

**Élection directe d'un premier ministre au Nunavut:
Propositions de dispositions législatives**

Commission d'établissement du Nunavut

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Canada ; et en second lieu, un choix éclairé parmi les options permettant la mise en oeuvre d'un tel système.

Par suite d'une période de discussion publique, les commissaires vous recommandaient de reporter la prise de décision sur ce point après l'élection de la première assemblée législative du Nunavut. Ils faisaient cette recommandation en raison des complexités de la question et de l'absence d'un consensus public sur la façon de procéder pour concevoir un tel système. La recommandation de la commission a été acceptée.

La possibilité d'élire le premier ministre du Nunavut au suffrage universel a soulevé un intérêt considérable à l'extérieur du Nunavut. Un avocat d'Ottawa, John Mark Keyes, s'est notamment penché sur la question. Pendant l'année universitaire 1997-1998, M. Keyes enseignait le volet anglais du cours de rédaction des lois offert par l'École des études supérieures de la faculté de droit de l'Université d'Ottawa. Avec l'encouragement des commissaires, il a inclus aux exercices de rédaction assignés aux avocats inscrits au cours, l'élaboration d'un mécanisme législatif pouvant permettre l'élection du premier ministre du Nunavut au suffrage universel.

Dans cet exercice, les avocats n'étaient pas limités par des instructions prédéterminées quant aux politiques. On les encourageait plutôt à retenir des hypothèses relatives aux politiques, puis à rédiger un plan en tenant compte de celles-ci. Certains des mécanismes proposés s'éloignent des modèles retenus dans le rapport antérieur de la Commission, mais un certain nombre s'y conforment de près. Les diverses propositions varient considérablement les unes des autres, ce qui met en relief le grand nombre de choix de politiques qu'exigera la mise en oeuvre de tout mécanisme législatif viable.

L'élection du premier ministre du Nunavut au suffrage universel continuera sans doute de retenir l'intérêt et d'alimenter le débat populaires après qu'on aura relevé le défi immédiat de l'établissement du nouveau gouvernement. Afin de préserver les résultats précieux des recherches et de l'analyse effectués à l'Université d'Ottawa, la Commission a demandé au professeur John Mark Keyes, de même qu'aux avocats inscrits au cours, la permission de reproduire les divers mécanismes élaborés dans le cadre du cours de rédaction des lois. Cette permission lui fut généreusement accordée pour ce qui concerne les propositions ci-jointes, et les commissaires en sont fort reconnaissants.

La Commission ne cautionne en particulier aucun des mécanismes législatif joints aux présentes, non plus que les politiques servant de fondements à ces propositions. Toutefois, les commissaires sont confiants que l'on pourra tirer de l'exercice des idées stimulantes et créatives quant aux questions pratiques qu'il faudra résoudre si jamais le Nunavut veut mettre en oeuvre un système d'élection du premier ministre au suffrage universel.

Veuillez agréer, Madame la Ministre, Monsieur le Premier Ministre et Monsieur le Président, nos cordiales salutations.

Le président,



John Amagoalik

Explanatory Notes

- 1. The following legislative schemes were developed by Irene Gendron, Glenn Hector, Rob Horwood, Vihar Joshi, Joanne Lee, Kate Murray, Barbara Pierre, Francis Savage, Paul Shuttle, and Robert Tourangeau. They appear in a different order of authorship.**
- 2. A number of the schemes are accompanied by notes. References in these notes to models are references to the various models identified in the Nunavut Implementation Commission report on the topic of an elected Premier.**

Notes Explicatives

- 1. Les propositions de mesures législatives suivantes ont été établis par Irene Gendron, Glenn Hector, Rob Horwood, Vihar Joshi, Joanne Lee, Kate Murray, Barbara Pierre, Francis Savage, Paul Shuttle et Robert Tourangeau. L'ordre de ces propositions de mesures législatives ne correspond pas nécessairement à l'ordre de présentation des auteurs.**
- 2. Un certain nombre de propositions de mesures législatives renferment des notes concernant des modèles. Il s'agit en fait de références aux différents modèles décrits dans le rapport de la Commission d'établissement du Nunavut où il est question d'un premier ministre élu.**

Legislative Scheme #1

Proposition de mesures législatives #1

DRAFTING SEMINAR 1 DCL 7401
(December 5, 1997)

Legislative Assembly of Nunavut

1st Session, 1999-2000
Bill 1

THE PREMIER OF NUNAVUT ACT

*The Commissioner
by and with the consent
of the Legislative Assembly of Nunavut
enacts as follows:*

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Interpretation

Definitions

1. In this Act, the following definitions apply:

"Commissioner"

"Commissioner" means the Commissioner of Nunavut, as appointed under section 5 of the Nunavut Act, S.C. 1993, c.28.

"Legislative Assembly"

"Legislative Assembly" means the Legislative Assembly of Nunavut.

"Premier"

"Premier" means the Premier of Nunavut.

"Speaker"

"Speaker" means the Speaker of the Legislative Assembly of Nunavut.

Purpose

Purpose

2. The purpose of this Act is

- (a) to establish the office of the Premier of Nunavut,
- (b) to establish an initial selection procedure for, and role of, the Premier,
- (c) to establish other potential selection procedures for, and roles of, the Premier, and
- (d) to establish authority for referenda respecting selection procedures for, and roles of, the Premier.

PART 1 GOVERNMENT OF NUNAVUT

Establishment of the Office of the Premier

*Office of the
Premier*

3. There is hereby established the office of the Premier of Nunavut, the occupant of which is to be chosen in accordance with Part 2.

Establishment of the Executive Council

*Executive
Council*

4. There is hereby established the Executive Council of Nunavut, the members of which are to be appointed by the Commissioner on the recommendation of the Legislative Assembly.

Establishment of the Government of Nunavut

*Government of
Nunavut*

5. The Government of Nunavut is comprised of the Executive Government and the Premier.

PART 2 SELECTION OF THE PREMIER AND EXECUTIVE COUNCIL

Selection by Legislative Assembly

*Legislative
Assembly to
choose
Persons for
Offices*

6. Immediately after persons elected as members of the Legislative Assembly have been sworn into office, the members of the Legislative Assembly shall without delay meet to choose persons to serve in the offices of

(a) Premier,

(b) members of the Executive Council, and

(c) Speaker.

*Criteria
Governing
Choice of
Persons*

7. In choosing persons to serve in these offices, the members of the Legislative Assembly (a) shall choose in accordance with the Rules, if any, of the Legislative Assembly for its operations and procedures,

(b) need not choose in a public sitting of the Legislative Assembly,

(c) shall choose persons in the following order: first, for the office of Premier; second, for the offices of member of the Executive Council; and third, for the office of Speaker,

(d) may choose a person for an office only if the person is an elected member of the Legislative Assembly, and

(e) may choose a person for an office only if a majority of the members of the Legislative Assembly so choose.

*Communication
of Choice to
Commissioner*

8. (1) The Legislative Assembly shall communicate to the Commissioner its choice of Premier and members of the Executive Council.

*Deemed
Recommendation*

(2) The choice under section 6 is deemed, for the purposes of section 11 of the *Nunavut Act*, S.C. 1993, c.28, to be a recommendation of the Legislative Assembly.

Appointment of Premier

*Appointment
of Premier*

9. The Commissioner shall, on the recommendation of the Legislative Assembly made under section 8, appoint a member of the Legislative Assembly to the office of Premier.

Appointment of Executive Council

*Appointment
of Executive
Council*

10. The Commissioner shall, on the recommendation of the Legislative Assembly made under section 8, appoint members of the Legislative Assembly to the office of member of the Executive Council.

New Selection by the Legislative Assembly

New Selection

11. (1) The Legislative Assembly may, at any time, select a different person to serve in the offices of

(a) the Premier,

(b) the members of the Executive Council, and

(c) the Speaker.

*Procedure for
New Selection*

(2) Where the Legislative Assembly selects a different person to serve in an office referred to in subsection (1), it may choose a person for that office in accordance with section 7.

*Communication of New
Selection*

(3) Where the Legislative Assembly selects a different person to serve in an office referred to in subsection (1), it shall communicate to the Commissioner its choice of Premier and members of the Executive Council.

