioner, on the advice of the Government Leader, may appoint under the Seal, from among the members of the Executive Council, the Ministers of the executive government."**

Unless their application is changed through a federal or territorial legislative initiative in the period leading up to April 1, 1999, the automatic coming into force of these sections in Nunavut will predetermine how the Premier for Nunavut will be chosen: through selection by the elected members of the Nunavut Legislative Assembly, and not through direct vote of the Nunavut electors or any other method. Interestingly enough, the Act does not indicate that the Premier, or for that matter other Ministers, need be drawn from the ranks of elected Assembly members. Accordingly, it might be possible to contemplate some system involving a public preference poll as to Premier --- perhaps analogous to the recent Nunavut Capital Vote --- which could result in the first Premier for Nunavut being identified by popular vote and then being formally chosen by the first Nunavut Legislative Assembly, thereby avoiding the necessity of legislative amendments prior to the coming into force of the **Nunavut Act**. Whatever possibilities might exist to this end, there are two distinct aspects of the question of direct election of Premier for Nunavut that require examination: (1) a substantive aspect of whether or not Nunavut's Premier should be directly elected; and, (2) a timing aspect as to whether, and

how, an electoral system amended to provide for direct election of Premier could be instituted to come into effect on April 1, 1999. The substantive aspect is examined in Part 5 of this paper in the form of various options for the selection of Premier. The timing aspect is dealt with in Part 8.

## **Part 3. Office of the Premier in Today's NWT**

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### **Section 3.1 Strengths of Existing System**

#### **3.1.1 In Relation to Selection of Premier**

The current system in place for the selection of Premier is not the result of happenstance. Rather, it has come about in response to the perceived need to designate a single elected representative as having pre-eminent responsibility for the conduct of the affairs of the GNWT, while at the same time acknowledging the absence of a system of partisan political parties that would both (1) bring forward party leaders as an identifiable group of candidates for Premier, and (2) sort out loyalties among Assembly members so as to determine which party leader would have most support as Premier. Notwithstanding many efforts to organize territorial politics along party lines, and a number of confident predictions as to their inevitability, NWT political life has so far resisted the mixed blessings and problems of a party system.

One virtue of the existing system is said to rest in its being a unique made-in-the-North adaptation of the Westminster system of representative democracy as practised in other parts of Canada. It is often suggested that the existing non-party system employed in the NWT for the selection of Premier (and other Ministers) is a better reflection of the high premium placed in the North on the political value of "consensus". This point can be easily overstated. At particularly fractious points in the life of the NWT Legislative Assembly, there has been little attachment to consensus evident. It must also be remembered that all forms of parliamentary democracy require an element of consensus in order to operate with any kind of effectiveness (e.g. the opposition parties remain "loyal" in their adherence to basic rules of parliamentary life; Cabinet Ministers show solidarity in public, despite differences of opinion during private debates).

Notwithstanding risks of over-statement, the system now employed in the NWT for choosing the Premier and other Ministers does favour the selection of those individuals displaying personal qualities that can attract and sustain the support of the majority of Assembly members. Under the current system, there is considerable incentive to grant Ministerial roles to those individuals who can

"get along" and "do business" with most other members, especially those individuals who can detect and develop consensus on key issues such as budget preparation and new legislation. The absence of any formal security of office --- the Premier can be removed at any time through an expression of lack of confidence on the part of the Assembly and does not have a leadership position in a political party that can be used to inhibit disaffection --- means that the Premier can never afford to move very far from the "mainstream" of opinion on various issues within the Assembly.

The existing NWT Legislative Assembly represents a number of sharply defined sub-constituencies. This is true at its most fundamental level --- each Assembly member represents a discrete geographic constituency. It is also true in other important ways. The Assembly is divided between Nunavut and Western MLAs, aboriginal and non-aboriginal MLAs, Yellowknife and outside-Yellowknife MLAs. The current system for selection of Premier and other Ministers allows all MLAs, drawing on their various geographic and other allegiances, to participate directly in the make up of the Cabinet. This results in fairly finely calibrated balancing of disparate interests: for example, the Cabinet is conventionally made up half of Nunavut MLAs and half of Western MLAs, and the Premier has been chosen from both Nunavut and the West (the Inuvialuit region has been seen as having a foot in either camp for such purposes). A system featuring a Premier elected directly by the public, having the power to hire and fire other Ministers, could upset the balancing of interests that has characterized NWT Cabinet making in recent years.

There are a number of other strengths that can be ascribed to the existing system of selecting the Premier.

One such strength is the relative simplicity of the electoral system, with a single set of elections for the Legislative Assembly. This avoids the complexity of parallel elections of Assembly members and Premier. In the absence of a party system, the NWT has been able to avoid the electoral instability often associated with "minority governments" in other Westminster systems. Consequently, NWT Assemblies have been able to last for four years between elections. This relative simplicity and predictability of the NWT system has avoided the additional costs that could flow from a more complex or unpredictable set of arrangements.

Another strength of the existing system is its similarity to, if not exact replication of, the systems used in Parliament and provincial legislative



assemblies. While the absence of political parties puts the selection of the NWT Premier on a somewhat different, rather shakier footing than in other parts of Canada, the Premier's position is nonetheless founded on the continued support of a majority of Assembly members. This fundamental similarity allows members of the NWT Legislative Assembly to look to the workings of other legislative forums in Canada for assistance in the development and interpretation of precedents as to procedure and deportment. A system involving the election of Premier by direct vote of the electorate would, at least in Canadian terms, be a step into the unknown, and the body of conventions and practices that nourish the current system in the NWT would be of diminished value.

A final strength of the existing system is that it allows promising candidates for high elected office to present themselves to local voters for election to the Assembly, while leaving open the possibility, if successful as candidates for the Assembly, of their seeking and securing the additional role of Premier. In this fashion, the competition for position of Premier does not dispatch unsuccessful claimants to political oblivion until the next election. Depending on the details of its design, a system involving direct election of Premier could result in all unsuccessful candidates, even those with sizable voter support at the Nunavut-wide, regional or local levels, being "lost" to active involvement in territorial politics until subsequent elections.

### **3.1.2 In Relation to the Role of Premier**

Just as the involvement of all Assembly members in the selection of Premier can be interpreted as an accurate reflection of the high value placed on the political value of consensus in NWT politics, so too can the active involvement of the Assembly in determining which of its members will join the Premier in forming the Cabinet. In reserving to itself the selection of Ministers, the Assembly reserves the opportunity of weighing the relative personal strengths of those members who seek to be in the Cabinet. It also reserves, for collective deliberation and decision making, questions of how various important sub-constituencies of the NWT public will be represented in the Cabinet. This approach can be seen as cementing an intimate relationship between the legislative and executive branches; not only does the Premier need to derive legitimacy from the expressed support of a majority of Assembly members in a free vote, but so do all of the Ministers who exercise financial and administrative discretion in the name of the GNWT.

Defenders of the current system argue that the ability of the Premier to discipline members of the Cabinet is accomplished through providing the Premier with the discretion of assigning, and re-assigning, specific Cabinet

portfolios. The Premier can give various Ministers "heavy" or "light" portfolios, depending on expected or demonstrated performance. Similarly, the Premier can "reward" Ministers by handing out Ministerial assignments that conform closely to personal preferences, or give Ministers assignments which are far from their tastes. In this fashion, the existing system can be viewed as a careful compromise between the Assembly's need to subordinate the allocation of executive power to the legislative branch (a theme which has formidable resonance in the long history of Westminster parliamentarianism, as King Charles I discovered at the price of his head), and the need for any coherent system of Cabinet-style government to be led by a "first minister" having an adequate array of carrots and sticks with which to instill and enforce Cabinet solidarity and productivity.

While seldom noted, one strength of the role currently assigned to the Premier is that it tends to encourage a collegial style of political leadership and works against an over-concentration of authority in a single pair of hands. While focusing power more substantially in the Premier might be rewarded in greater accountability and efficiency in the conception and execution of policy, there is a danger of nurturing "leadership cult" politics.

Finally, some would argue that it is a strength of the existing system that the Premier must combine the Nunavut-wide responsibilities of Premier with the constituency responsibilities of an "ordinary" MLA. This continuing responsibility for representing local constituents in all their dealings with territorial government --- negotiations between municipalities and government departments on various matters, applications by individuals to government programs, etc. --- can keep the Premier plugged into both the daily concerns of both the Nunavut public and of all MLAs. The Premier has to keep his or her feet on the ground.

## **Section 3.2 Weaknesses of Existing System**

### **3.2.1 In Relation to Selection of Premier**

While the current system for selecting the NWT Premier has its advocates, it is not short of critics. In its community visits in late 1994 and early 1995, NIC Commissioners heard many complaints about the current system and many expressions of support for the election of Premier by direct popular vote. In its meetings with the public since that time, and in periodic meetings of Nunavut leaders, the Commission has continued to hear similar things. Most comments in support of an elected Premier have been short of details in relation to practical matters such as when an election for Premier would take place, whether or not a Premier could be removed by the Legislative Assembly, how would other Ministers be chosen, etc. Almost all comments of this kind, however, have been anchored in a deeply felt belief that the current system is not working well.

Despite the pride taken by many in the North in the unique features of how the NWT Legislative Assembly operates, it is not difficult to find problems. In their already cited recent book, Kirk Cameron and Graham White pointed out the following:

**“( ... ) even aside from those in the Aboriginal communities who dispute the GNWT’s legitimacy, the people of the NWT are often harshly critical of their system. This negative attitude is a northern variation of the cynicism toward government commonly found throughout North America, heightened by a widespread distaste for the behaviour exhibited by MLAs. The record of the 12th Assembly (1991-1995) explains why public perceptions of MLAs are often unfavourable: of 24 MLAs, one lost his seat upon criminal conviction and another resigned from the legislature after being charged with criminal offenses (the latter had previously resigned from Cabinet when faced with different criminal charges, on which he was acquitted); one minister was forced out of Cabinet for apparently lying to the House; another minister lost her Cabinet seat following her involvement in an alcohol-related altercation in a “dry” community; two ministers were forced out of Cabinet by MLAs dissatisfied with their performances; and the Speaker resigned her position to pursue conflict of interest allegations against a minister, who resigned one of his portfolios but not his Cabinet seat, and in return sued the former Speaker for libel.”**  
**(pages 56-57)**

Many people subscribe to the belief that problems of Ministerial performance, or lack of performance, could be reduced by strengthening the hand of the Premier. Equipping the Premier with a stronger hand, it is argued, would improve performance in at least two respects: it would encourage the formulation of more sharply focused government policy objectives by making the voice of the Premier more confident in the internal deliberations of Cabinet and in the advocacy and defence of Cabinet decisions in the Legislative Assembly; and, it would give the Premier more authority in evaluating and re-defining the work of individual Cabinet members. The selection of Premier by direct public vote is seen as delivering significant new powers to the Premier. Through election by the public in an open competition for the top job, the Premier would be able to invoke a mandate obtained directly from the people in promoting a particular program of legislative and administrative action. The Premier's tenure of the top job would be at the will of the electors, not at the sufferance of fellow Assembly members.

Strengthening the hand of the Premier may be viewed as particularly important at a time of ongoing strain in all aspects of public finance in the North and in Canada as a whole. A consensus style of leadership --- a Chairman of the Board approach --- may be attractive in periods featuring a high degree of stability in the economy and in public administration --- it may be less desirable in periods when tough policy choices need to be made at the expense of various sacred cows.

Another perceived strength in the direct election of Premier is its populist emphasis. In current NWT Legislative Assembly elections no member of the public has advance knowledge about who is likely to end up with the most important elected position in the territory. Direct election of Premier would mean that, notwithstanding the absence of party politics, the top position in territorial politics would be filled by popular choice, not by a process that filters popular opinion through the deliberations of Assembly members. There is an appetite apparent in the NWT, and perhaps throughout Canada, for greater grassroots contents in politics. Direct election of Premier would tend to minimize the back room politicking that can make the selection of Premier in the NWT merely one bargaining chip in the larger closed door poker playing that determines the overall composition of the NWT Cabinet.

### 3.2.2 In Relation to the Role of Premier

There is a widespread perception in Nunavut that the existing system of government in the NWT results in a weaker office of Premier than would be desirable. This perception is apparent even though recent incumbents of the office of Premier have had strong personalities. The weakness of the office is perceived as systemic, not a failing on the part of the individuals who have occupied the office.

It is difficult to state with any precision why the role of the Premier is believed to be too weak by a substantial portion of the public in the NWT. Some members of the public might point to the inability of a Premier to count on a reliable majority of Assembly members to endorse, through votes on appropriate measures in the Assembly, the legislative and financial program of the government and to defend, through activities in both the Assembly and at public forums, the policy and administrative record of the government. It would appear, however, that perceptions as to the weakness of the office of Premier focus far more frequently on the relationship of the Premier to other Ministers, than on the relationship of the Ministers collectively to the Assembly. In this regard, the Premier is seen as greatly hampered by the inability to select the complement of Ministers with whom he or she must work, or to dismiss Ministers out of hand for unsatisfactory performance (this last problem has been addressed in some circumstances by the obtaining of pre-signed letters of resignation from Ministers).