*Deemed
Recommendation*

(4) A choice under subsection (2) is deemed, for the purposes of section 11 of the *Nunavut Act*, S.C. 1993, c.28, to be a recommendation of the Legislative Assembly.

*New
Appointment
of Premier
and Executive
Council*

(5) The Commissioner shall, on the recommendation of the Legislative Assembly made under subsections (2) and (4), appoint

(a) a member of the Legislative Assembly to the office of Premier, and

(b) members of the Legislative Assembly to the office of member of the Executive Council.

Powers of Premier

*Head of
Government*

12. The Premier is the head of Government of Nunavut

*Appointment
to Executive
Council*

13. (1) The Premier may not, without the recommendation of the Legislative Assembly, cause persons to be appointed to or removed from the office of member of the Executive Council. Only the Legislative Assembly may recommend that persons be appointed to or removed from the office of member of the Executive Council.

*Assignment to
Portfolio*

(2) The Premier may, without the recommendation of the Legislative Assembly, assign a member of the Executive Council to a specific portfolio of responsibility, or to serve without portfolio.

*Appointment
to Portfolio*

(3) Where the Premier has so assigned a member of the Executive Council, the Commissioner shall appoint that member to that specific portfolio of responsibility, or to serve without portfolio.

PART 3

REFERENDA ON SELECTION PROCEDURES

*References to
Procedures*

- 14. For the purposes of this Part and Parts 4 and 5,**
- (a) “selection by Legislative Assembly” refers to the procedure set out in sections 6 to 13,**
 - (b) “selection by registered political party” refers to the procedure set out in sections 6 to 13, as amended by section 17, and**
 - (c) “selection by direct election” refers to the procedure set out in sections 6 to 13, as amended by section 18.**

Referendum

15. The Commissioner in Council may at any time order a referendum to be conducted respecting selection procedures for and role of the Premier.

*Referendum
Procedure*

- 16. (1) The Commissioner in Council may**
- (a) establish the degree of popular support that a selection procedure must receive in order to be declared approved, and**
 - (b) appoint an official to conduct the referendum.**

*Applicable
Law*

(2) A referendum ordered in accordance with subsection (1) shall be conducted in accordance with applicable territorial law or, if no applicable territorial law exists, the *Canada Elections Act*.

*Subject Matter
of Referendum*

(3) A referendum ordered in accordance with subsection (1) may be conducted respecting one or more of the following selection procedures:

- (a) the selection by Legislative Assembly procedure set out in sections 6 to 13,**
- (b) the selection by registered political party procedure, as set out in section 17, in its amendments to sections 6 to 13,**
- (c) the selection by direct election procedure, as set out in section 18, in its amendments to sections 6 to 10, or**
- (d) any other selection procedure proposed by the Commissioner in Council.**

*Official
Declaration of
Approval*

(4) Where a referendum is conducted respecting one or more of the following selection procedures, the official conducting the referendum shall declare a selection procedure approved, if that selection procedure receives the degree of popular support established under paragraph (1)(a).

PART 4

ALTERNATIVE ROLES AND SELECTION PROCEDURES

Selection by Registered Political Party

*Selection by
Registered
Political Party*

17. Sections 6 to 13 of this Act are replaced by the following:

Party Leaders of Registered Political Parties

*Members of
Legislative
Assembly to
indicate
political
affiliation*

6. Immediately after persons elected as members of the Legislative Assembly have been sworn into office, each member of the Legislative Assembly shall without delay indicate his or her affiliation, if any, to a registered political party.

Registration of Parties

7. (1) For the purpose of election of members of the Legislative Assembly, a political party may register in accordance with applicable territorial law or, if no applicable territorial law exists, the *Canada Elections Act*.

Indication of Party Leader

(2) A political party which registers under subsection (1) must indicate at the time of registration the name of the person serving as its party leader. The party leader indicated by a political party becomes that party's candidate for the office of Premier.

Selection of Premier

Members of Legislative Assembly to indicate affiliation with political party
Deemed Selection of Premier

8. (1) Immediately after persons elected as members of the Legislative Assembly have been sworn into office, each member of the Legislative Assembly shall without delay indicate his or her affiliation, if any, to a registered political party.

(2) *Where a member, at any time, indicates his or her affiliation, if any, to a registered political party, that member is deemed to have selected the party leader of that registered political party as that member's choice for Premier.*

Appointment of Premier

Appointment of Premier

9. (1) After each member of the Legislative Assembly has indicated his or her affiliation, if any, to a registered political party, the Commissioner shall without delay appoint to the office of Premier the party leader of the registered political party selected by the greatest number of members of the Legislative Assembly.

In Case of Tie

(2) Where the party leaders of two or more registered political parties are selected by the same number of members, and where that number is greater than the number of members selecting any other party leader, then the Commissioner shall without delay appoint to the office of Premier the party leader of the party that, in the opinion of the Commissioner, will most enjoy the support of the Legislative Assembly.

Qualifications

(3) The Commissioner may appoint to the office of Premier a party leader who is not a member of the Legislative Assembly.

Appointment of Executive Council

Recommendation of Executive Council

10. (1) The Premier may recommend to the Commissioner that a member of the Legislative Assembly be appointed to the office of member of the Executive Council, either in a specific portfolio of responsibility, or to serve without portfolio.

Deemed Recommendation of Legislative Assembly

(2) A recommendation by the Premier under subsection (1) is deemed, for the purposes of section 11 of the Nunavut Act, S.C. 1993, c.28, to be a recommendation of the Legislative Assembly.

Appointment of Executive Council

(3) Where the Premier recommends to the Commissioner that a member of the Legislative Assembly be appointed to the office of member of the Executive Council, to serve either in a specific portfolio of responsibility, or to serve without portfolio, the Commission shall appoint the member to that office in that capacity.

New Selection of Premier by Political Party

New Selection of Premier

11. (1) A political party who registers under subsection 7(1) may at any time, in accordance with its internal procedures, select a different person to serve as its party leader.

Indication of Party Leader

(2) Where a registered political party selects a different person to serve as its party leader, it must indicate, in accordance with the applicable law established under subsection 7(1), the name of the person serving as its party leader. The party leader indicated by a political party becomes that party's candidate for the office of Premier.

Appointment of Premier

(3) Where the registered political party whose leader has been selected by the greatest number of members of the Legislative Assembly selects a different person to serve as its party leader, the Commissioner shall without delay appoint to the office of Premier the new party leader of that party.

New Selection of Premier by Legislative Assembly

New Indication of Affiliation

12. (1) A member of the Legislative Assembly may at any time indicate his or her affiliation, if any, to a different registered political party than previously indicated.

New Appointment of Premier

(2) Where a member of the Legislative Assembly has indicated his or her affiliation to a different registered political party, and where this indication leads to a change in the party with which the greatest number of members of the Legislative Assembly have indicated their affiliation, the Commissioner shall without delay appoint to the office of Premier the party leader selected by the greatest number of members of the Legislative Assembly.

New Selection of Executive Council by Premier

New Selection of Executive Council

13. (1) The Premier may at any time recommend to the Commissioner amendments to the composition of the Executive Council, including the members of the Legislative Assembly to be appointed to the Executive Council, and the capacity in which they may serve.

Appointment of Executive Council

(2) Where, in accordance with subsection (1), the Premier recommends that a member of the Legislative Assembly be appointed to the office of member of the Executive Council, to serve either in a specific portfolio of responsibility, or to serve without portfolio, the Commission shall appoint the member to that office in that capacity.

Selection by Direct Election

*Selection by
Direct
Election*

18. Sections 6 to 13 of this Act are replaced by the following:

Regulations Respecting Elections

*Regulations
respecting
elections*

6. The Executive Council may make regulations respecting the election of the Premier, including regulations respecting

- (a) the timing of such elections;**
- (b) the qualifications of candidates in such elections;**
- (c) the qualifications of electors in such elections; and**
- (d) the method and system of such elections, including regulations establishing**
 - (i) a plurality system,**
 - (ii) a single-transferable-vote system,**
 - (ii) a majority-vote run-off system, or**
- (iv) any other electoral system;**

Appointment of Premier

*Appointment
of Premier*

7. (1) Where an election for Premier has been held, where the officer conducting the election has declared a person to be elected, the Commissioner shall without delay that person to the office of Premier.

Qualifications

(2) The Commissioner may appoint to the office of Premier a person who is not a member of the Legislative Assembly.

Appointment of Executive Council

*Recommendat
ion of
Executive
Council*

8. (1) The Premier may recommend to the Commissioner that a member of the Legislative Assembly be appointed to the office of member of the Executive Council, either in a specific portfolio of responsibility, or to serve without portfolio.

*Deemed
Recommendat
ion of
Legislative
Assembly*

(2) A recommendation by the Premier under subsection (1) is deemed, for the purposes of section 11 of the Nunavut Act, S.C. 1993, c.28, to be a recommendation of the Legislative Assembly.

*Appointment
of Executive
Council*

(3) Where the Premier recommends to the Commissioner that a member of the Legislative Assembly be appointed to the office of member of the Executive Council, to serve either in a specific portfolio of responsibility, or to serve without portfolio, the Commission shall appoint the member to that office in that capacity.

New Selection of Premier

*New Selection
of Premier*

9. (1) A selection of a different person to serve as Premier may be made only upon
- (a) the holding of a general election,
 - (b) the death or resignation of the incumbent, or
 - (c) the impeachment of the incumbent by the Legislative Assembly.
- (2) A registered political party does not, by selecting a different party leader, select a different person to serve as Premier.
- (3) The Legislative Assembly may not, by any action other than impeachment, select a different person to serve as Premier.

New Selection of Executive Council by Premier

*New
Recommendation
of Party
Leader*

10. (1) The Premier may at any time recommend to the Commissioner changes to composition of the Executive Council, including which members of the Legislative Assembly are to be appointed to the Executive Council, and the capacity in which they may serve.

*Appointment
of Executive
Council*

(2) Where, in accordance with subsection (1), the Premier recommends that a member of the Legislative Assembly be appointed to the office of member of the Executive Council, to serve either in a specific portfolio of responsibility, or to serve without portfolio, the Commissioner shall appoint the member to that office in that capacity.

**PART 5
ENTRY INTO FORCE**

Transitional

19. Notwithstanding the definition of “premier” in subsection 2(1), and sections 3, 6, and 9, the first Premier of Nunavut is the person chosen by the first Legislative Assembly of Nunavut in its first session in accordance with s.57 of the *Legislative Assembly and Executive Council Act*, N.W.T.

Coming into Force of Selection by Legislative Assembly

*Coming into
force of
Selection by
Legislative
Assembly*

20. Sections 1 to 16 and 19 come into force on a day to be fixed by order of the Executive Council.

Coming into Force of Selection by Registered Political Party

*Coming into
force of
Selection by
Registered
Political Party*

21. Section 17 comes into force on a day to be fixed by order of the Executive Council, but shall not come into force before such day as the procedure set out in section 17 and referred to as the “selection by registered political party” procedure has been declared approved under subsection 16(4) by the official conducting a referendum ordered under section 15.

Coming into Force of Selection by Direct Election

*Coming into
force of
Selection by
Direct
Election*

22. Section 18 comes into force on a day to be fixed by order of the Executive Council, but shall not come into force before such day as the procedure set out in section 18 and referred to as “the selection by direct election” procedure has been declared approved under subsection 16(4) by the official conducting a referendum ordered under section 15.

Legislative Scheme #2

Proposition de mesures législatives #2

Assignment 7

An Act to provide for the organization of the Legislative Assembly and the Executive Council and the election of the Premier and the Legislative Assembly

SHORT TITLE

Short title

1. This Act may be cited as the Nunavut Organization Act

INTERPRETATION

Definitions

2. In this Act

Commissioner

Commissioner means the Commissioner established by section 5 of the Nunavut Act;

Deputy Premier

Deputy Premier means the Deputy Premier established by section 11(5) of the Nunavut Act;

Executive Council

Executive Council means the Executive Council established by section 11 of the Nunavut Act;

Legislative Assembly

Legislative Assembly means the Legislative Assembly established by section 13 of the Nunavut Act;

Minister

Minister of the Crown means the Minister of the Crown established by section 11(1) of the Nunavut Act;

Premier

Premier means the Premier established by section 10.1 of the Nunavut Act.

ORGANIZATION OF THE LEGISLATIVE ASSEMBLY

Composition

3. The Legislative Assembly shall be composed of a Premier and 14 members.

Where member ineligible at time of election

4. (1) A person shall not be a member of the Legislative Assembly if that person

a) is not eligible to be a candidate in the election; or

b) has been convicted of an indictable offence under the Criminal code.

Where member ineligible after election

(2) The Legislative Assembly may expel a member from the Legislative Assembly if after the election the member is convicted of an indictable offence under the Criminal Code.

Assignment 7

Inherent power of Legislative Assembly

(3) Subsection (2) does not limit the right of the Legislative Assembly to expel suspend or discipline a member and to control its own proceedings privileges or prerogatives.

Privileges and immunities

5. The Legislative Assembly and its members have

(a) all the privileges immunities and powers of the Commons House of Parliament of the United Kingdom and its members on March 29, 1867; and

(b) the privileges immunities and powers established by the Rules and Practices of the Legislative Assembly.

Vacancy of member's seat

6. (1) If a seat of a member becomes vacant for any reason, the Speaker shall inform the Commissioner of the vacancy.

Writ for election to fill vacancy

(2) The Commissioner shall issue a writ for the election of a member to fill the vacancy unless the vacancy occurs within six months before the day on which the Legislative Assembly is to expire.

Effect of vacancy

7. No omission or failure to elect a member for any electoral district and no vacating of the seat or avoiding of the election of any member or members makes the Legislative Assembly incomplete, invalidates any of its proceedings or prevents it from meeting and conducting business so long as there is a quorum of members present.

ORGANIZATION OF THE EXECUTIVE COUNCIL

Composition

8. The Executive Council shall be composed of the Premier and not more than five members of the Legislative Assembly.

Removal

9.(1) If any Minister of the Crown except the Premier is removed from office or is unable to perform the functions of the office for any reason, the Premier may recommend another member of the Legislative Assembly to fill the vacancy.

Removal of Premier

(2) If the Premier is removed from office or is unable to perform the functions of the office for any reason the Commissioner shall appoint the Deputy Premier as Premier.

Departments

10.(1) The Executive Council shall establish such departments as it determines are necessary for the efficient administration of the territory of Nunavut.

Department headed

Assignment 7

by Minister

(2) Each department shall be presided over by a Minister of the Crown.

Preparation

11. Each department shall assist in the preparation of a budget which shall be tabled by the Minister of Finance in the Legislative Assembly within 60 days of the end of the fiscal year.

ELECTIONS

Election of the Premier

12. Any resident of Nunavut who is 18 years of age or older may seek election as Premier.

Percentage of vote required for election

13. The candidate obtaining more than 50 per cent of the total number of votes cast shall be declared Premier.

Second ballot

14.(1) If no candidate obtains an majority of the votes, a second ballot shall be held no more than 7 days after the first ballot .

First and second place candidates only

(2) Only the first and second place candidates on the first ballot shall be candidates on the second ballot.

Declaration by default

(3) If either the first or the second place candidate does not run on the second ballot, the remaining candidate of the two shall be declared Premier.

Appointment by Commissioner

(4) If both the first and second place candidate do not run on the second ballot the Commissioner shall appoint the remaining candidate with the most votes on the first ballot to be Premier.

Election of the Members of the Legislative Assembly

Electoral districts

15.(1) There shall be 14 electoral districts as named and described in Schedule A.

One member per district

(2) Each electoral district is entitled to return one member to the Legislative Assembly.

Eligibility

16. Any resident of Nunavut who is 18 years of age or older may seek election as a representative of an electoral district.

Premier elect cannot run

17. A Premier elect shall not seek election as a representative of an electoral district.

Legislative Scheme #3

Proposition de mesures législatives #3

Nunavut

Office of Premier Act

Date: May 20, 1998

CHAPTER XX
OFFICE OF PREMIER ACT
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CHAPTER XX
OFFICE OF PREMIER ACT
INTERPRETATION

Definitions

1. The following definitions apply in this Act.

“Executive Council” means the ministers of the executive government, including the Premier.