At the moment in the NWT, the Premier is unable to invoke a mandate obtained directly from the people in forcing his or her will in the Cabinet room, in the Assembly chambers, or in the public arena. It is a conventional truth of the United States' system of government that the American President, notwithstanding severe difficulties when faced with a hostile Congress, occupies a "bully pulpit". From such a position, the American President can exercise considerable power to direct political events by mobilizing the moral authority that flows from being the tribune of the electorate, the people's choice. Advocates of a popularly elected Premier in the NWT believe that a high level of moral authority of this kind would allow a Premier to provide a greater sense of purpose in the affairs of government.

This high level of moral authority could be buttressed by explicit sanctioning of the Premier's role of unchallenged leader of Cabinet; for example, statutory amendments could be made to the **Legislative Assembly and Executive Council Act** making it clear that the Premier could "hire and fire" other Ministers.

While providing additional authority over Cabinet to the Premier would be a logical accompaniment to the institution of a system of direct election of the Premier, this additional authority could be supplied to a Premier even if he or she continued to be chosen by the Legislative Assembly.

With respect to the perceived advantages associated with having a Premier who also has "grassroots" responsibilities as an MLA for a specific constituency, there are counter-balancing problems associated with a single individual trying to serve as both Premier of all Nunavut residents and MLA on behalf of a localized fraction of Nunavut residents. One such problem is the practical one of trying to do two demanding jobs well at the same time. A second problem involves the inevitable suspicions and jealousies that result from the Premier having more obligations to one geographic part of Nunavut than to any of the others: every positive action taken by the Premier wearing his or her "MLA hat" can be criticized as an unfair advantage secured by local constituents through the privileged access and special prestige and powers that attach to the office of Premier.

## **Part 4. Experience from Outside the NWT**

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### **Section 4.1 Other Westminster Systems**

#### **4.1.1 Another Northern Jurisdiction Inside Canada: Yukon**

Like the NWT, the Yukon has witnessed an evolution in the power of its territorial legislature and government over the last 25 years. At the opening of the 1970s, the Commissioner and other appointed Executive Council members still played a major hands on role in the day to day governing of the territory. By 1979, the situation had completely changed. A letter of instruction from then DIAND Minister Jake Epp to the Commissioner of the Yukon in October 1979 underscored the status of the Yukon territorial government as a representative and responsible one, and signaled a retreat in the role of the Commissioner from active engagement in the executive functions of government to one approximating that of a Lieutenant Governor of a province. Equally important, the 1978 territorial election in the Yukon was fought along partisan political lines, with the large majority of successful candidates being aligned with the Progressive Conservative, Liberal or New Democratic Parties.

Since their first appearance, organized political parties have become an abiding feature of Yukon politics at the territorial level (political parties have operated in relation to contests for Parliamentary elections, in both the Yukon and the NWT, for much longer). There are no indications of popular support for abandoning the party system in favour of an Assembly of independent members. Nor is there any evidence that the party system in Yukon is likely to evolve into some variant on party politics that looks noticeably different from the party system as it works in Parliament or provincial legislative assemblies. It is true that the Yukon has seen the emergence of an "indigenous" political party --- the Yukon Party --- but this is not atypical of other parts of Canada, where provincial politics do not always play out against a monopoly by the "old line parties" (witness the one-of-a-kind Parti Quebecois in Quebec and the life and death of Social Credit in Alberta and British Columbia). Allowing for some differences that result from the scale of the Yukon Legislative Assembly (it only has 17 members) and the geographic and socio-cultural setting of the population it serves, the Yukon Legislative Assembly operates along partisan political lines very similar to those of legislative bodies in southern Canada. Party allegiance and discipline is the glue that holds the system together. It offers the electorate

choices in party platforms and competing candidates for Premier. It also allows the Assembly to function at the initiative of a government side that, subject to maintaining the confidence of the Assembly, controls the course of law-making and budget setting, and the management of government departments and agencies.

Given the high level of public commitment to the party system as practised at the territorial level of Yukon politics --- a commitment that largely, if not completely (there are on-going negotiations as to aboriginal self-government at the local level), binds the aboriginal and non-aboriginal components of the Yukon population --- it is relevant to speculate as to why party politics have not taken root at the territorial level in the NWT, despite at least periodic efforts on the part of some high profile individuals to inspire them.

A number of explanations can be proffered. One might be that the much larger proportion of aboriginal peoples in the NWT, who attribute importance to the value of pursuing a "consensus" approach to decision making, has inhibited the emergence of parties. A second explanation might be that the enormous geographic expanse of the NWT, with its large number of widely scattered small communities, has prevented the kind of sustained and complex communications and organizational work that must be carried out to form and maintain coherent political parties. A third explanation might be that the fundamental incompatibility of political visions between Nunavut and the western part of the NWT has precluded the emergence of political parties with an ideological message sufficiently powerful to overcome the linguistic and cultural barrier of the tree line. Viewed from this angle, it is possible to analyze the history of the last 20 years in the NWT as a contest between the integrating pull of party politics that is characteristic of almost all Westminster parliamentary systems, and the competing pull of Nunavut as a political objective taking priority over all other partisan considerations. Events suggest that Nunavut has been the more powerful of the two.

If the lure of a new territory in the Nunavut area has been a principal factor behind the absence of parties in territorial level politics in the NWT, what is the outlook for party politics in Nunavut after April 1, 1999? With the distracting, but unifying, struggle for Nunavut behind them, will it be natural for the leaders and electors of Nunavut to gravitate quickly to a system of politics based on divergent ideas and policies enshrined in party platforms, rather than a system that judges the relative stature of independent candidates who collectively promise to do a good job in Yellowknife in solidarity with all other MLAs from Nunavut? Put more succinctly, will the creation of a Nunavut territory be the harbinger of party politics in Nunavut? From the point of view of demographics, the population of Nunavut is likely to be at least as free from



fundamental cleavages as is the case with the Yukon (the western part of the NWT will present a more complex picture); given the non-controversial aspect of party politics in Yukon, is it any less likely that a party system will be attractive to the Nunavut population than it has been to the Yukon's?

Questions such as these do not lend themselves to conclusive response. Their relevance, however, should be kept clearly in mind in assessing any options for the institution of a method for selecting a Premier that pre-supposes the long-term absence of a party system. Arguments in favour of a directly elected Premier can be marshaled independently of the existence or non-existence of a party system. After all, most non-Westminster systems around the world involve both direct popular election of a chief executive and the election of members to a legislative chamber along party lines. The emergence of party politics in Nunavut, however --- a development which, for legal as well as political reasons, cannot be prevented --- would necessarily entail a re-think of the rationale and workability of a Premier elected through a vote of the entire electorate.

#### **4.1.2 Innovation Outside Canada: Israel**

The Westminster system of parliamentary government, a form of democratic government that finds its roots in the evolution of the parliamentary system over centuries in Great Britain, has been transplanted to many parts of the globe. In being transplanted, it has been modified in many of its substantive and symbolic features. In parts of the world, it operates within its original framework of constitutional monarchy. In other parts, the sovereignty of the Crown had been replaced by the sovereignty of the State, and the role of the monarch has given way to that of a president. Some countries have two chamber legislatures. Other countries follow a single chamber approach. Some Westminster style constitutions operate as federations of various provinces and states, others operate within unitary jurisdictional boundaries. In short, the Westminster system has proven remarkably versatile.

Despite such versatility, Westminster systems have (except in circumstances where the commitment to democracy has been a matter of form rather than content), shown a high degree of consistency in relation to one important respect: the subordination of executive authority to the will of the representatives of the people as elected to a law making assembly. This subordination takes predictable form: Cabinets are made up of Ministers who, collectively and individually, command the confidence of the majority of assembly members, and who retain the executive powers vested in their

Ministerial posts only so long as they retain, collectively and individually, such confidence. Accordingly, apart from the largely titular executive authority commanded by a head of state, Westminster systems make the enjoyment of power by the executive branch of government conditional on the support of the legislative branch. The logic associated with this approach to the allocation of authority in a liberal democratic state leaves little theoretical room for an executive claiming a mandate "over the heads" of assembly members, that is, directly from the people.

One Westminster jurisdiction that has recently experimented with the direct election of Premier is the State of Israel. Israel is a parliamentary democracy with formal executive authority vested in a President, but with substantive executive authority placed in the hands of a Prime Minister and Cabinet answerable to a single-chamber assembly (the Knesset). In a far reaching reform of the basic constitutional underpinnings of the state in 1992, changes were introduced providing for the direct election of the Prime Minister by the Israeli population. These changes were put into effect in time for the general elections that took place in Israel in the spring of 1996.

A summary of the new system, in the form of an Internet information release by the Israeli Government information service, is set out in **Appendix "A"** to this discussion paper. Major features of the new system entail the following:

- \* direct election of the Prime Minister in national general elections coinciding, except in special circumstances, with Knesset elections;
- \* generally, candidates for Prime Minister will be the leaders of various parties competing in Knesset elections;
- \* to be successful, a candidate for Prime Minister must obtain more than half the votes cast; if no candidate receives this number in a first vote, a run-off between the top two candidate will be held within three weeks;
- \* the Prime Minister will appoint Ministers subject to approval by the Knesset;

- \* rejection of the Prime Minister's proposed Cabinet or one of the Prime Minister's proposed budgets amounts to a vote of non-confidence; non-confidence can be moved in other circumstances as well;
- \* a non-confidence vote in the Prime Minister (majority vote) means fresh elections for both the Knesset and the office of Prime Minister;
- \* the Knesset can remove the Prime Minister without dissolution of the Knesset by a vote that gets substantially more than 50% support (80 members);
- \* the Cabinet must have between eight and 18 members; at least half must sit in the Knesset; and,
- \* Cabinet decisions will be made by majority vote.

Even a cursory study of the new Israeli system reveals that, in adopting a method of direct election of their Prime Minister, the Israelis have struggled through many of the issues that would need to be addressed if Nunavut were to go the same route. It is, however, important to note certain contrasting features of the Israeli political situation.

Israeli politics features a large number of parties having often sharply different ideological positions on matters of economics, national security, and the role of religion in Israeli society. The large number of parties is promoted by a proportional representation electoral system under which parties nominate lists of candidates and are allocated seats in the Knesset according to the number of votes gained on a national basis. As a consequence of the number and vigour of parties, no Israeli government since independence has been constituted on the basis of a single party majority in the Knesset. Rather, each government has been a multi-party coalition of varying numerical strength and durability.

The multi-party coalition nature of governments has been reflected in the make-up of Cabinets, with the various parties participating in the coalition securing places in the Cabinet for their members based on their clout in the Knesset.

Inter-party fractiousness and continuing reliance on multi-party coalitions have become fixed parts of Israeli democracy. As a consequence, significant concern has arisen that the shape of successive Israeli government has been largely a function of the back room negotiations over potential coalitions that have followed every fresh set of Knesset elections. This concern has been accentuated by the fact that, in the deal making that surrounds the creation of coalitions commanding majority support in the Knesset, the smaller parties enjoy a negotiating power that far outstrips their share of overall electoral support. Smaller parties that are open to participating in coalitions with either of the major parties, Labour or Likud, have sometimes been able to extract a very high "price" for their support.

Direct election of Premier has been instituted to combat the some of the back room inter-party politicking that has customarily accompanied Israeli election results. How successful the reforms will prove to be in that regard is moot, given proportional representation election procedures and the penchant of Israeli voters to support small parties in significant numbers. The new system of direct election of Premier has just begun to be used; there is speculation that at least some of Israel's current leaders would like to un-do the reforms at the earliest opportunity and revert to the old way of doing business.

The pivotal role played by political parties in Israel preclude any carbon copying of the reformed Israeli system onto Nunavut. Notwithstanding the inability to clone reforms onto Nunavut, Israel's example demonstrates that it is possible for Westminster systems to develop new techniques for addressing perceived shortcomings in the allocation of executive authority in general, and in the manner of selecting a Premier in particular.

## **Section 4.2 Non-Westminster Systems**

### **4.2.1 Theoretical Alternatives**

A review of functioning liberal democracies reveals wide variation in the inter-play of the legislative and executive arms of government.

Almost all parts of the world deriving democratic representative institutions from political theories founded on the sovereignty of the Crown adhere, with greater or lesser strictness, to the Westminster model of a Cabinet drawn from, dependent upon, and answerable to a legislative assembly.

Westminster models are also in place in parts of the world that, though inheriting most of the political assumptions of constitutional monarchies, have replaced the office of the monarch with that of a president or some similar non-hereditary figure.

Political theories founded on the sovereignty of the people have displayed different features of organization and operation. Following the pattern of the United States, some have adopted a congressional style of government which invests considerable effort in clearly distinguishing the legislative, executive and judicial branches of government and equipping each of these branches with a high degree of autonomy. Inspired by the writings of eighteenth century theorists seeking a rational, impersonal foundation to the State, the American and other congressional systems contain many mechanisms --- Presidential vetoes, legislative overrides, charters of rights --- intended to operate as "checks and balances" among the three branches of government and between the citizenry and the State.