“general election” means an election to elect a Premier or to elect members of a Legislative Assembly.

PART I

LEGISLATIVE ASSEMBLY

General

Premier is member

2. The Premier is a member of the Legislative Assembly by virtue of being Premier.

PART II

EXECUTIVE COUNCIL

General

Composition

3.(1) The Executive Council is composed of ministers and the Premier has the sole discretion to establish the number of ministers who are appointed to the Executive Council. However, the Executive Council must not have less than 7 or greater than 11 ministers, including the Premier.

Appointment of ministers

(2) The ministers of the Executive Council shall be appointed by the Commissioner on the advice of the Premier.

Member of Legislative Assembly

(3) A minister of the Executive Council must be a member of the Legislative Assembly.

Premier is member

4. The Premier is a member of and the leader of the Executive Council, by virtue of being Premier.

Powers

5. The Executive Council advises the Commissioner on the exercise of executive powers under section 7 of the *Nunavut Act*.

Election of Premier**Eligibility for election**

6.(1) Any person eligible to vote in a general election is eligible to be a candidate for the office of Premier and to be elected Premier.

Disqualification

(2) A member of the Senate or of the House of Commons of Canada or of the legislative assembly of any province is not eligible to be a candidate for the office of Premier or to be elected Premier.

Member of Legislative Assembly must resign

(3) If a member of the Legislative Assembly is elected Premier, that member must resign from the Legislative Assembly before assuming the office of Premier.

Continued eligibility

(4) If, after election, the Premier becomes aware of being ineligible to vote in a general election, the Premier shall, without delay, take all of the steps necessary to become eligible to vote in a general election. If the Premier does not become eligible to vote in a general election within 90 days, the Premier is unable to continue in office due to permanent incapacity.

Election

7. The Premier shall be elected directly by the electors in a general election.

Timing of election

8. The general election to elect a Premier shall be held at least 40 days before the day on which the general election to elect a Legislative Assembly is held.

Repeat election

9.(1) If no candidate for Premier receives more than half of the votes cast, the Commissioner must call a repeat general election to elect a Premier. If a repeat general election is required, the election shall be held at the same time as the general election to elect the Legislative Assembly.

Process for selection of candidates

(2) The two candidates for Premier who, individually, received the largest number of votes cast are eligible to take part in a repeat general election to elect a Premier.

(3) If one of the candidates is unable or unwilling to stand for election, that candidate may be replaced by the candidate who received the next largest number of votes. This process for the selection of candidates for Premier in a repeat general election to elect a Premier is continued until two candidates, who are able and willing to stand for election, have been selected.

Sole candidate acclaimed

(4) If only one candidate is able to stand for election in a repeat general election to elect a Premier, that candidate shall be acclaimed Premier.

Duration of term of office

10. The Premier may continue in office until the next general election.

Powers of Premier**General**

11.(1) The Premier has all of the non-statutory powers, prerogatives and authority that normally belong to a first minister in a democratic system of government.

Limitation

(2) Subsection (1) does not give the Premier greater powers than are given to the premiers of the provinces of Canada.

Specific

(3) The Premier has the following specific powers, duties and functions:

- (a) to advise the Commissioner on the exercise of executive powers pursuant to section 7 of the *Nunavut Act*;
- (b) to advise the Commissioner, at any time, to dissolve the Legislative Assembly;
- (c) to advise the Commissioner, at any time, to call a general election to elect a Premier;
- (d) to advise the Commissioner on the appointment of ministers;
- (e) to advise the executive government on government administration and policy;
- (f) to establish the duties and functions of ministers;
- (g) to dismiss a minister from office;
- (h) to establish the number of ministers who are appointed to the Executive Council under the Act;
- (i) to act as the chair of the meetings of the Executive Council;
- (j) to be responsible for the preparation of an annual budget; and
- (k) to present the annual budget to the Legislative Assembly for approval.

Dissolution of Legislative Assembly

12.(1) If the Premier advises the Commissioner to dissolve the Legislative Assembly, the Commissioner must do so and, within 10 days after the day on which the Premier advised the Commissioner, call a general election to elect a Premier and to elect a Legislative Assembly.

Advice to elect Premier

(2) If the Premier advises the Commissioner to call a general election to elect a Premier, the Commissioner must do so, within 10 days after the day on which the Premier advised the Commissioner.

Deputy Premier

Appointment

13.(1) The Premier must appoint a Deputy Premier.

Ministers may elect

(2) If both the Premier and Deputy Premier are absent, ill or unable to act or if both of those offices are vacant, the ministers may elect, by majority vote, one of the ministers to act as Premier.

Powers

(3) If the Premier is temporarily absent from office, ill or unable to act or if the office of Premier is temporarily vacant, the Deputy Premier has and may exercise and perform all of the powers, duties and functions of the Premier. The Deputy Premier must appoint one of the ministers to be Deputy Premier for the period of time that the Deputy Premier acts as Premier.

Limitations

- (4) The Deputy Premier does not have the power
- (a) to submit a proposed budget to the Legislative Assembly for approval;
 - (b) to advise the Commissioner to call a general election to elect a Premier;
 - (c) to advise the Commissioner to dissolve the Legislative Assembly; or
 - (d) to dismiss a minister.

However, if a minister resigns, the Deputy Premier on the advice of the Premier may advise the Commissioner on the appointment of a new minister.

Resignation of Premier or Inability of Premier to Continue

Resignation

14. (1) If the Premier resigns from office, the resignation is effective immediately and the Commissioner must, within 10 days after the day on which the resignation was given, call a general election to elect a Premier. The Premier and the ministers may continue in office until a Premier is elected.

Inability to continue

(2) If the Premier is unable to continue in office due to death or permanent incapacity or if the office of Premier is vacant, the Commissioner must call a general election to elect a Premier within 10 days after the day on which the death, permanent incapacity or vacancy is established. The Deputy Premier and the ministers may continue in office until the new Premier is elected.

Dismissal of Minister**Dismissal**

15. The Premier may dismiss a minister from office, at the Premier's sole discretion.

Proposed budget**Time to submit**

16. The Premier must submit a proposed budget to the Legislative Assembly within 60 days after the day on which the Premier is elected.

Vote of Non-confidence**Definition of specific resolution**

17.(1) For the purposes of this section, a specific resolution is a resolution that expresses non-confidence in either the Premier or the Executive Council.

Vote on specific resolution

(2) A specific resolution that receives at least 67 per cent of the votes of the members who are elected to the Legislative Assembly is a vote of non-confidence in either the Premier or the Executive Council, as the case may be.

Vote on proposed budget

(3) If the Legislative Assembly votes on a proposed budget and the vote is defeated, a second proposed budget must be prepared and submitted to the Legislative Assembly for approval within 30 days after the day on which the first vote was taken.

Vote on second proposed budget

(4) A defeat of a vote on the second proposed budget is a vote of non-confidence in the proposed

budget.

Effect of vote of non-confidence

(5) If a vote of non-confidence is recorded in the Legislative Assembly, the Legislative Assembly is automatically dissolved and the Commissioner must call, within 10 days after the day on which the vote is recorded, a general election to elect a Premier and members of a Legislative Assembly.

Interim period

(6) The Premier and the ministers of the Executive Council continue in office until the election has been completed.

Who may call for a vote of non-confidence

18. A member of the Legislative Assembly may call for a vote of non-confidence.

Amendment of Act

Percentage of votes

19. If the Legislative Assembly votes on a proposed change to the provisions of this Act and the proposed change receives at least 67 per cent of the votes of the members who are elected to the Legislative Assembly, the provisions of the Act are changed accordingly.

Treaty Rights

Effect

20. This Act does not affect treaty rights of the aboriginal peoples of Canada under section 35 of the *Canadian Charter of Rights and Freedoms*.

Legislative Scheme #4

Proposition de mesures législatives #4

December 1, 1997

Option: L (Status Quo with active encouragement of political parties)

Context

This is a draft of the provisions that could be enacted by the Legislature of Nunavut, as established by the Nunavut Act, pursuant to their powers under s.23(1) (d).

The following assumptions are necessary:

1. Section 11 of the *Nunavut Act* is amended to read:
There is hereby established an Executive Council of Nunavut, the members of which are chosen in accordance with the laws of the Legislature of Nunavut.
2. The number of members of the Assembly prescribed by the Legislature, in exercise of their powers under section 14(1) of the *Nunavut Act* is 17. What is essential to the scheme is not the numeric value, but the ratio of this number to others.
3. The Legislature has made laws according to which a person is disqualified from sitting or serving as a member.

Structure

The Act is divided into two main sections. In the first, 'Executive Council', Cabinet is constituted. It is called 'Cabinet', based on the recommendations of the Nunavut Implementation Commission Report. In the second section, 'Cabinet Powers', the powers of Cabinet are set out.

Constitution of Cabinet

The objective of these sections is to give the Premier more power through the benefits of party politics: (a), without making him so powerful that he overshadows the legislature, reducing government of the Crown, Legislature and Assembly to government by Cabinet: (b). In recognition of the facts that there are at present no parties in Nunavut, and it is not certain if or when they will be established, the scheme is such that it is open to the local politicians to continue to act by consensus indefinitely. In the event that party politics does develop however, the structure will already be in place for its operation. The instability that may result owing to the fragmentation of an Assembly which has the power to unseat the Cabinet by a vote of no confidence is also addressed: (c).

(a) More power:

party support (though not party discipline) and selection of leader of majority party as premier - this helps decrease the power of the Assembly over the Premier;
power to hire and fire ministers of Cabinet - this helps give him more control over the Ministers and thus in governing the territory,

collective responsibility of Cabinet - the Premier will have at least the support of Cabinet Ministers for Government proposals introduced into the Legislature).

absence of official opposition party - as the aim of the introduction of party politics is merely to increase the power of the Premier, it was considered unnecessary (and undesirable) to establish an official opposition. The role of opposition parties in fact (nevermind the theory) is to oppose the party in power, and more particularly, the executive council. When there is an opposition party, one side is pitted against the other. It is therefore not only unnecessary, but also inconsistent with what this scheme seeks to establish: a legislative assembly in which not some but all of the non-cabinet members supervise and 'control' Cabinet. In this way the introduction of party politics does not amount to imposing an adversarial approach in place of the current consensus approach that now characterises the Northwest Territories.

absence of other measures to actively encourage political parties - some other measures that may be used to encourage political parties are not dealt with because the measures that are most suitable depends on the particular local circumstances. This would require further studies than what is reflected in the report. In any event it is better left to be worked out after the new territory becomes operational.

Examples of these other measures are, whether funding can be given to parties who are represented by a certain number of members; whether there will be limitations on the activities of parties (for example in the UK the buying of radio and television time is banned, in order to make it a more level playing field for the parties which have a lot of money, and those which do not), and whether and how funding of parties should be regulated (for example the issue whether making funding more transparent by requiring disclosure of donations above a certain amount, or whether limitations should be placed on the size of individual donations, is even now being considered the UK where the parliamentary system originated).

(b) Limitations on power:

collective responsibility of cabinet- this is the most important check on the Premier's power. His cabinet must maintain the confidence of the majority of the Assembly to continue in office;

limitations on the number of members of the Assembly that can be cabinet ministers, together with,

absence of party discipline - it is because of party discipline that the a Premier in the context of a party system dominates the Legislature. This was sought to be avoided by limiting the member of Cabinet (who, as a second result of their collective responsibility, must vote in favour of cabinet proposals) to a number less than what is required for a majority in the assembly, and to permit persons who belong to the party or parties which constitute parliament, to vote against Cabinet if that is necessary. In view of the fact that there is caucus, at which the government can try to win over the private members who belong to their party, this will work as a check without crippling the work of Cabinet.

Ratios: Assembly 17
Cabinet 7
Minority party 3

Cabinet members votes, which must be with the Premier by virtue of collective responsibility, is not sufficient; he has some extra power from party support in the case of a majority government, but without party discipline this support must be earned. In the event of a minority government he still has at least 7 (collective responsibility of cabinet) votes and needs to win only 2 others.

(c) Stability:

To counter-act the instability that can be caused by the power to unseat cabinet by a no confidence vote, two options were considered: first, the dissolution of Parliament as a consequence of the exercise of this power (thus it would not be used unless the members are reasonably certain that they are right and can convince the public of this); second, the concurrent responsibility to choose a successor (this enables the problem to be solved without making fresh elections inevitable; of course this successor would last at most 5 years; in any event he has the power to request a dissolution of parliament if that is necessary.)

Cabinet Powers

Here it is sought to give effect to the convention that the active body of the executive is the executive council (Cabinet), although all executive power is formally vested in the Commissioner. A declaration of Cabinet's advisory role was considered sufficient for this purpose. This is not too vague an elaboration of the powers of Cabinet since exactly what comprises the advisory role of Cabinet is pretty well established.

An Act to provide for the Nunavut Cabinet

The Commissioner of Nunavut, with the advice and consent of the Legislative Assembly of Nunavut, enacts as follows:

Short Title

Short Title

1. This Act may be cited as the *Nunavut Cabinet Act*.

Interpretation

Interpretation

2. In this Act,

“Assembly” means the Legislative Assembly of Nunavut established under section 13 of the *Nunavut Act (Canada)*;

“Cabinet” refers to the Executive Council of Nunavut established under section 11 of the *Nunavut Act (Canada)*;

“majority” means simple majority;

“Minister” means the Minister of Indian Affairs and Northern Development of Canada;

“Cabinet Minister” means a member of the Cabinet of Nunavut;

“minority party” means a political party that has more than 2 but less than 9 of its members in the Assembly;

“working majority” means the support of a majority of the members of the Assembly for the leader of a minority party.

Cabinet of Nunavut

Composition of
Cabinet

3. The Cabinet of Nunavut consists of a Premier and as many other Cabinet Ministers as are appointed under section 5.

Nunavut Executive Council Act

Selection and
appointment of
Premier

4. Whenever it is necessary to appoint a Premier, except in the event of a vote of no confidence under section 8, the Commissioner must appoint the member of the Assembly who appears to the Commissioner to command the support of the majority of its members by virtue of being any one of the following, which are exhaustive:

(a) the leader of the majority party;

(b) the leader of a minority party with a working majority, or, if there is a coalition, the leader of the coalition; or,

(c) the person who is chosen by secret ballot by a majority of the members of the Assembly, if

(i) there are no parties, or

(ii) there are only minority parties but none with a working majority.

Number of
Cabinet
Ministers

5. (1) There are to be as many Cabinet Ministers as the Commissioner on the advice of the Premier, may establish; but there must be at least 6, in addition to the Premier appointed in section 4.

Appointments
from Assembly

(2) Six of them, not including the Premier, must be appointed from among the members of the Assembly, by the Commissioner on the advice of the Premier.

Appointments
from outside
Assembly

(3) Any others, not including the Premier, must be appointed by the Commissioner on the advice of the Premier, but not from among the members of the Assembly.

Assembly
Approval

(4) The Premier must not recommend any person to be a Cabinet Minister, unless that person is approved by the Assembly.

Oaths of office
and allegiance

6. Before assuming the duties of their offices, the Premier and the other Cabinet Ministers must take any oaths of office and of allegiance that the Commissioner in Council may prescribe.

Tenure of
Premier

7. After every general election and before the first meeting of the newly elected Assembly, the Commissioner must select and appoint a Premier. The appointment automatically brings to an

end the term of the Premier who was in office immediately before this appointment.

Vote of no confidence

8. (1) A vote of no confidence in the Cabinet defeats the Cabinet only if, at the same sitting of the Assembly, the Assembly chooses a successor to the Premier. The Commissioner must appoint the person chosen to be Premier.

Defeat of Cabinet measure

(2) Subject only to the constraints of the collective responsibility of Cabinet, votes on bills introduced by Cabinet are free votes. The defeat of a Cabinet proposal that is put to a vote in the Assembly, does not constitute a withdrawal of confidence in Cabinet.

Tenure of Cabinet Minister

9. Cabinet Ministers, not including the Premier, hold office during the pleasure of the Premier. They are dismissed by the Commissioner when the Premier so advises.