Alongside Westminster and congressional models can be found numerous hybrids. The French, over the course of two empires and five republics since the Revolution, have experimented in many ways. The current system --- the Fifth Republic --- features both a National Assembly to which Cabinet Ministers must account and a President elected directly by the voters with strong executive powers. In its early years, the stability of the Fifth Republic was seen to depend on the same political party being in control over both the National Assembly and the President's office; the successful period of "co-habitation" between a conservative Assembly and a socialist President in the 1980s has revealed that the system is more flexible than might have been feared.

The issue of a popularly elected Premier is not a stand alone issue. How a Premier is selected and what role a Premier plays raise broader questions about how a political system is organized. In reviewing the possibility of instituting a method of popular election for the Premier of Nunavut, more substantial departures from a conventional Westminster system of Government might be contemplated.

## 4.2.2 Practical Difficulties

The creation of Nunavut flows from a commitment made in Article 4 of the **Nunavut Agreement**, the land claims agreement concluded between representatives of the Inuit of Nunavut and the Crown in right of Canada in May 1993. The key section in Article 4 reads as follows:

**“4.1.1 The Government of Canada will recommend to Parliament, as a government measure, legislation to establish, within a defined time period, a new Nunavut Territory, with its own Legislative Assembly and public government, separate from the Government of the remainder of the Northwest Territories.”**

This section contemplates a territorial government for Nunavut organized along the broad lines of a Westminster model made familiar to Canadians through the working of federal, provincial, and territorial governments. The commitment to create a Nunavut Territory must be understood in the context of almost 20 years of work by various Inuit organizations and Nunavut leaders in promoting the creation of a new government in the eastern and central portions of the NWT patterned closely, if not necessarily in all particulars, on the existing GNWT. The commitment to create a Nunavut Territory in the **Nunavut Agreement** must also be seen in the context of the **Nunavut Act**, which was drafted in collaboration with Nunavut Inuit representatives to give detailed expression to the essential design features of the Nunavut Government: the election and powers of its legislature; the role of its Commissioner and Executive Council; and, the constitution of its courts. The **Nunavut Act** presupposes and builds upon a Westminster style government for Nunavut, with the relationship of Cabinet to the Legislative Assembly being conditioned by the conventions of responsible, representative government as understood to apply to senior levels of government in Canada. Accordingly, any suggestion of re-thinking the overall Westminster style foundations to a Nunavut Government --- for example, the conversion of the office of Commissioner into an elected position, or removal of the need for Ministers to answer to the Legislative Assembly --- would have to be appreciated for what it would be: a radical departure from the fundamental political promises and understandings that have underscored the creation of the new territory and government.

Apart from legal problems associated with effecting a radical departure from the fundamental understandings and promises that anchor Nunavut --- legal problems in the form of potential amendments to Article 4 of the **Nunavut Agreement**, a wholesale revision of the **Nunavut Act**, and questions

surrounding the constitutional competence of Parliament even to effect such revisions --- other compelling obstacles exist.

First, the Commission has been unable to detect any significant interest in Nunavut in re-thinking the entirety of how government ticks in Nunavut. While there is wide interest in specific items related to the design of government --- should there be an elected Premier, how can a better balance of male and female participation be achieved --- these matters can best be perceived as questions of whether and how to reform a fundamentally sound system in its particulars, not as evidence of a far reaching dissatisfaction with the basic features of the system of representative government now in place. The main preoccupation for the people of Nunavut is how to make more successful a form of government of proven value, not to reinvent the institutions of representative democracy altogether.

A second reason to resist an uninhibited re-examination of the fundamental design features of the Nunavut government as set out, or necessarily implied, in the **Nunavut Act**, is the high level of resistance to such an exercise outside Nunavut. Public support for Nunavut has been high, and remains high, in other parts of Canada, partly because the Nunavut government will be organized along lines that Canadians can readily understand and respect. The creation of Nunavut will be an affirmation, not an indictment, of the fundamental soundness of the system of public government experienced in Canada. At a time when delivering on the commitment to Nunavut is complicated by on-going strains in public finances at every level, there would be little advantage, and major disadvantages, in converting Nunavut into an open-ended experiment in the wholesale reconfiguration of Westminster style government.

## **Part 5. Options for Reform: Selection of Premier**

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**Appendix "B"** to this report provides a summary of the various options for selection of Premier that follow.

### **Section 5.1 Option A**

#### **Direct Election of Premier by Popular Vote, Vote Conducted Simultaneously with Assembly Elections, Conventions as to Needing the "Confidence of the Assembly" Retained, Premier Can "Hire and Fire" Ministers**

##### **5.1.1 Description**

This option would institutionalize the direct election of Premier by popular vote while making a limited number of changes to other aspects of the allocation and enjoyment of executive and legislative authority.

The Premier would be elected at the same time as the entire Legislative Assembly. This would, of course, force would-be leaders to choose between standing as candidates for Premier in an across-Nunavut contest or standing as candidates for the Legislative Assembly in more narrowly circumscribed geographic constituencies. Once elected, a Premier would perform a double function: as the effective head of the executive branch of the territorial government (a great deal of formal authority would still be exercised by the Commissioner), and as a member of the Legislative Assembly with the privileges and responsibilities common to all members.

Consistent with the accountability of the executive branch to the legislative branch that is a salient feature of the contemporary Westminster model, the Premier would be an active participant, indeed a focal point, in the daily life of the Legislative Assembly, introducing key legislation, responding to questions from members, and defending the record of the Government. One feature of this option would bring political life in Nunavut into closer conformity with that of the Yukon, the provinces, and the federal government: the Premier



would be able to both hire and fire Ministers and to assign ministerial portfolios among them. As is the case in these jurisdictions, the confidence of the Assembly in the Premier and in the "Government" --- that is, the entire Cabinet -- - would be synonymous. Accordingly, a successful motion of non-confidence in the Assembly, whether targeted specifically at the Premier or not, would precipitate the resignation of the whole Cabinet.

Under this option, the defeat of a Government would entail the calling of fresh, simultaneous elections for both Premier and the Legislative Assembly. There would be no discretion on the part of the Premier to come forward and present a new Cabinet to the Legislative Assembly or for the Commissioner to invite a member of the Legislative Assembly to become Premier as the head of an alternate Cabinet capable of obtaining the confidence of the Assembly. The security in office of the Premier, of the Cabinet, and of the Legislative Assembly itself, would all be inextricably tied together.

### **5.1.2 Discussion**

This option would result in a Premier being possessed of considerably greater authority than is currently the case in the NWT. The moral authority obtained directly from Nunavut electors would contribute to this. So, too, would the ability to shape and re-shape the Government through the power to hire and fire Ministers --- each Minister would be dependent upon the Premier for being in Cabinet at all, as well as having responsibility for the affairs of particular departments or agencies. Equally importantly, the inability of Legislative Assembly members to remove a Premier without putting their own seats on the line in an ensuing election would discourage them from bringing forward motions of non-confidence in the absence of compelling reasons capable of being successfully explained to the electorate.

Several potential disadvantages could accompany this option. One would follow from the simultaneous timing of elections for Premier and the Assembly. Unsuccessful Premier candidates, however attractive, would be left out of active participation in territorial level politics, at least until the next set of elections. Another disadvantage might take the form of an over-concentration of power in the hands of the Premier, with the make-up of Cabinet and the fate of the entire Assembly effectively handed over to one individual. The difficulties of disciplining the Premier except through the triggering of elections --- or a credible threat of doing so --- could result in overly frequent elections, with attendant instability and expense.

## **Section 5.2 Option B**

### **Same as Option A, but Premier without the Ability to “Hire and Fire” Ministers**

#### **5.2.1 Description**

Under this option, the Premier, notwithstanding the political stature resulting from direct election by the Nunavut population, would be denied the power to hire and fire Ministers contemplated in Option A. This would result in a situation analogous to the one that now prevails in the GNWT, in that the Premier would rely on the Legislative Assembly to choose Ministers; the Premier would then decide how to divide up executive responsibilities among those Ministers.

Under this option, it would be logical to distinguish between matters of “confidence” involving the Premier and those involving other Ministers. Given the inability of a Premier under this approach to choose Ministers, there would be no reason to hold the Premier to a rigid standard of accountability as to the performance of those Ministers (indeed, if a Premier were obliged to take into the Cabinet members of the Assembly that he or she judged wanting, the poor performance of such Ministers might be said to create a lack of confidence on the part of the Premier in the Assembly). Accordingly, only a vote of non-confidence on the part of the Legislative Assembly specifically aimed at the Premier would spark the need for fresh elections.

#### **5.2.2 Discussion**

This option has the potential advantage of obliging a Premier to work in much greater harmony with the Assembly as a whole in putting together a Cabinet, thereby increasing the probability that the Cabinet’s decisions about finances, law making and administration would have the on-going support of the Assembly. This option would also work against a Premier wielding so much power as to reduce representative government to “one person” rule.

The potential disadvantages to this option are the flip side of its potential strengths. By making the Premier as powerless to impose the key sanction --- removal --- on other Ministers as is the current GNWT Premier, the practical benefits associated with direct election of Premier could be minimal, despite all the trouble and expense.

## **Section 5.3 Option C**

**Same as Option A, but Conventions as to "Confidence of the Assembly" Modified**

### **5.3.1 Description**

Under this option, the Premier would be elected, and would perform his or her duties, along the lines set out in Option A (it could also follow along the lines of Option B). One major difference, however, would be introduced. As in the system being brought into effect for direct election of Prime Minister in Israel, a mechanism would be introduced allowing for the replacement of the Premier without the automatic triggering of Legislative Assembly elections.

The mechanism could be designed so that a resolution of non-confidence in the Premier by the Assembly, adopted by simple majority, would be sufficient to bring about the removal of the Premier (this could take the form of resignation or dismissal by the Commissioner) and the holding of a special election --- like a by-election --- for Premier. As in the case of a by-election, the Premier elected would then take office for the balance of the life of the Assembly. The newly elected Premier would put together a new Cabinet as a first order of business.

Alternatively, the mechanism could operate so as to distinguish between confidence in the Premier and confidence in the Government as a whole. It would also be possible to establish a higher voting threshold for the removal of Premier than for the dissolution of a particular Cabinet. Under this approach, a simple majority vote of non-confidence by the Assembly might be sufficient to dissolve the Cabinet, but a larger vote --- say, two-thirds or three quarters of members voting --- would be needed to remove a popularly elected Premier and to force a special election. Following along these lines, it would be possible for the Assembly to force a Premier to re-construct Cabinet without requiring the Premier to re-new his or her mandate directly with the electorate.

### **5.3.2 Discussion**

This option would eliminate the problem that dissatisfaction with a single Minister or several Ministers could only be rectified by the Assembly bringing about fresh Legislative Assembly elections. It could also serve to underscore the greater security of office of a Premier chosen by the electorate directly in comparison with the fortunes of Assembly members elevated to Ministerial office. One major disadvantage of such an option would be that it flies in the face of traditional wisdom as to the need for a high level of collegiality and solidarity among Ministers by making it possible to contemplate the periodic, perhaps casual, unmaking and remaking of Cabinets.

## **Section 5.4 Option D**

### **Same as Option C, but Accompanied by Further Separation of the Affairs of the Legislative and Executive Branches of Government**

#### **5.4.1 Description**

Under this option, efforts might be made to emphasize the different roles associated with the law-making and administrative functions of government. One way of doing this would be to give the Premier a freer hand in putting together a Cabinet that draws on the best talent available outside the ranks of the Legislative Assembly. It is possible, even under the current system, to recruit individuals into the Executive Council, and give them active Ministerial portfolios, even if they are not sitting members of the Legislative Assembly; doing so, however, flies in the face of convention. The reformed Israeli system allows a significant portion of the Cabinet being drawn from outside the Knesset, stipulating only that a majority of Cabinet members be members of the Knesset.

#### **5.4.2 Discussion**

One potential advantage of this option would be to widen the talent pool out of which Cabinets can be formed. Another advantage would be that at least a portion of the Cabinet could be spared the onerous obligations associated with answering to the Assembly on behalf of the Government (e.g. fielding questions in Question Period) and representing the local interests of their constituency

electors. Potential disadvantages are equally apparent. They would include a perception of unaccountability on the part of unelected Cabinet members and a visible cleavage of Cabinet into two different classes of Ministers.

## **Section 5.5 Option E**

### **Direct Election by Popular Vote Conducted Immediately After Assembly Election, Candidates Confined to Newly Elected Assembly Members, Premier Can "Hire and Fire" Ministers**

#### **5.5.1 Description**

The major difference between this option and **Option A** would be in relation to the timing of elections for Premier. Rather than electing a Premier simultaneously with the Legislative Assembly, a second election for Premier would occur some weeks after the Legislative Assembly election. Candidates for Premier would be confined to newly elected Assembly members. The winner in the Premier election would be the candidate receiving the most votes from the Nunavut electorate (it is difficult to see how the election of Premier could feature a "run-off" between the two candidates receiving the most votes --- assuming more than two candidates --- as this would entail three Nunavut wide votes in short succession, a complex and expensive solution). Both the winning candidate in the election of Premier and the losing candidates would retain their newly won seats in the Legislative Assembly. As is the current case in the NWT, the Premier would also be the MLA for a specific constituency. Under this option, the Premier would have the power to hire and fire Ministers, although the option could be easily modified to remove this power.

#### **5.5.2 Discussion**

This option would have the potential advantage of shrinking the pool of candidates for Premier to those individuals of demonstrated popular appeal in at least part of Nunavut --- that is, it would narrow down the field of candidates for Premier to those individuals who are proven "electable" as MLAs. This option would also preserve the advantage of having a Premier grounded in the day to day preoccupations of local electors.

A disadvantage of this option might be the readiness of large numbers of MLAs to stand for election as Premier, thus allowing a Premier to be chosen by a relatively small proportion of the overall Nunavut electorate. One reason for such readiness would be the lack of any direct disincentive on the part of any newly elected MLA to stand for election as Premier.

## **Section 5.6 Option F**

### **Same as Option E, but Candidates for Premier Confined to Assembly Candidates**

#### **5.6.1 Description**

This option would operate along the same lines as Option E but the pool of eligible candidates for election of Premier would be widened to include all those individuals competing in the recently concluded Assembly elections, whether successful or not. In the event that a newly elected MLA were elected Premier, he or she would retain his or her seat in the Assembly as the representative of a specific constituency. In the event that an unsuccessful Assembly candidate were elected as Premier, he or she would sit in the Assembly purely by virtue of being Premier.

#### **5.6.2 Discussion**

This option would have the potential advantage of opening up the contest for Premier to a wider range of candidates. In particular, it would widen up the contest to those individuals who, while perhaps not being considered the most effective champion of the local interests that often are key to deciding who becomes an MLA, enjoy a widely established reputation for integrity and fairness across Nunavut.

Alongside this potential advantage would be several equally plausible disadvantages. The first follows from the high degree of respect that must be afforded any democratic pronouncement by the electorate, whether on a local or territorial wide level: why should individuals who have been repudiated by the very voters where they have chosen to run for election to the Assembly be given, virtually immediately, a second opportunity to secure elected office in the same

forum? A second potential disadvantage would be bound up in not knowing whether or not successive Premiers would also be serving as local MLAs. Such unpredictabilities could contribute to confusion in the role of Premier, rather than confidence in that position.

## **Section 5.7 Option G**

### **Direct Election of Premier by Popular Vote Conducted in Advance of Assembly Elections, Premier Can “Hire and Fire” Ministers**

#### **5.7.1 Description**

As in the case of **Options E and F**, this option would entail Assembly elections and the direct popular election of Premier being conducted on different dates, at an interval of some weeks. Unlike those options, however, this option would entail the election of Premier with the Assembly election taking place later. The option would be designed to permit individuals to file nominating papers as candidates for Assembly elections after the conclusion of the election of Premier. In this way, both unsuccessful candidates for Premier, and others wanting to know about the identify of the Premier, could await the outcome of the Premier elections before making up their minds about running for Assembly. The individual elected as Premier would be a member of the Assembly ex officio, with a power to hire and fire ministers, but without being the representative of a particular local constituency.

#### **5.7.2 Discussion**

This option would hold out a number of potential advantages. Popular but unsuccessful candidates for Premier would not necessarily be “lost” to playing a hands on role in territorial level politics; they would be free to seek election as local candidates in ensuing Assembly elections. Another advantage could result from a newly elected Premier actively recruiting like-minded individuals to stand for office in Assembly elections. If elected, they could help to form a coherent group of Assembly members committed to policy priorities similar to those of the Premier. In this fashion, an informal version of “party politics” might grow up, but in a way and at a speed compatible with the predilections of the people of Nunavut (it is worth noting that the emergence of “party politics” at Westminster took many generations, with factions defined around personalities

--- e.g. "the King's party" or "Burke's party" --- apparent long before the highly regularized formal party politics of nineteenth century and twentieth century Britain). A potential advantage accompanying this last point might be the "goading" effect of electing an individual as Premier. The election of a forceful, but controversial Premier might stimulate a number of highly qualified individuals to stand for upcoming Assembly elections precisely to serve as some kind of plausible counterweight in the political life of Nunavut. This would serve to enhance the vitality and effectiveness of both the executive and legislative branches of government.

While the election of a forceful, but controversial Premier might "goad" some individuals into running in Assembly elections, it is possible to speculate on a less happy effect: fore-knowledge of the identity of the Premier could dissuade a number of individuals from even contemplating participating in the life of an Assembly expected to be fractious and frustrating.

## **Section 5.8 Option H**

### **Same as Option G, But Run-off Between Top Two Candidates for Premier in the Absence of Majority Support**

#### **5.8.1 Description**

This option would operate in the same way as Option G, but would allow for a run-off between the two candidates for Premier who secured the largest numbers of votes in the event that no one candidate received an overall majority. If one or both of the two candidates with the most votes declined to stand in the run-off, then the candidate or candidates with the next largest numbers of votes would be eligible to stand in the run-off. The time delay and expense associated with the holding of a run-off election would be minimized by having the run-off coincide with ensuing Assembly elections.

#### **5.8.2 Discussion**

This option would ensure that no individual filled the key role of Premier without first securing the support of a majority of electors across Nunavut. The significance of achieving this result is evidenced by the fact that run-off elections



between leading candidates are used in other well established democratic electoral systems around the world, for example, in France.

One potential drawback of this option would be to forego the advantages associated with a clear knowledge of the identity of the Premier in advance of Assembly elections. These advantages could be recouped in a run-off model by introducing the possibility of a three stage territorial election process --- (1) election for Premier, (2) run-off election for Premier if necessary, and (3) Assembly election. This possibility, however, has obvious disadvantages in terms of complexity, time, and cost.

## **Section 5.9 Option I**

### **Regional Ministers Elected Directly as Well as Premier, Elections Conducted Simultaneously or in Advance of Assembly Elections, Premier without Power to "Hire or Fire" Regional Ministers, Various Approaches Possible to Matters of "Confidence"**

#### **5.9.1 Description**

This option would institutionalize, within the Assembly and within the Cabinet, regional realities within Nunavut --- the Kitikmeot, Keewatin and Baffin regions (possibly, the North Baffin and South Baffin regions). Under this option, the direct popular election of Premier by a Nunavut wide electorate would be accompanied by direct popular election, at the regional level, of Regional Ministers (in more formal vocabulary, these might be described as Regional Nominees to Executive Council). In this fashion, each of the major regions of Nunavut would be guaranteed a seat in Cabinet. The Premier would not have the power to remove these Regional Ministers but, as in the current GNWT system, would have the authority to allocate and re-allocate executive responsibilities among Ministers. The Premier and Regional Ministers would be ex-officio members of the Assembly. The Premier's mandate would be in relation to all of Nunavut, whereas Regional Ministers might be assigned to take on special regionally defined Cabinet responsibilities as well as functionally defined duties. In the event that a four or five member Cabinet were considered to be too small for the complete distribution of Ministerial responsibilities, the Premier could be given the authority to recruit several additional Ministers for specific functions. These Ministers would be members of the Executive Council but not members of the Assembly.

As Regional Ministers as well as the Premier would obtain their mandates directly from electors, this option would necessitate some reconsideration as to the application of matters of "confidence" and non-confidence" in the Government. One approach would be to allow for a generally phrased motion of non-confidence in the Government which, if adopted, would trigger new elections for Premier, Regional Ministers and the Assembly alike. A more narrowly focused vote of non-confidence in a particular Regional Minister could have the more limited effect of forcing a removal of that Regional Minister and the holding of a by-election for his or her seat. The instability threatened by such flexibility might be modified by requiring a by-election for Regional Minister as a result of a vote of non-confidence to be accompanied by by-elections in all the local constituencies making up that region.

### **5.9.2 Discussion**

The potential advantages and disadvantages are reverse sides of the same coin, with their relative weights very much dependent on the perspectives of the person doing the assessment. For those who subscribe to the proposition that Nunavut is an informal federation of distinct regions, and that regional identities and interests must be given transparent recognition in the allocation of executive as well as legislative power, this option would have appeal. For those who fear that the forces of regionalism could undercut the emergence of coherent, inclusive politics based on what's best for Nunavut, not what's best for its various component parts, this option would be decidedly unattractive. This option might also be considered unappealing insofar as it would result in the division of Ministerial responsibilities across geographic as well as functional lines (would this have implications for how the entire machinery of government would need to be organized?); it could also replace the strong leadership role afforded a Premier with a collective leadership featuring a Premier with a political profile only somewhat higher than that of strong Regional Ministers.

## **Section 5.10 Option J**

### **Direct Election of Premier by Popular Vote, Conversion of Cabinet System into Legislative Assembly Committee Chairpersons Approach**

#### **5.10.1 Description**

This option would vary a great deal from the current GNWT in the relationship of Cabinet to the Assembly and with respect to how Cabinet would be put together. Bearing some similarities to the powerful committees of law-makers characteristic of many congressional systems of government and of many municipal governments operating within Westminster systems, this option would consciously depart from a Government/Opposition (or in the case of the NWT, Government/Ordinary MLAs) dialectic. Policy development would not occur along the lines of (1) secret Cabinet deliberations, resulting in (2) unified Cabinet positions, generating (3) proposals by Ministers to the Assembly for concrete legislative and financial measures with only marginal room for amendment. Rather, all members of the Assembly would participate in the executive activities of government through membership on one or more legislative assembly committees. Collectively, these committees would have power to oversee the entire range of territorial governmental jurisdiction and administration. The enjoyment of effective power by these committees would be brought about by making the chairperson of each legislative assembly committee the Minister responsible for the same matters assigned to the committee. Apart from the Premier, the Cabinet would be the sum total of individual committee chairpersons.

This option would force a fundamental re-think of most of the conventions associated with systems of Westminster government. In order for committee chairpersons to retain the active support of their committees, it is likely that many aspects of Cabinet life would have to be considerably modified. Similarly, it is difficult to see how such an option would lend itself to readily definable questions of confidence or lack of confidence in the "Government". Indeed, the whole notion of "Government" as a united executive would be transformed into a much looser dispersion of executive responsibilities among Assembly members. This dispersion of authority would be particularly evident if the mandates, memberships and chairpersonships of committees were left to the initiative of the Assembly as a whole and not to the initiative of the Premier. Insofar as any system of government requires at least some matters to be dealt with through detailed proposals put together with the assistance of technical help (e.g. budget proposals), it is likely that this option (as is the case with most municipal governments) would necessitate a great deal of day to day responsibility for the

initiation of policy proposals being left in the hands of the Premier, working closely with a high-profile public servant heading a well-disciplined bureaucracy.

### 5.10.2 Discussion

This option would represent a major departure from the basic assumptions and conventions animating the status quo in the NWT. This very novelty would represent a significant potential advantage or disadvantage, depending on one's fondness for the current set-up. Advantages of the option might include an attenuating of the "ins versus the outs" psychology that is often more creative of question period invective than of fresh approaches to difficult problems in public policy. Another advantage could be the likelihood that Assemblies, once elected, would be confident about living out their terms; the self-contradicting aspects of unseating a Cabinet made up of committee chairpersons through a standard non-confidence vote --- thereby risking new elections --- could confine a lot of inter-personal disagreements and rivalries to the workings of various committees. One disadvantage could be the requirement to develop a fresh approach to such things as information flow and confidentiality of information among Cabinet Ministers (also acting as Legislative Assembly committee chairpersons) and Assembly members. Indeed, the split loyalties of Cabinet Ministers (to their respective Assembly committees and to their Cabinet colleagues) could put less skilled Ministers in a state of permanent organizational schizophrenia, and make it very difficult to complete such necessary tasks as the development of a sound territorial government budget. A further difficulty might be a public perception that government policy making would be overly complex and heavily dependent on the quality of bureaucratic personnel assigned to various committees.

In the early life of the 13th current NWT Legislative Assembly, efforts have been made to move to strengthen the roles played by committees. A description of the newly reformed standing committee system has been set out in **Appendix "C"** to this discussion paper.

## **Section 5.11 Option K**

### **Indirect Election, Premier Chosen from among Newly Elected Assembly Members by Specially Constituted Electoral College**

#### **5.11.1 Description**

This option, and the one that follows, offer some possibilities for the reform of the current system in use in the NWT without adopting the technique of direct popular election of the Premier.

Like the status quo, this option would involve confining the selection of Premier to those individuals successfully elected to the Assembly in an immediately preceding election. Unlike the status quo, the actual selection of Premier from among those eligible would not be confined to the newly elected Assembly members themselves. Instead, a broader group of Nunavut wide leaders would be assembled in the form of an "electoral college". This college could be constituted in a number of ways, but adherence to democratic principle would require that all, or nearly all, be holders of elected office of one kind or another. To take one approach, the electoral college could be made up newly elected MLAs, any retiring MLAs from the previous Assembly who did not stand for re-election, and a complement of mayors from across Nunavut. The electoral college could be re-convened to choose a new Premier between Assembly elections in the event of a vacancy in the office due to death, disability, resignation or removal.