Causes of vacancy

10. Vacancy arises:

End of term of Premier

(a) in the office of each Cabinet Minister, not including the Premier, at the end of the term of a Premier;

Withdrawal of confidence

(b) in the office of each Cabinet Minister, if the Cabinet is defeated;

Disqualification

(c) in the office of each Cabinet Minister, in any other circumstances that would disqualify the Cabinet Minister from sitting or serving as a member of the Assembly.

Resignation or death

(d) In the office of a Cabinet Minister who resigns or dies.

Replacement in the event of vacancy

11. In the event of vacancy in

(a) the office of the Premier, the Commissioner must appoint another person in accordance with section 4 or subsection 8(1); or,

(b) the office of any Cabinet Minister, except the Premier, the Commissioner must appoint another person in accordance with section 5, unless the Commissioner, on the advice of the Premier, considers it unnecessary.

Cabinet Powers

Function of
Cabinet

12. (1) The function of Cabinet is to aid and advise the Commissioner in the government of Nunavut.

Collective
responsibility

(2) Cabinet is collectively responsible to the Assembly for any advice given to the Commissioner by it or under its general authority, and for all things done by or under the authority of any Cabinet Minister in the execution of the Cabinet Minister's office.

Ministerial
portfolios

13. The Commissioner, on the advice of the Premier, may assign to any Cabinet Minister responsibility for any business of Government, including the administration of one or more departments of government.

Ministerial
responsibility

14. A Cabinet Minister has responsibility for all matters arising within the department over which the Cabinet Minister has authority.

Temporary
absence or
incapacity

15. The Commissioner may appoint a Cabinet Minister to act in place of one who is temporarily absent or temporarily incapable of performing his or her responsibilities. The Commissioner must act on the advice of the Premier, unless the Premier is unable to advise, in the Commissioner's own deliberate judgement.

Committees

16. Cabinet may establish committees, as it considers advisable, from among its members, to aid and advise it in the discharge of its functions.

Legislative Scheme #5

Proposition de mesures législatives #5

DRAFTING SEMINAR 1 (DCL 7401)

Exercise 7

NOTES:

- The attached draft deals with the direct election of the Premier of Nunavut and a system of checks and balances incorporating essential features of a Westminster system.
- The Bill has been drafted in a fairly spare fashion, leaving room for the emergence of appropriate conventions and of arrangements for “one-off” situations. Provision has been made for two-thirds support of any amendments to the Act.
- There are underlying assumptions on policy considerations, on amendments being made to the *Nunavut Act* and on the Nunavut Assembly adopting the statutory provision needed to complete an entire scheme. Brief notes on these matters are set out in Annex A.

The Nunavut Legislative Assembly

DRAFT BILL

An Act to provide for the Legislative Assembly, the Office of Premier, the Executive Council and related matters

SHORT TITLE

Short Title

1. This Act may be cited as the *Nunavut Governance Act*.

INTERPRETATION

Definitions

2. In this Act,

eligible voter

“eligible voter” means a person registered as a voter under the *Nunavut Elections Act*;

general election

“general election” means

- (a) the first election of members of the Legislative Assembly held after April 1, 1999; and
- (b) an election of members of the Assembly held following the dissolution of an Assembly;

member

“member” means a person elected to represent an electoral district and unless the context otherwise requires includes the Premier;

Minister

“Minister” means a member who is serving as a Minister under an appointment made by the Commissioner;

NUNAVUT GOVERNANCE ACT

special election

“special election” means an election other than a general election where eligible voters are entitled to elect a Premier.

PART 1

LEGISLATIVE ASSEMBLY

Composition

3. The Legislative Assembly is composed of

(a) the Premier; and

(b) X members elected from each of the electoral districts named and described in Schedule 1.

First Session

4. (1) The Commissioner on the recommendation of the Premier shall convene the first session of the Assembly as soon as practical after a general election, but not later than 45 days after the date of that election.

Sessions

(2) The Commissioner in Council must convene at least one session of the Assembly every 12 months.

Duration

(3) No Assembly shall continue for longer than five years after the date of the return of the writs for a general election, but the Commissioner on the recommendation of the Premier may dissolve the Assembly at any time.

PART 2

PREMIER OF NUNAVUT

Term of office

5. (1) The person who is elected or acclaimed as Premier at a general or special election

serves until the next general election or special election.

Privileges and powers

(2) The Premier holds the same privileges, enjoys the same immunities and may exercise the same powers customarily held by as the premier of a province.

Specific Duties

(4) The Premier

(a) presides over meetings of the Executive Council.; and

(b) advises the Commissioner on matters relating to the dissolution of the Assembly and the calling of a general election.

Election

6. (1) Each voter in a general election is entitled to select one person from among those who are candidates for Premier in that election. The candidate who receives the majority of the votes cast is elected as Premier.

Acclamation

(2) If there is only one candidate for Premier, that person shall be acclaimed as Premier.

Eligibility

7. (1) A person is eligible to be a candidate for Premier if the person

(a) meets the eligibility requirements imposed on a candidate for a member for an electoral district; and

(b) is nominated by ten or more eligible voters from each electoral district.

Ineligible candidate

(2) A person is not eligible to be a candidate for Premier if that person

(a) holds any office, commission or employment in the service of the Government of Canada or the Government of Nunavut to which is attached any salary, fee, wages, allowance, emolument or profit of any kind;

(b) is a sitting Member of the Parliament of Canada or of the legislative assembly of a province, of the Northwest Territories or of the Yukon Territory; or

(c) is a candidate as a member in an electoral district in the same election.

Special election

- 8.** When a person serving as Premier resigns, dies or becomes permanently incapable of carrying out the duties of Premier, the Deputy Premier must recommend that the Commissioner authorize the issuing of writs for a special election. The Deputy Premier shall also recommend a date for the special election.

Eligibility

- 9.** A person is eligible to be a candidate if that person would be eligible to be a candidate for Premier at a general election.

Voting

- 10.** (1) Every eligible voter in an electoral district is entitled to select one person from among the candidates in a special election. The person who receives the majority of the votes is elected as Premier.

Acclamation

- (2) If there is only one candidate for Premier in a special election, that person is acclaimed as Premier.

PART 3

EXECUTIVE COUNCIL

MINISTERS

Appointment

- 11.** (1) The Commissioner on and in accordance with the recommendation of the Premier shall
- (a) within two weeks of the appointment of the Premier, appoint at least 5 Ministers, each of whom serves for the term recommended by the Premier; and
- (b) at any time thereafter, appoint additional Ministers.

Eligibility

- (2) The Commissioner in Council may not appoint a person as a Minister unless that person is a member at the time of the appointment.

Responsibilities

12. The Commissioner on and in accordance with the recommendation of the Premier establish the duties of each Minister and the duties of any ministries over which a Minister presides.

EXECUTIVE COUNCIL

Composition

13. (1) The Executive Council is composed of the Premier and the Ministers.

Responsibilities

- (2) The Executive Council is responsible for the overall management and direction of the Nunavut Territorial Government, including matters of policy.

Decisions

- (3) Decisions of the Executive Council are to be made by majority vote. In the case of a tie-vote, the Premier has an additional vote.

DEPUTY PREMIER

Selection

14. (1) The Executive Council at its first meeting following a general or special election shall select one of the Ministers as Deputy Premier.

Duties

- (2) When the Premier is absent or unable to act, or the office is vacant, the Deputy Premier may act in the place of the Premier, and while so acting has all the rights, powers and authority of the Premier.

PART 4

GENERAL

Non-confidence motions

15. If two-thirds of the members vote in favour of a motion expressing non-confidence in the Premier, the Assembly is dissolved.

Defeat of a budget measure

16. (1) If a vote, resolution, address or bill proposed by a member of the Executive Council as part of its annual budget measures is defeated by majority vote, any member may table a motion expressing non-confidence in the Executive Council. The motion must be voted within 30 days after the day it is tabled.

Immediate dissolution

- (2) If a majority of the members vote in favour of the motion, the Assembly is dissolved.

Continuity of government

17. The Executive Council continues in office after dissolution of an Assembly and until the return of the writs for the general election next following the dissolution.

Amendments

18. The adoption of an amendment to any provision of this Act requires the consent of at least two-thirds of the members.