#### **5.11.2 Discussion**

A potential advantage of this option would be to remove some of the mystery attached to how one Assembly member emerges from the pack in a post-election period to become Premier and to diminish the chances of the Premier being selected largely on the strength of back-room power brokering and deal-making among MLAs. Apart from its obvious similarity to the status quo, a major disadvantage to many, this option could result in the selection of a Premier who, even from the birth of a Government, would have inadequate support in the Assembly. This could easily give rise to revolving door Governments and overly frequent elections.

## **Section 5.12 Option L**

### **Status Quo, With Active Encouragement of Institutionalized Party Politics**

#### **5.12.1 Description**

This option, like the previous one, would avoid introducing a mechanism for the selection of Premier by direct popular vote. As is currently the case in the NWT, the selection of Premier would turn on the majority view of Assembly members. This option would vary from the status quo, however, in its encouragement of --- but not insistence on --- institutionalized party politics.

Conceivably, eligibility to stand for election to public office could be made contingent on formal endorsement by a recognized political party, thereby prohibiting the candidacies of "independents". In a democratic society such as Canada, however, so heavy handed an approach would run clear contrary to popular opinion. It would also likely offend fundamental Constitutional guarantees.

There has been a greater willingness in Canada to institutionalize the role of parties in the political system in a way which, while facilitating the activities of parties, does not make affiliation with them mandatory for aspiring or elected members of legislatures. Canadian politics at the federal level provide a number of examples of how an active role for political parties can be enhanced, both with respect to the conduct of politics generally and with respect to the life of Parliament in particular. Contributions to political parties receive advantageous tax treatment. Candidates for office can be identified by way of party affiliation on ballots. Parties are given free time on radio and television to state their views. Parties securing a minimum number of seats achieve "official" status under the rules governing Parliament, and are entitled to special privileges in relation to such things as research money, membership in Committees, and priority in the posing of questions during Question Period in the House of Commons.

Under this option, similar measures would be adopted to encourage the emergence and vitality of party politics at the territorial level in Nunavut. In addition to borrowing the measures in place at the federal level to support the

active participation of organized parties in political life, other special measures could be considered for Nunavut. For example, after every Assembly election, the Commissioner would invite the leader of the party having the largest number of seats --- if there are any members affiliated with parties --- to become Premier and to nominate his or her Ministers. And, after every Assembly election, the Commissioner would also invite the leader of the party having the next largest number of seats in the Assembly, but not participating in a coalition government --- if there is such a party present among Assembly members --- to become the Leader of the Opposition. This approach would not, if and of itself, necessarily persuade every candidate for the Assembly or newly elected Member to join a party, but there would be tangible incentive to do so. Even in the event only a fraction of Assembly members were to be elected to the Nunavut Legislative Assembly in its early days under party labels ---say, for example, the Assembly were made up of one party with four seats, one with three seats and the balance of seats were held by independents --- the obvious advantages accruing to party affiliated members might soon persuade more and more Assembly candidates and members to embrace party politics.

### **5.12.2 Discussion**

The attractions and drawbacks of this option turn on the perception as to whether the appearance of party politics at the territorial level in Nunavut would be a good or bad thing.

For those who believe that party politics are a tested way to signal to voters, in advance of Assembly elections, who is a serious contender for the position of Premier, and to determine the allocation and tenure of executive authority once an Assembly has been elected, this option would have predictable appeal. Enhancing the appeal of this option would be its reliance on carrots, not sticks, and its ability to lend itself to a gradual, Nunavut-specific approach to party politics. It is possible, at least for a number of years, that the Nunavut Legislative Assembly would be characterized by the continuing presence of a large number of Members sitting as independents, with parties organized along sufficiently loose lines so as to allow for "free votes" on a wide variety of topics.

For those who believe that the emergence of party politics in Nunavut would bring about a more fractious, interest-based, and culturally incompatible form of politics, this option would be easy to resist. In the absence of any ground swell of public support for the idea, it might be argued that the active encouragement of party politics by the adoption of measures making it difficult to

operate outside them would constitute a kind of "stacking of the deck". Viewed from this angle, a fairer test of whether or not party politics represents a "natural" evolution of Nunavut politics would be to maintain the status quo until such time as embryonic parties appeared through the efforts of private citizens. Then, and only then, would it be appropriate to adopt measures carving out an institutionalized role for parties.



## **Part 6. "Party Politics" and an Elected Premier**

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### **Section 6.1 Centrality of the Issue of Party Politics**

As is evident in the discussion in section 5.12, it is difficult to extricate the issue of whether or not Nunavut should have a popularly elected Premier from the issue of party politics. For a significant portion of the Nunavut public, there would appear to be two major attractions in having a Premier elected first hand by the public: (1) fuller respect would be paid to the primacy of public opinion by ensuring that the most important elected position in the jurisdiction is occupied by an individual chosen by the people to take on the specific responsibilities associated with the position; and, (2) flowing from the heightened moral authority engendered by an exercise in direct democracy, there would be a strengthening of the hand of the Premier in relation to other members of the Cabinet and the Assembly, thereby helping to ensure that the need for strong executive authority --- the need to make tough decisions --- would not be overshadowed by the more deliberative functions of the Assembly.

To some extent, the development of party politics, even in the absence of any reforms resulting in a Nunavut wide vote for Premier, would also have these two attractions.

If Assembly elections featured organized parties led by individual leaders, members of the public would have a much greater sense of who would be likely to emerge as Premier in the post-election period. All voters would not, admittedly, enjoy an equal opportunity to cast a vote for or against a particular person becoming Premier. Direct judgments of that kind would only be rendered by voters in the various local constituencies where party leaders were standing for election to the Assembly. As is the case in other parts of Canada, however, voters across Nunavut would know that a vote for the local candidate of a particular party would contribute towards the likelihood of that party, led by a known leader, forming the Government, and of that party leader becoming Premier.

Similarly, the logic of party politics as practised in other parts of Canada suggests that the leader of the party forming the Government would have much greater authority over Cabinet colleagues and the Assembly as a whole than is currently the case in the NWT. Indeed, with party politics, the authority of the Premier would go beyond the moral authority that might accrue through a process of direct election by the people in a non-partisan contest. A Premier operating in a system of party politics can make use of the powers available through the rules of his or her particular party to supplement the powers attaching to the office of Premier --- for example, the Premier might be able to resist an attempt by Cabinet colleagues to unseat him or her by reciting relevant sections of a party constitution prohibiting review of party leadership except in specified circumstances.

The likelihood that the adoption of a party system in Nunavut could overcome, at least in some degree, major weaknesses perceived in the position of Premier in the existing NWT does not, of course, make the introduction of party politics and the direct popular election of Premier interchangeable ideas. There would be a significant number of people in Nunavut who would fear that the introduction of party politics at the territorial level in Nunavut might remedy some of the weaknesses in the position of Premier only at the cost of creating new, perhaps greater, problems. Whatever their stand-alone qualities, the introduction of party politics and the direct popular election of Premier are sufficiently tightly inter-connected that a decision in relation to one reform should be taken in full awareness of the potential implications for the other.

## **Section 6.2 Compatibility of Party Politics and Elected Premier**

In examining the possibilities of a popularly elected Premier and of territorial level party politics in Nunavut, it may be tempting to consider these possibilities as logical alternatives. That is, it may be tempting to think that instituting a system of popular election of the Premier would obviate the need for the introduction of party politics, and so would the reverse. However tempting such an analysis, it should be avoided for at least two reasons.

The first reason is rooted in a fundamental political value in Canada that is given expression and protection in the Constitution in a variety of ways: members of the electorate have a right to organize in order to advance a common set of policies in relation to public issues, and through such organizational work --- frequently, but not always, expressed in the formation of political parties with their own internal constitutions and creeds --- to offer up candidates in the competition for public office. As in any democratic society, all

political activists in Canada who subscribe to bedrock belief in the rule of law are invited to operate openly, not in secret. While the institution of a form of direct popular election of Premier in Nunavut, and other electoral reforms, might be conceived, and be designed in their detail, so as to discourage the emergence of party politics, such measures would not be able to preclude their emergence. Whatever the view of those promoting the direct popular election of Premier as to the desirability or undesirability of party politics, party politics might come about anyway.

A second reason for not interpreting the direct popular election of Premier and party politics as alternatives is the possibility that many members of the Nunavut public would see their positive effects as mutually reinforcing: the effective co-ordination and use of executive authority by a Premier would be enhanced by his or her having a direct mandate from the electorate and the powers of party leader. Subscribers to this point of view can point to numerous examples around the democratic world where a popularly elected Premier carries out his or her responsibilities in political environments characterized by vigorous political parties. Other members of the Nunavut public, while conceding the viability of an elected Premier in a setting of party politics, might worry about two negative consequences. One such consequence could result from the situation where the elected Premier and the majority of Assembly members belong to different parties. While "co-habitation" (a term employed in France in the 1980s to describe the situation under a portion of Francois Mitterand's presidency) might not necessarily entail acrimony or deadlock between the executive and legislative branches, such a possibility exists (witness the budget making problems that have pitted a Democratic President against a Republican Congress in Washington recently). A second potential negative consequence might take the form of an overly powerful Premier, being able to exploit --- to unhappy ends --- the combination of prestige associated with direct election by the population and authority flowing from being the head of a political party with majority control of the Assembly.

Whatever assessment is made of the effects that might follow from a popularly elected Premier operating within a party politics environment, reform should be considered in full foresight of potential implications. It would, for example, be a major mistake to change the electoral system to allow for the popular election of Premier in order to forestall the emergence of party politics, only to rue the consequences of having an elected Premier playing an active role in party politics.

### Section 6.3 Possibilities of Transition

Apart from the adoption of a number of measures aimed at facilitating the emergence of party politics as outlined in Option L in Section 5, it is difficult to see how any steps could be taken which would make the emergence of party politics inevitable, let alone predictable, in association with any specific set of Assembly elections. Far more amenable to conscious alteration of the status quo would be the introduction of a method for the popular election of Premier. At least in theory, the introduction of such a method could be brought about with all the exactness available through some well-worded strokes of Parliament's legislative pen.

Could the adoption of a system of popular election of Premier be seen as a useful "transition" to the emergence of party politics in Nunavut, perhaps in a form that borrows less from how they are understood to operate in other parts of Canada and more from Nunavut's political culture and societal circumstances?

It could be predicted that the popular election of Premier, particularly if timed to occur before the closing date for nominations for Assembly candidacies, would contribute towards the emergence of party politics in that Assembly candidates would tend to define their affinity for, or opposition towards, the stated policy priorities of the Premier. In this way, party politics, perhaps initially defined around the policy viewpoints of various candidates for Premier, would tend to take shape. It could equally plausibly be predicted that the popular election of Premier would tend to distract political activists and the electorate from conventional notions of party politics, and reinforce the assumption that Nunavut political life turns more on the relative credibility and attractiveness of various personalities, than on ideological commitments and organizational loyalties that transcend personal differences.

The difficulty in predicting, with any degree of confidence, cause and effect relationships between a system of popular election for Premier and the introduction of party politics makes it hazardous to forecast whether a system for the popular election for Premier would precipitate, hasten, retard or prevent the emergence of party politics. Accordingly, the concept of popular election of Premier should be evaluated primarily on its own merits and defects, not as a transitional measure to something else.

## Part 7. Other Electoral Issues

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### Section 7.1 Scheduling and Frequency of Elections

In a Westminster model of government, the lifetime of any particular parliament or legislature is usually an uncertain thing, turning as it does on the vagaries of two things: the willingness of the members of the legislative assembly to maintain confidence in the allocation of effective executive authority to a particular body of Ministers (viewed negatively, the absence of a vote of non-confidence); and, the continued willingness of a particular body of Ministers to work with the assembly as constituted on the strength of the results of the last general election (viewed negatively, the absence of a resignation and recommendation for dissolution on the part of the Premier to the formal holder of executive power in the jurisdiction). In theory, any particular Canadian Parliament or Legislature can be dissolved at any time, triggering fresh elections, subject only to the outside five year time set out in Section 4 of the **Canadian Charter of Rights and Freedoms**. In reality, the irregularity of elections in Canada has been very much influenced by domination or non-domination of party politics in various jurisdictions. In circumstances of "minority governments" operating amidst party politics, elections have sometimes been called at relatively short intervals. In the contemporary NWT, with its tradition of non-party politics, elections have been held every four years without exception.

Considerable advantages could be obtained from scheduling elections at predictable dates (for example, on a given day --- say the first Monday after Labour day --- four years after the previous election). Greater predictability would allow individuals potentially interested in becoming candidates to plan their lives with clear understanding as to the periods that would need to be allocated to election campaigns. Greater predictability would allow public servants to anticipate when changes could occur in Ministerial appointments assisting in transitional arrangements. In addition, pre-scheduled election dates could allow for certain administrative savings to be realized in the organization and conducting of elections, and might even allow for the maintenance of permanent voters lists.

On account of such efficiencies, there are a number of jurisdictions --- such as Sweden --- that pre-schedule election even alongside the uncertainties introduced by party politics. In Nunavut, where there is no reason to anticipate the inevitability of party politics, there could be considerable incentive to adopt pre-set scheduling of elections. Such a schedule could be open to amendment in the event of a clear determination on the part of the Legislative Assembly to depart from the schedule.

In the event of pre-set scheduling of Legislative Assembly elections, the question of frequency arises. There is no overwhelming logic evident in various democracies as to the most desirable frequency of elections for legislative bodies. A number of democracies in the Western world schedule elections every three years. For parts of its history, the parliament at Westminster sat for seven years. The current standard lifetimes for the federal Parliament and provincial legislatures in Canada is --- except where an election is called early due to the defeat or electoral opportunism of the Government --- for a term of four or five years. The NWT Legislative Assembly has followed the pattern of elections every four years. The four year pattern of elections at the territorial level in Nunavut does not appear to be in any way controversial, offering as it does a balance between the need for electors to pass judgment on a sufficiently regular basis and the need for legislators to have adequate security of tenure to develop experience and judgment in relation to their responsibilities. There does not, therefore, appear to be any obvious incentive to modify such a pattern.

## **Section 7.2 Two-Member Constituencies and Male/Female Balance in the Assembly**

The NIC has produced a discussion paper, and stimulated public discussion, with respect to the possibility of organizing the Nunavut Legislative Assembly along the lines of two-member constituencies. Building on the advantages offered by a two-member constituency approach, the NIC has further proposed that a two-member system be designed to group male and female candidates on separate lists, thereby guaranteeing equal numbers of male and female MLAs (see the February, 1995, NIC discussion paper entitled, **“Two-Member Constituencies and Gender Equality: A “Made in Nunavut” Solution for an Effective and Representative Legislature”**). The proposal outlined in that discussion paper continues to be the topic of public debate in Nunavut and among interested observers in other parts of Canada.

Whatever the outcome of that debate, there is no obvious reason to tie the issue of direct popular election of Premier of Nunavut to the matters of two-member constituencies and male/female balance in the Assembly. The inescapable reality that the Premier's office must be filled by a single individual --- splitting the functions of a Premier into two co-leaders would rob the position of much of its co-ordinating, integrating nature --- and the need for that individual to command the best combination of qualities and aptitudes for the effective performance of his or her job, suggest that it would be inadvisable to stipulate whether the incumbent should be male or female after any particular election.

While the NIC is not of the view that a requirement for male/female balance should be applied to the office of an elected Premier, there is an important connection between the issues of two-member constituencies, male/female balance in the Assembly, and an elected Premier, namely, the process for bringing about any fundamental reforms in the electoral system in place for the first elections to the Nunavut Assembly. As each of these concepts, in order to be applicable to the elections for the first Nunavut Assembly would need to be sanctioned by permissive legislative provisions before the coming into existence of the Nunavut Territory, any strategy for the introduction of a system for election of Premier should take into account any larger package of electoral reforms.

### **Section 7.3 Other Issues**

There is evidence of considerable public interest in Nunavut in the possibilities of an elected Premier, two-member constituencies, and a guarantee of male and female balance in the Assembly. While there has been less evidence of a similar kind of interest in other reforms, some of the dissatisfactions voiced with the electoral status quo --- lack of accountability to the public, inappropriate behaviour on the part of some Ministers and other members of the Assembly --- could be addressed by additional types of electoral reform.

One such reform that has a well-established history of discussion in a number of jurisdictions in North America, and that has been put into practice at various times and in various places, is a method whereby voters can, independently of the preferences of elected representatives, initiate the making of specific kinds of laws (e.g. laws approving or constraining spending activities of government, laws involving social policy matters such as punishments for certain crimes). Typically, a power of voter initiative has taken the form of a petition signed directly by large numbers of voter precipitating a plebiscite or

referendum on a specific question (conventionally --- Quebec government practice notwithstanding --- a referendum is binding on an elected law making body, a plebiscite does not have enforceable weight). Voter initiative schemes pose conceptual and practical problems in any jurisdiction, notably with respect to the wording and interpretation of petitions and questions and in the process for implementing successful initiatives. These problems are particularly acute in Westminster model jurisdictions that have evolved from assumptions of parliamentary supremacy rather than popular sovereignty.

Another type of electoral reform that might be of interest to a significant portion of the Nunavut electorate would be a system of voter recall. Under such a system, a petition signed by a requisite number of disgruntled voters in any given constituency could force a by-election in that constituency. Through such a reform, an elected representative who behaves in such a way as thoroughly to alienate his or her electors would not be able to hang onto office until the next general election in the face of hostile public opinion. This kind of electoral reform does not present as many conceptual and practical problems of implementation as do voter initiative schemes, and could be applied to members of the Nunavut Legislative Assembly and, in the event of a directly elected Premier, to him or her as well.

Apart from possibilities surrounding further electoral reforms at the territorial level of politics in Nunavut, electoral reforms at the municipal level might also be usefully canvassed at some stage.

Whatever the attractions or drawbacks of these or other possibilities for electoral reform, it is unlikely that the Nunavut public will be able, in the period leading up to the first Nunavut Assembly elections in 1999, to come to discernible conclusions as to their desirability or feasibility. Accordingly, in the interests of not "overloading the circuits" with respect to public information and discussion of electoral reform, and of concentrating on those topics of electoral reform of greatest current interest, the Nunavut Implementation Commission advises that active consideration of electoral reform in the pre-1999 period be confined to the direct election of Premier, to two-member constituencies, and male/female balance in the Assembly. Other possibilities for reform should be left for closer examination in the period following the election of the first Assembly.

One exception might usefully be made with respect to the postponement of most possibilities for electoral reform, and this issue relates to the timing of the first elections of the Nunavut Legislative Assembly. A number of individuals in Nunavut have expressed concern as to the delay between the coming into



existence of Nunavut on April 1, 1999, and the conducting of first elections. As a consequence of the wording of the **Nunavut Act**, there would be a period of time --- likely some six to ten weeks --- following the coming into existence of the Nunavut Government when, due to the absence of an elected Assembly, virtually complete executive authority would necessarily be in the hands of the Commissioner. While the discretionary authority of the Commissioner could be limited by his or her instructions, some individuals have argued that a hiatus in the operation of responsible government as it is now understood in the North --- even if only in a brief and nominal way --- would be unfortunate and, if at all possible, should be avoided. On account of such concerns, the Commission intends to examine, in combination with its review of two-member constituencies, male/female balance in the Assembly, and direct election of Premier, the feasibility of eliminating such a hiatus.

## Part 8. Matters of Timing

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### Section 8.1 When Could Reforms be Introduced?

In its earlier report, **“Footprints in New Snow”**, the Commission addressed issues of timing in relation to the reform of the electoral system applicable to Nunavut’s first legislative assembly. The Commission developed the following reasoning:

**“The electoral districts of Nunavut need to be firmly set at least a year in advance of elections to the first Assembly, in order to allow potential candidates to assess their interest and chances. In the event that existing electoral boundaries were used along with a two-member constituency approach guaranteeing equal numbers of male and female MLAs, or some other variation of two-member constituencies were brought into play, then time might be needed to make enabling legislative changes. Alternatively, in the event that the two-member constituency approach were not to be followed, about a year would need to be set aside for an electoral boundaries commission to prepare recommendations for new electoral boundaries for Nunavut.”**

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In **“Footprints in New Snow”**, the Commission applied such considerations of timing to its own work plans and undertook to supply its precise recommendations with respect to two-member constituencies, guarantee of balanced male and female representation in the Assembly, and direct election of Premier, by June 30, 1996.

For a number of reasons, including the time needed to clarify public preferences as to a choice of capital for Nunavut, essential issues requiring decisions of the federal Cabinet have taken somewhat more time to go to Cabinet than contemplated by the Commission, perhaps somewhat overly optimistically, in its **“Footprints in New Snow”** report. Notwithstanding an element of delay in relation to the time path for a number of infrastructure, training and financial decisions, there is no reason why such delay need affect the timetable for making key decisions about the make up of the Nunavut Legislative Assembly and the selection and role of Nunavut’s Premier. In order for the Nunavut public to familiarize itself with relevant features of Nunavut’s

electoral system, it would be desirable that all important questions concerning the first elections for the Nunavut Assembly be dealt with definitively as soon as practicable. Major reforms to the system used to govern Nunavut's first elections can only be brought about through amendments to the **Nunavut Act**; therefore, any serious suggestions as to reform must provide for sufficient time for the public and elected leaders to consider proposed reforms and, if persuaded, to adopt them. More specifically, sufficient time needs to be allotted for debate and endorsement at the political level --- including, the federal Cabinet --- and the enactment of amending legislation by Parliament. For the purpose of accommodating the possibility of reform, the Commission intends to complete its recommendations in relation to Nunavut's electoral system before the end of 1996. This discussion paper is, of course, aimed at assisting in the fulfillment of that commitment.

## **Section 8.2 Nunavut's First Legislative Assembly**

A number of arguments can be raised against attempting to institute any reform of Nunavut's electoral system in the period prior to the coming into existence of the Nunavut Territory and Government on April 1, 1999. One argument can be based on the practical difficulties associated with bringing about amendments to the **Nunavut Act** in sufficient time to change the electoral rules governing the first Nunavut Assembly election. Another argument can be made against changing the existing system prior to a body of duly elected Nunavut representatives --- the first Nunavut Legislative Assembly --- being convened to decide whether any far-reaching changes to Nunavut's electoral system should be adopted for the purpose of subsequent elections.

The weight of the first argument --- the doubtful wisdom of pursuing changes to the **Nunavut Act** before Nunavut is up and running --- turns very much on an assessment of the political pluses and minuses that could result from opening up of the statute. Consistent with the reasoning set out in the previous section, there is ample time for Parliament to change the electoral system for Nunavut's first elections (assuming that the course of legislative amendments were fairly smooth). Accordingly, the practical difficulties attached to instituting legislative amendments to Nunavut's electoral system prior to April 1, 1999, are more a matter of political context than of logistics. Would opening up the **Nunavut Act** for one set of purposes inspire an appetite on the part of the public or Parliament to re-assess other parts of the statute? What would be the potential advantages and disadvantages of doing so? Would a process of amending the **Nunavut Act** buttress or detract from public and Parliamentary support for the Nunavut "project"? Answers to these and similar questions are very much a matter of subjective analysis and opinion; while bringing forward

such questions for the consideration of those reading this discussion paper, the Commission offers no particular viewpoint in relation to them.

It can be argued that instituting fundamental changes to Nunavut's electoral system, in the form of a popularly elected Premier or two member constituencies with male/female balance, is putting the cart before the horse --- that is, it would effect a fundamental re-definition of an electoral system before that system is allowed to operate.

According to this line of argument, the creation of a separate Nunavut Territory and Government will be a major struggle, notwithstanding important continuities, in the political life and electoral system employed in Nunavut. For all the reasons recited by the advocates of Nunavut over the last twenty years, the post-division political life of Nunavut will define itself around a significantly different set of issues and personalities than was characteristic of the undivided NWT. Even in the absence of more far-reaching changes to the electoral system, Nunavut electors will likely face new constituency boundaries and other electoral changes. The organizational face of democracy in Nunavut, will change enormously in 1999, and new ways of governing Nunavut will take time to become familiar and comfortable to the public. Given the scope of this challenge, it can be argued that introducing additional and avoidable reforms to the electoral system prior to the first elections to the Nunavut Legislative Assembly, whatever the merits of those reforms, runs the risks of seriously over-complicating the task of creating the Nunavut Government and out-stripping the capacity of the public to remain comfortable with the direction and pace of change.

An argument emphasizing the problems of moving too far, too fast, in re-ordering representative institutions can be supplemented by questions as to the "legitimacy" of bringing into effect far-reaching departures from the conventions of Westminster government prior to the election of a group of representatives who can speak authoritatively in the name of Nunavut and its electors.

These arguments can be countered by arguments in the opposite direction.

It can be emphasized that the creation of Nunavut is all about altering the status quo, not perpetuating it. Insofar as the Nunavut Legislative Assembly will, by the very process of division of NWT into separate electorates, be a very different body than the existing NWT Legislative Assembly, the job of those working on Nunavut should be to assist in making sure that all the branches of

government in Nunavut ---- legislative, executive and judicial --- operate with maximum effectiveness and popular approval from Day 1, not to preserve those elements of the status quo that are confronted by alternative approaches that have superior features. Putting off the issues of popular election of Premier and, even more tellingly, two-member constituencies and male/female balance in the Assembly, could result in future Nunavut Legislative Assemblies predisposed to preserve themselves in an unreformed state.