ANNEX A

Policy Assumptions

- The first General Election will be held in accordance with the *Nunavut Act*, S.C.1993, c.N-28.6.
- The expense and logistical implications of elections in Nunavut are such that the possibilities for calling elections should be minimized to the degree possible and reasonable.
- The requirement for nomination endorsement from each electoral district for those wishing to stand as candidates for Premier is a mechanism to require a minimum degree of broadly-based support.

***Nunavut Act* Amendments**

- The Bill presupposes a number of amendments being made to the *Nunavut Act*, including section 11 (Executive Council), section 13 (Legislative Assembly) and section 17 (Duration of an Assembly).

Other Nunavut Legislation

- It is anticipated that the Legislative Assembly would adopt other legislation to deal with conduct of Assembly business (appointment of Speaker, Committees, quorums, voting procedures, etc.), the compensation of Members and Ministers and conflict of interest provisions, and all matters related to the conduct of elections.

Legislative Scheme #6

Proposition de mesures législatives #6

EXERCISE 7

NUNAVUT LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT

Working Assumptions:

I will assume that

- this draft has the status of a relatively final discussion draft;*
- the first Assembly elections will be as described in the Nunavut Act, and the first Assembly will enact the new Nunavut Legislative Assembly and Executive Council Act;*
- under the authority of section 29 of the Nunavut Act, terms similar in substance to those contained in the NWT Legislative Assembly and Executive Council Act will continue to apply to all matters not encompassed by the proposed legislation, e.g., provisions relating to MLAs; immunities and privileges; indemnities, allowances and expenses; elections and functions of the Speaker and Deputy Speaker; conflicts of interest etc. Questions of regulation-making powers and delegation of powers will also be dealt with. In other words, the substance of the draft legislation is designed to be supplemented by existing text dealing with such matters;*
- Parliament has amended the Nunavut Act to empower the Nunavut Legislative Assembly to enact the draft legislation. The necessary amendments to the Nunavut Act and my comments follow:*
 - s. 2 - Definitions might include "Premier". (However, the Executive Council, the Legislative Assembly, the Legislature and the Commissioner are not defined in s. 2, which suggests that "Premier" would not be defined either.)*
 - s. 4 - In my draft, the Legislative Assembly designates Iqaluit as the seat of government. Section 4 of the Nunavut Act does not explicitly require that sessions be held at the seat of government, but if this is implicit, it would have to be amended to allow sessions to be held elsewhere in Nunavut.*
 - s. 11 - Section 11 would have to be amended to provide that the Executive Council is composed of the Premier and the Ministers appointed on the advice of the Premier.*
 - s. 12 - Because, in my draft, the Legislative Assembly is composed of the Premier and locally-elected members, no amendment is necessary to s. 12.*

- ☐ *s. 13 - Section 13 would have to be amended to include the Premier in the Legislative Assembly. Although I propose below that paragraphs 23(1)(a) and (b) should be amended to allow the Legislature to make laws in relation to the election of the Premier, which presumably would encompass direct elections, for certainty it might be advisable to provide for direct election of the Premier here. Once these changes are made, strictly speaking, the remaining wording would appear to be broad enough to cover two-member constituencies (because each member would represent an electoral district even though there were two members elected per district), but it might be better to clarify in this section that the Assembly is composed of the Premier, who is directly elected in a territory-wide vote, and locally-elected members.*
- ☐ *s. 14 - Because I am assuming that the first Assembly elections will be as described in the Nunavut Act, and that the first Assembly will enact the new Nunavut Legislative Assembly and Executive Council Act, no changes are necessary to ss. 14(2) in connection with the first Assembly. It might be advisable to clarify in ss. 14(1) that there can be more than one member per electoral district.*
- ☐ *s. 15 - Ss. 15(1) should be amended to encompass writs for the election of the Premier.*
- ☐ *s. 16 - The oaths of office provision should be amended to refer to the Premier as well as locally-elected members.*
- ☐ *s. 17 - My draft sets out a four-year term for the Legislative Assembly, but this would seem to fall within the enabling framework of s. 17, without requiring amendment to the term of years. The section should be amended to specify that the Commissioner would dissolve the Assembly at the request of the Premier.*
- ☐ *s. 23 - Paragraphs (a), (b) and (c) should be amended to include the Premier.*
- ☐ *Elections - It is interesting that the Nunavut Act sets out specific requirements for the first Assembly but not, for the most part, for following Assemblies. I think that ss. 13, 14(1) and paragraphs 23 (1) (a) and (b), if amended to encompass an elected Premier as described above, would form the core enabling provisions for the Legislative Assembly to enact the draft legislation I am proposing as it relates to elections.*
- ☐ *Executive powers - I am assuming that the executive powers that will be exercised by the Premier and Executive Council do not have to be explicitly set out in the federal enabling legislation because they are currently exercised in the NWT by a combination of the Government Leader, the Executive Council and the Legislative Assembly, and the Nunavut Act must currently contemplate their exercise. However, for greater clarity, it may be advisable to stipulate in the Nunavut Act that the Legislature may make laws in relation to the powers, duties and functions*

of the Premier, provided those powers, duties and functions do not exceed those of Premiers of the provinces (except, I suppose, as might be necessary to implement the land claims agreements in s. 25 and as contemplated by ss. 23(3) in relation to laws in respect of Indians and Inuit. However, it is not immediately obvious to me that the Premier, as distinct from the Legislature, would have to have additional powers in this regard. So, for the purposes of the assignment, I will assume that he or she does not.) This might be added as ss. 14(2), and would be consistent with s. 23's paralleling of "section 92" jurisdiction.

If the Legislature did enact the draft legislation I am proposing in relation to elections and executive powers, as I read s. 7 of the Nunavut Act, the executive powers of the Commissioner would be reduced accordingly, so no amendment would have to be made to s. 7.

- *Other provisions - I am assuming that the various provisions relating to lands vested in the Crown (ss. 23(1)(i), ss. 49, 50), borrowing and lending (s. 27), and public moneys (ss. 39(2), 40, 44, 45) would continue to refer to the Commissioner rather than the Premier, but if not, a reference to the Premier should be added or substituted as appropriate.*

I think it is appropriate for s. 47 (auditor's inquiry and report) to refer to the Executive Council, rather than the Premier, but if not, it should be amended.

I think ss. 23(1)(t), relating to intergovernmental agreements, might have to be amended to refer to the Premier as well.

- *Note: I have experimented a bit with two-sentence sections throughout the draft. I would appreciate your feedback on whether they are appropriate.*

NUNAVUT LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT

INTERPRETATION

Definitions

1. In this Act,

“Chief
Electoral
Officer”
(*directeur
général
des élections*)

“Chief Electoral Officer” means the Chief Electoral Officer appointed

under subsection 3(1) of the *Nunavut Elections Act*¹;

“Department”
(*ministère*)

“department” means a department, secretariat, agency, board or corporation of the Nunavut Territorial Government;

“Elector”
(*électeur*)

“elector” means any person who is qualified as an elector under subsection 27(1) of the *Nunavut Elections Act*;

“Electoral district”
(*circonscription*)

“electoral district” means an electoral district described in Schedule A²;

“Locally-elected member”
(*simple député*)

“locally-elected member” means a member elected in an electoral district;

“Member”
(*député*)

“member” means a member of the Legislative Assembly, and includes the Premier and a locally-elected member;

“Speaker”
(*président*)

“Speaker” means the Speaker of the Legislative Assembly.

PART I

LEGISLATIVE ASSEMBLY

Composition of
Legislative
Assembly

2. (1) The Legislative Assembly is composed of the Premier and the locally-elected members.

Electoral
districts

(2) There are 11 electoral districts as described in Schedule A.

¹ I am assuming here that the NWT Elections Act will be grandfathered. This is the equivalent section of the NWT legislation.

² There would be a Schedule A setting out the electoral districts yet to be determined by the Electoral District Boundaries Commission.