According to this analysis, a decision to allow the first Nunavut Legislative Assembly to review the old electoral rules, after employing those rules to elect that Assembly, is not postponing matters of fundamental electoral reform but effectively pre-deciding it. This analysis suggests that, given the absence of a truly "neutral" position on the future of electoral reform prior to April 1, 1999, the architects of Nunavut's first electoral system should make decisions on the basis of merit, not bias towards the status quo.

Advocates of fundamental reforms being instituted prior to Nunavut's first elections can counter, at least to some extent, arguments as to the "legitimacy" of making such reforms in the absence of Nunavut's Legislative Assembly by emphasizing two factors: the over-riding responsibilities of the federal Parliament which has a mandate to legislate for Nunavut residents as well as for other Canadians; and, the likelihood that fundamental electoral reforms in advance of April 1, 1999, will only proceed if there is adequate public support shown in the coming year or two.

Both of these lines of argument have appeal, making conclusions difficult. After careful consideration, the Commission favours the adoption of fundamental reforms to the electoral system prior to Nunavut's first elections, provided that the merits of such reforms, and their continuing popular support, are clear.

### **Section 8.3 Legislative Amendments**

In the event that fundamental reforms were to be made in relation to Nunavut's electoral system prior to Nunavut's coming into existence --- allowing for popular election of Premier, two-member constituencies, male/female balance in the Assembly, and, possibly, the conducting of a first Assembly election in advance of April 1, 1999 ---- what legislative route and what legislative form should such reforms take?

The necessary legislative route for such changes would be amendments by Parliament to the **Nunavut Act**. Fundamental reforms of the kind being considered could not reliably be achieved without revision of the **Nunavut Act** to sanction them. Legislative authority now in the hands of the NWT Legislative Assembly in relation to Assembly elections and the allocation of executive authority within the territorial government's jurisdiction could not, as a general proposition, serve as a reliable avenue of change; the NWT Legislative Assembly lacks the power to make laws targeted at the composition and activities of key governing institutions in post-division Nunavut. An exception can be identified to this general proposition in relation to the role of Premier. While the NWT Legislative Assembly would not be able to enact valid legislation providing for the direct popular election of the Premier of Nunavut, amendments to the existing NWT **Legislative Assembly and Executive Council Act** codifying a transfer of additional powers to the Premier in relation to the Assembly (for example, the power to hire and fire Ministers) would, through the **Nunavut Act**, be "grandfathered" forward into Nunavut's statute books.

With respect to the form of legislative amendments, it is possible, at least in theoretical terms, to identify two such forms. One form would involve amendments to the **Nunavut Act** requiring the first Nunavut Assembly elections to be conducted along new lines and carving out a particular method for the selection and, possibly, the role of a Premier (amendments could also provide for the conducting of first Nunavut Legislative Assembly elections prior to April 1, 1999). An alternate form would entail amendments to the **Nunavut Act** permitting another legislative body --- the existing NWT Legislative Assembly --- to enact legislation effecting stipulated reforms to Nunavut electoral system. This second form, while theoretically possible, offers few advantages. It does not remove the need for legislative activity by Parliament and would entail laws central to the operation of representative institutions in Nunavut to be made by a legislative body in which members from Nunavut are in a minority.

A final note can be made with respect to the form of any legislative amendments to the **Nunavut Act** bringing about fundamental reforms to the electoral system in use in Nunavut. Whatever the advantages or disadvantages of instituting reforms of the kind discussed in this paper prior to the first elections to the Nunavut Assembly, the long-term legislative jurisdiction over such matters should be actively exercised by Nunavut's Legislative Assembly, not Parliament (subject, of course, to the application of fundamental Constitutional principles and parameters). Accordingly, amendments to the **Nunavut Act** making fundamental electoral reforms should do two things: introduce direct, substantive changes in relation to the election and operation of the first Nunavut Legislative Assembly; and, provide the Nunavut Legislature with the ability to

make laws in relation to the extension, modification, or reversal of such substantive changes to subsequent elections and Assemblies.

## Part 9. Making a Decision

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### Section 9.1 Some Guiding Principles

Given the number and range of options that exist (a number are set out in Part 5 of this discussion paper; additional ones could, no doubt, be identified) for the fundamental reform of Nunavut's electoral system, making choices will be difficult. This difficulty will be compounded by the need to ensure that whatever approach adopted is adequately grounded in public understanding and support. In order to make choices easier, the Commission is of the view that decision making about the fundamental reform of Nunavut's electoral system --- including, but not confined to, the issue of popular election of Premier --- should conform to the following principles:

1. The main determinant concerning the adoption and substance of any fundamental reforms should be the preferences of the citizens of Nunavut, and the Commission should consider developing techniques to gauge these preferences for the purpose of apprising the three parties (the Government of Canada, the GNWT, and NTI). One technique, among others, might involve the administration of a reliable opinion survey.

2. Any fundamental reforms should be made by Parliament at least one year prior to the first elections to the Nunavut Legislative Assembly. Calculating backwards from that objective, would suggest the following timetable benchmarks:

\* present to end of 1996: public review and discussion; discernment of public preferences;

\* end of 1996: decisions by the three parties; and,

\* 1997: introduction of amendments to **Nunavut Act** into Parliament.



3. Any fundamental reforms in relation to Nunavut's first Assembly elections should be accomplished through a complete set of amendments to the **Nunavut Act** by Parliament; the responsibility should not be delegated elsewhere.

4. The continued application and design of any fundamental reforms to the second and subsequent Nunavut Legislative Assemblies should, through appropriate changes to the **Nunavut Act**, be vested in the Nunavut Legislature.

5. For the purpose of confining issues of fundamental reform of the electoral system to a manageable number, active consideration of such reforms during the period leading up to April 1, 1999, should be confined to the following:

- \* direct popular election of the Premier;
- \* two-member constituencies;
- \* male/female balance in the Nunavut Legislative Assembly;  
and,
- \* the scheduling of elections to the first Nunavut Legislative Assembly prior to April 1, 1999.

6. In keeping with financial constraints affecting all levels of government in Canada, any package of fundamental reforms should not anticipate any increase in the costs of electing representatives to legislative and executive offices and of operating government institutions. In the event, for example, that a system were to be adopted for the popular election of a Premier through a series of two votes (a first election and a run-off), then compensating efficiencies should be realized in other parts of the overall design of government in Nunavut (it would be possible to have one vote for Premier legislated to coincide with municipal elections).

7. Any reforms in relation to the selection and role of the Premier should respect a fundamental principle of the Westminster model of government, that is, that the continued exercise of executive authority is conditional on the maintenance of an acceptable level of support on the part of those individuals elected to represent their constituents in the legislative assembly.

## **Section 9.2 Most Promising Options**

After careful review of options available for the selection and role of a Premier of Nunavut as set out in Part 5 of this discussion paper, the Commission considers the following four options to be the most promising ones.

### **9.2.1 Status Quo**

It is the burden of those who advocate change to justify its need and its form. Whatever the positive and negative features of new ways of selecting and mandating a Premier, the system now in place in the NWT, despite defects, has a number of virtues. A decision to avoid introducing any new methods, in the period leading up to April 1, 1999, for selecting and mandating a Premier for Nunavut would not, of course, "lock in" the system now used in the NWT. First of all, the methods currently being relied upon in the NWT may evolve over the next few years and, in so far as evolutionary changes crystallize into law or convention, Nunavut will stand to inherit them. Secondly, Nunavut's Legislature, once in operation, will be equipped to consider further changes when and how it sees fit.

### **9.2.2 Option L**

#### **Status Quo, With Active Encouragement of Institutionalized Party Politics**

This option proceeds from two propositions. An opening proposition --- which is highly controversial --- that the emergence of party politics in Nunavut would be an indication of political maturity in Nunavut political culture and a harbinger of a more effective and productive Assembly and Cabinet. In short, that party politics would be a good thing for Nunavut. The second proposition --- which is not controversial --- is that democratic institutions and practices cannot

be designed so as to either compel or prevent the emergence of party politics in Nunavut, but they can be shaped so as to encourage or discourage party politics. This option would introduce features into the political system in Nunavut which, while absent in the political system currently in place in the NWT, would facilitate the emergence of party politics sooner rather than later. These features would draw to a maximum extent on precedents available at the federal level and in other parts of Canada, thereby minimizing suggestions of "forced feeding" party politics.

### **9.2.3 Option H**

#### **Direct Election of Premier by Popular Vote Conducted in Advance of Assembly Elections, Run-off Between Top Two Candidates for Premier in the Absence of Majority Support, Premier Can "Hire and Fire" Ministers**

Of the various options available for the popular election of Premier, **Option H** offers the most attractive method. The requirement that an elected Premier attract at least 50% of votes cast, even if this entails a second stage run-off, would ensure that the Premier is chosen through a broad constituency of support and accentuate the moral authority attached to the Premier's position. The costs of a two stage process could be lessened by synchronizing the two stages with municipal and Legislative Assembly elections. Knowledge of who would be likely to become Premier in advance of the closing date for nomination of candidates to Assembly elections would tend to give voters more sharply defined policy and personality choices in Assembly elections. Equipping the Premier with the power to "hire and fire" Ministers logically flows from the rationale of strengthening the executive arm of government.

### **9.2.4 Options L and H Combined**

The popular election of Premier might be seen as contributing to the emergence of party politics without acknowledging, in any formal sense, their legitimate role. This approach, based on a perception on the compatibility of the key features of **Options L and H**, would integrate and build on their respective features.

## Part 10. A Few Final Words

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As set out in the introductory text, it is the NIC's hope that, like all its reports, this discussion paper will assist in informed public debate and detailed three-party (the Government of Canada, GNWT and NTI) consultations that are needed in order for the best decisions to be made about the design and implementation of the Nunavut Government. The Commission recognizes that there is further work to be done with respect to both aspects of this objective. In relation to informed public debate, the lengthy, technical treatment of the topic of an elected Premier offered in this discussion paper needs to be followed up with dissemination to the Nunavut public of an information brochure drawing from the paper. In relation to decision making by the three parties, conclusions that emerge out of the contents of this discussion paper need to contribute to the formulation of the Commission's advice on the broad range of issues surrounding the size and make-up of the Nunavut Legislative Assembly and the selection and role of members of the executive branch of the Nunavut Government. In both these areas, the Commission is committed to carrying out further and timely work.

**Appendix "A"**

**Main Points on the Direct Election of the Prime Minister,  
Information Division, Israel Foreign Ministry**

=====  
Information Division, Israel Foreign Ministry - Jerusalem  
Mail all Queries to ask@israel-info.gov.il  
URL: http://www.israel-mfa.gov.il  
gopher://israel-info.gov.il  
=====

**BASIC LAW: THE GOVERNMENT (1992)**  
**Main Points on the Direct Election of the Prime Minister**

The Government is comprised of the Prime Minister and Ministers. The Prime Minister serves by virtue of his being elected in the national general elections, to be conducted on a direct, equal, and secret basis in compliance with The Election Law (The Knesset and The Prime Minister).

The Ministers will be appointed by the Prime Minister; their appointment requires the approval of the Knesset. Should the Knesset reject the Prime Minister's proposal regarding the composition of the Government, it will be regarded as an expression of no confidence in the Prime Minister.

Whenever elections are being conducted for the Knesset, the same date will also be determined for the elections for the Prime Minister, excepting when new elections are held pursuant to an election appeal.

In the cases specified in this Basic Law separate elections will be held for the election of the Prime Minister (hereinafter - special elections).

The period of service of the Prime Minister and the Ministers shall be equal to the period of service of the Knesset to which they were elected; in special elections for the period of service of the Knesset serving at that time, unless specified differently in this Basic Law.

Persons fulfilling the following conditions are eligible candidates for the Prime Ministership:

- (1) Eligible for candidacy to the Knesset and at least thirty years old on the day of submission of candidacy.
- (2) Should the elections for the Prime Minister be conducted at the same time as the Knesset elections - the candidate for Prime Minister will head the list of candidates for the Knesset.
- (3) Should special elections be held - he will be a member of Knesset.

The following bodies may propose Prime Ministerial candidates:

(1) A faction of the outgoing Knesset, with no less than ten members, having submitted a list of candidates to the Knesset.

(2) A few factions of the outgoing Knesset, with not less than ten members, having submitted a list of candidates or lists of candidates to the Knesset.

(3) Fifty thousand enfranchised persons.

In special elections, a candidate may be proposed by a faction or factions of the Knesset, the total number of members of the faction or factions not being less than ten members or fifty thousand enfranchised persons.

The elected Prime Minister will be the candidate receiving more than half of the valid votes, provided that he is also a Knesset member.

If no one of the candidates receives the number of votes prescribed above, repeat elections will be held on the first Tuesday after the passage of two weeks from the publication of the results of the first election.

In the return elections the candidates standing for election will be the two candidates who received the largest number of valid votes in the first elections, and who are Knesset members. In the return elections the candidate receiving the largest number of valid votes will be the chosen candidate.

Should there be a sole candidate, whether in the first elections or in the return elections, the elections will be conducted by way of a vote either for him or against him, and he will be elected if the number of valid votes for him exceeds the number of valid votes against him. If no candidate is elected according to the provisions of this section, special elections will be held.

Within 45 days of the publication of the election results the Prime Minister elect will appear before the Knesset, present the Ministers of the Government, announce the division of tasks and the guiding principles of the Government's policies, and the Prime Minister and the Ministers will begin their service, provided that the provisions of section 33(a) and (b) have been complied with. As soon as possible after that the Prime Minister and the Ministers will make their declarations of allegiance before the Knesset in the version specified in subsection (c).

A person convicted of an offence involving moral turpitude, prior to the passage of ten years from the day he completed his period of punishment, may not be appointed as a Minister.

A Knesset member seceding from his faction and failing to tender his resignation as a Knesset member may not be appointed as a Minister during the period of service of that Knesset.

Should the Government not be presented in accordance with the provisions of this law, special elections will be held.

Should the Prime Minister elect fail to present the Government as stated, and is again elected Prime Minister and again fails to present a Government, he may not submit his candidacy in the subsequent special elections.

The Knesset may, by means of a majority of its members adopt an expression of no confidence in the Prime Minister.

An expression of no confidence in the Prime Minister will be deemed to be a Knesset decision to disperse prior to the completion of its period of service.

Non-adoption of the Budget Law within three months subsequent to the beginning of the fiscal year will be considered to be a Knesset decision on its dispersion, prior to the completion of its term of service.

Should the Prime Minister ascertain that a majority of the Knesset opposes the Government, and that the effective functioning of the Government is prevented as a result, he may, with the approval of the President of the State, disperse the Knesset by way of an order to be published in Reshumot; a decision to disperse the Knesset will be regarded as a decision of the Knesset to disperse prior to the completion of its term of service, and new elections for the Knesset and the Prime Minister, will be conducted on the last Tuesday before the passage of 60 days from the day of the dispersion of the Knesset.

The Prime Minister may, after notifying the Government of his decision to do so, resign by way of submitting his written resignation to the President of the State; the resignation will go into force 48 hours after the letter of resignation is submitted to the President, unless the Prime Minister retracts prior to such time. Should the Prime Minister resign, special elections will be conducted.

Should the Prime Minister cease to function as a member of the Knesset, he will be deemed to have resigned.

Should the Prime Minister be convicted of an offence involving moral turpitude, the Knesset may remove him from office, pursuant to a decision of a majority of the Knesset members.



The Knesset may, pursuant to a vote of 80 of its members, remove the Prime Minister from office. Neither the Knesset Committee nor the Knesset itself may decide to remove the Prime Minister unless the Prime Minister has been first given an opportunity to state his case before them.

Should the Knesset decide to remove the Prime Minister from his office, special elections will be conducted.

Should the Prime Minister die or be permanently incapacitated, special elections will be held.

Should the Prime Minister die, be permanently incapacitated, or be removed from office, the Government will empower one of the Ministers who is also a Knesset member, to serve as acting Prime Minister until the new Prime Minister takes office. The acting Prime Minister will have all the powers of the Prime Minister, except for the power to disperse the Knesset.

Should the Prime Minister be temporarily unable to discharge his duties for a period not exceeding 100 consecutive days, his place will be filled by a Minister who is also a Knesset member and appointed by the Prime Minister; failing the appointment of a Deputy, or should the appointed person not be able to perform his duties, a Minister who is a Knesset member shall be appointed by the Government as acting Prime Minister until either the Prime Minister or permanent acting Prime Minister resumes his functions.

After the passage of one hundred days upon which the Prime Minister does not resume his duties, the Prime Minister will be deemed to have permanently ceased to discharge his duties and the provisions of sections 28 and 29 shall apply.

A Prime Minister who has resigned or in whom the Knesset expressed no confidence, will continue in office until the newly elected Prime Minister assumes office.

In the event of the Prime Minister's death, permanent incapacitation, resignation, removal from office, or an expression of no confidence by the Knesset, the Ministers will continue in office until the newly elected Prime Minister assumes office.

The Government shall not exceed eighteen members in number and not be less than eight. At least one half of the Ministers shall be Knesset members. A Minister shall be appointed over an office, but a Minister may be a Minister without portfolio. The Prime Minister may also function as a Minister appointed over an office.

In a Government in which the number of Ministers including the Prime

Minister does not exceed eight, no Minister may be removed from his post.

Should the number of Ministers in the Government including the Prime Minister be less than eight, the Prime Minister will appoint a Minister or Ministers to complement the required minimum; the appointment shall be made within 72 hours and until such time he may not remove any Minister from his post; if the required minimum is not complemented in accordance with these provisions, special elections will be conducted.

A Minister may resign from the Government by submitting a letter of resignation to the Prime Minister. His service in the Government will be terminated upon the passage of 48 hours from the time the letter of resignation reached the Prime Minister, unless he retracts prior to such time.

The Minister in charge of an office, may, with the approval of the Prime Minister, appoint a Deputy Minister for the office, the Deputy having been appointed from amongst the Knesset members; the Prime Minister too may appoint a Deputy in the stated manner; a Deputy Minister shall assume his role after notice of his appointment has been given by the Government to the Knesset; a Deputy Minister appointed by the Prime Minister shall be entitled "a Deputy Minister in the Prime Minister's office"; the number of Deputy Ministers shall not exceed six.

A Knesset member seceding from his faction without resigning from his position subsequent to his secession, may not be appointed to the position of Deputy Minister during the period of service of the same Knesset.

The Prime Minister may, by way of written notification, remove a Minister from his post; the removal of Minister will take effect 48 hours after the letter notifying thereof was given to the Minister, unless the Prime Minister retracts prior to such time.

The Knesset may remove a Minister from his post, by way of a decision of a majority of seventy of its members; the Knesset will not debate the removal of a Minister from his post unless the initial recommendation of a majority of the Knesset committee members is received and after the Minister has been provided with an opportunity to state his case before the Knesset Committee and before the Knesset plenum.

Should the Minister cease to serve, be absent from the country, or be temporarily incapable of discharging his duties, the Prime Minister or another Minister appointed by the Prime Minister will discharge his duties until the Minister resumes his regular duties.

The Prime Minister will conduct the functioning of the Government and will set work procedures and voting procedures in the Government and its

committees;

Government decisions will be adopted by a majority vote; should the vote be drawn, the Prime Minister will have an additional vote.

The Government will provide the Knesset and its committees with information upon request and will assist them in the discharging of their roles; special provisions will be prescribed by law for the classification of information when the same is required for the protection of state security and foreign relations or international trade connections or the protection of a legally mandated privilege.

The Knesset may, at the request of at least forty of its members, conduct a session with the participation of the Prime Minister, pertaining to a topic decided upon; requests as stated may be submitted no more than once a month.

The Knesset may obligate a Minister to appear before it, similar authority is granted to any of the Knesset committees within the framework of their tasks.

Any of the Knesset committees may within the framework of the discharging of their duties, and under the auspices of the relevant Minister and with his knowledge, require a civil servant or any other person prescribed in the law, to appear before them.

The Prime Minister and any Minister may speak before the Knesset and its committees.

This Basic Law may not be changed unless by a majority of the Knesset members; however, a provision prescribing that a Knesset decision must be adopted by a specified number of the Knesset members, will not be altered unless by at least the same amount of Knesset members; the required majority under this section will be required for decisions of the Knesset during the first reading, the second reading and the third reading; "change" for the purposes of this section means both specific and by implication.

\*\* This law, of 5752-1992 will enter into effect - as noted in par. 63 - from the elections to the 14th Knesset and henceforth. Until that time, the Basic Law: The Government of 5728-1968 will remain in effect.

## **Appendix "B"**

### **A Summary of Options for the Selection of Premier**

# OPTION

	A 5.1	B 5.2	C 5.3	D 5.4	E 5.5	F 5.6	G 5.7	H 5.8	I 5.9	J 5.10	K 5.11	L 5.12
1. Direct election by population	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
2. Direct election – same time as Assembly election	✓	✓	✓	✓					↕	↕		
3. Direct election – before Assembly election							✓	✓	✓	✓		
4. Direct election – after Assembly election					✓	✓				↕		
5. Run-off election								✓				
6. Limitations on candidates for Premier						✓						
7. Indirect election											✓	✓
8. Premier with power to 'hire and fire' Ministers	✓		✓	✓	✓	✓	✓	✓			✓	✓
9. Election of other Ministers									✓			
10. Conventions as to confidence retained	✓	✓		✓	✓	✓	✓	✓			✓	✓
11. Conventions as to confidence subject to major changes			✓						✓	✓		
12. Active encouragement of party politics												✓
13. Modifications to make-up of Cabinet				✓					✓	✓		

**Appendix "C"**

**13th Legislative Assembly Standing Committee System**

**13TH  
LEGISLATIVE  
ASSEMBLY**

**STANDING COMMITTEE  
SYSTEM**

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## STANDING COMMITTEE SYSTEM

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The following are the Standing Committees of the Legislative Assembly:

- 1) Standing Committee on Government Operations
- 2) Standing Committee on Infrastructure;
- 3) Standing Committee on Resource Management and Development;
- 4) Standing Committee on Social Programs;
- 5) Standing Committee on Rules and Procedures;

### Standing Committee on Government Operations

The Standing Committee on Government Operations shall:

- a) Review issues which have government-wide implications;
- b) Consider items and issues referred from other Committees and the House;
- c) Conduct the overview of the budget and the fiscal framework;
- d) Consider the budgets and financial management of boards and agencies that are outside the responsibility of any Standing Committee including the Office of the Legislative Assembly;
- e) Examine the reports on the annual financial statements and public accounts of the Government of the Northwest Territories and the Report of the Auditor General;
- f) Review the estimates and the financial status of the Government of the Northwest Territories to monitor compliance with the *Deficit Elimination Act*;
- g) Allocate to any other Standing Committee its examination of any estimates and any review of departmental performance;
- h) Recommend the appointment of the "Statutory Officers" of the Legislative Assembly; and



- 1) Examine and consider the overall issues that affect the operation of the Government of the Northwest Territories relating to Division and the creation of two territories.

Committee Memberships:

- 1) Roy Erasmus, Chair
- 2) Edward Picco
- 3) Seamus Henry
- 4) David Krutko
- 5) Kevin O'Brien
- 6) Tommy Enuaraq
- 7) Michael Miltenberger

Alternates

Yet to be named.

2) Standing Committee on Infrastructure

This Committee shall consider the following matters with respect to the Departments of Finance, Public Works and Services, Municipal and Community Affairs, Intergovernmental and Aboriginal Affairs, Executive, Personnel Secretariat, and the Financial Management Board Secretariat:

- a) Review legislative and policy proposals, multi-year plans and budgets, Bills, boards and agencies, public accounts and Division issues;
- b) Review departmental performance; and
- c) Consider any other matter referred by the House.

Committee Membership:

1. Edward Picco, Chair
2. Seamus Henry, Deputy Chair
3. Jane Groenewegen
4. Levi Barnabas
5. Vincc Steen

Alternates:

1. David Krutko
2. John Ningark
3. Jake Ootes

3) **Standing Committee on Resource Management and Development**

This Committee shall consider the following matters with respect to the Departments of Economic Development and Tourism, Renewable Resources, Transportation, Safety and Public Services, and Energy Mines and Petroleum Resources:

- a) Review legislative and policy proposals, multi-year plans and budgets, Bills, boards and agencies, public accounts and Division issues;
- b) Review departmental performance; and
- c) Consider any other matter referred by the House.

**Committee Membership:**

- 1) David Krutko, Chair
- 2) Kevin O'Brien, Deputy Chair
- 3) Mark Evaloanjuk
- 4) Jake Ootes
- 5) James Rabesca

**Alternates:**

- 1) Tommy Enuaraq
- 2) Roy Erasmus
- 3) Edward Picco

4) **Standing Committee on Social Programs**

This Committee shall consider the following matters with respect to the Departments of Health and Social Services, Education, Culture and Employment, Justice, and the Northwest Territories Housing Corporation:

- a) Review legislative and policy proposals, multi-year plans and budgets, Bills, boards and agencies, public accounts and Division issues;
- b) Review departmental performance; and
- c) Consider any other matter referred by the House.

**Committee Membership:**

- 1) Tommy Enuaraq, Chair
- 2) Michael Miltenberger, Deputy Chair
- 3) Roy Erasmus
- 4) John Ningark
- 5) Floyd Roland

**Alternates:**

- 1) Levi Bamabas
- 2) Jane Groenewegen
- 3) James Rabesca

5) Standing Committee on Rules and Procedures

This Committee shall inquire into such matters as may be referred to it by the Legislative Assembly, the Speaker, or the Management and Services Board.

Committee Memberships

1. Honourable Charles Dent
2. Mark Evaloanuk
3. Seamus Henry
4. Michael Mittenberger
5. John Ningark

Chairman and Deputy Chairman, yet to be named.

Alternates:

1. Tommy Enuaraq
2. David Krutko
3. Vince Steen