Locally-elected members	(3) The electors in each electoral district are entitled to elect two locally-elected members to the Legislative Assembly.
Premier	(4) The electors in all of the electoral districts are entitled to elect the Premier.
Duration of Legislative Assembly	3. (1) Except as provided in subsection (2), the term of the Legislative Assembly expires four years after the day the writs for the general election are returned. ³
Dissolution of Assembly	(2) At the request of the Premier, the Commissioner may dissolve the Legislative Assembly at any time within the four-year period.
Writs for general election	(3) When either the term of the Legislative Assembly expires or the Assembly is dissolved, the Commissioner must issue a warrant instructing the Chief Electoral Officer to issue writs for the election of the Premier and for the election of locally-elected members. ⁴
Special election	4. (1) A special election must be conducted if either the office of Premier or the seat of a locally-elected member is vacant.
Writ for special election	(2) Except as provided in subsection (3), if a special election must be conducted, the Commissioner must issue a warrant instructing the Chief Electoral Officer to issue a writ for an election to fill the vacancy.
No warrant	(3) The Commissioner must not issue a warrant if the vacancy occurs

³ *A four-year term is one of the NIC's recommendations in its July 1996 report. It is also recommending pre-set scheduling of general elections, where possible. I have tried to capture both here.*

⁴ *I would like to have the election provisions in the draft for the following reasons: the special election provisions are important to my scheme relating to vacancy in the Premier's office; s. 3(3) concerning general elections is included to ensure the scheme is cohesive internally and as a link to the no-confidence provision in s. 19; and warrant provisions for special elections are contained in the NWT Legislative Assembly and Executive Council Act, ss. 9-10.*

within 180 days before the day on which the term of the Legislative Assembly expires.

Revocation
of writ

(4) If the Legislative Assembly is dissolved after a warrant is issued and before an election is held to fill the vacancy, the warrant and any writ issued under it are revoked.

Publication of
election results

5. Election results must be published in the Nunavut Gazette within 14 days after the day of the election.

Seat of
government

6. (1) Iqaluit is the seat of government of Nunavut.

Place of
sessions

(2) Except as provided in subsection (3), sessions of the Legislative Assembly must be held at the place of the seat of government.

Other places
of sessions

(3) Upon the recommendation of the Executive Council and with the approval by a majority of votes cast by members, a session may be held in a place in Nunavut other than the place of the seat of government.

First session

7. (1) A session of the Legislative Assembly must be convened no later than 60 days after the day the Premier is elected.

Sessions

(2) A sufficient number of sessions must be convened in each year to ensure that the Legislative Assembly sits at least once every twelve months.

Quorum

8. (1) A majority of members, including the Speaker, constitutes a quorum of the Legislative Assembly.

Voting

(2) A question that arises in the Legislative Assembly must be decided by a majority of votes cast by members.

Vote by
Speaker

(3) The Speaker or a person acting as Speaker may vote only to break a tie vote.

Standing
orders

9. The Legislative Assembly may adopt standing orders for the orderly conduct of its business, and may amend the orders.

PART 2

LOCALLY-ELECTED MEMBERS

I will assume, for the purpose of the assignment, that the substance of the provisions of the NWT Legislative Assembly and Executive Council Act that apply to MLAs will be adopted by the Nunavut Legislative Assembly and incorporated into the scheme that applies to locally-elected members.

However, there should be two additional provisions in the following form:

Eligibility X. *A candidate for election as a locally-elected member must not be a candidate for election to the office of Premier.*

...

*Election of
locally-elected
members*

Y. *The successful candidates for election as locally-elected members in each electoral district are the two candidates who receive the largest number of valid votes cast in that district.*

PART 3

PREMIER

Eligibility 10. *A candidate for election to the office of Premier⁵
(a) must be eligible for candidacy as a locally-elected member⁶; and*

⁵ *I am using the phrase “a candidate for election to the office of Premier” to distinguish between the office of Premier and the individual who is Premier at any point in time. You noted that repetition of the phrase was unwieldy, so I have maintained the distinction initially but have reduced the use of the phrase throughout this Part. If it still seems unwieldy, an alternative might be “a candidate for election as Premier”.*

⁶ *My reasoning for incorporating the Assembly eligibility requirements here is the following: I am assuming that, in my scheme, they would be included just above in Part 2; they would set out the same (relatively lengthy) requirements as the NWT Legislative Assembly and Executive Council Act ss. 6-6.1, which are 1995 amendments that apply to MLAs and the Government Leader; and, because they were enacted so recently in the NWT, they or something similar would represent the wishes of the Nunavut Legislative Assembly. I am trying to integrate my draft into the structure of existing legislation, the NWT Legislative Assembly and Executive*

(b) must not be a candidate for election as a locally-elected member.

- | | | |
|--|------------|---|
| Nominations | 11. | A candidate must be nominated by 20 or more electors in each electoral district. |
| Election of Premier | 12. | (1) The successful candidate for election to the office of Premier is the candidate who receives more than half of the valid votes cast. |
| Repeat election | | (2) If no candidate receives more than half of the valid votes cast, a repeat election must be conducted. |
| Candidates in repeat election | | (3) The candidates in the repeat election are the two candidates who receive the largest number of valid votes in the first election. |
| Substitute candidates | | (4) If a candidate who is entitled to participate in the repeat election does not participate for any reason, his or her place must be taken by the candidate who receives the next largest number of valid votes in the first election. |
| Election of Premier in repeat election | | (5) In the repeat election, the successful candidate is the candidate who receives more than half of the valid votes cast. |
| Single candidate | | (6) If there is only one candidate in either the first election or the repeat election, the election must be conducted by way of a vote either for or against the candidate. The candidate will be successful if more than half of the total number of valid votes cast are cast for him or her. ⁷ |

Council Act. On a different structural approach, an alternative might be to have a separate Part dealing with eligibility/ineligibility that applied to both locally-elected members and the Premier.

⁷ You asked whether this was a good idea, because it could result in no one being elected, and you observed that another election would be costly and would not necessarily produce a different result. Under my scheme, a special election would have to be called and an Acting Premier would be elected to discharge the Premier's duties in the interim. From a policy perspective, it seems to me that the counterbalancing factors that would support the provision are that the essence of the Premier's moral claim to authority, and the rationale for vesting

Appointment
of Premier

13. The Commissioner must appoint the successful candidate as Premier.

Timing of
election

14. (1) If writs have been issued under subsection 3(3) for a general election, an election to fill the office of Premier must be conducted 35 days before the day of the general Legislative Assembly election.

Timing of
repeat
election

(2) If a repeat election is conducted, it must be held on the day of the general Legislative Assembly election.

Timing of
special
election

15. (1) If a writ has been issued under subsection 4(2) for a special election to fill a vacancy in the office of Premier, an election must be conducted within 60 days after the day the writ is issued.

Timing of
repeat
special
election

(2) If a repeat special election is conducted, it must be held 35 days after the day of the first special election.⁸

significant power in the Premier, are that he or she has the support of at least half the electorate. Also, it is possible that such a vacancy might encourage candidates to emerge. Finally, this is similar to the Israeli system. But, ultimately, I concede that there is a down side either way. An alternative might be to keep the provision as is but require a lower percentage of the vote, say 40%, which would reduce the chances of a vacancy, or maybe to add another provision to require an even lower percentage of the vote if only one candidate stands in the special election.

⁸ *You asked whether I should use “conducted within” as in ss. (1). My thinking here is that the time provisions serve different purposes: in ss. (1), I want to ensure that the special election will not be delayed, so an outside date should be set. In ss. (2), I want to ensure that a sufficient period of time has passed since publication of the election results in the Nunavut Gazette for electors to consider their options (in other words, the repeat election can not be rushed), and that the number of days set should ensure that the day set for the repeat election falls on a weekday. I have lengthened the period from 28 to 35 days.*

Powers, duties
functions of

Premier

16. (1) The powers, duties and functions of the Premier are similar to and do not exceed those of the Premiers of the provinces.⁹ In particular, the Premier may

- (a) select persons to be appointed as Ministers to fill five positions on the Executive Council;
- (b) remove persons from their positions as Ministers;
- (c) determine the roles and responsibilities of Ministers;
- (d) change the division of roles and responsibilities among Ministers;
- (e) transfer authorities and responsibilities from one Minister to another in whole or in part; and
- (f) establish Ministerial committees.

Selection of
Ministers

(2) Except as provided in subsection (3), the Premier must select persons to be appointed as Ministers from among the locally-elected members.

Non-member
Ministers

(3) If the seat of a locally-elected member who is a Minister is vacant, the Premier may select a person who is not a locally-elected member to be appointed as a Minister. The appointment is effective only until the earlier of either

- (a) the day of a special election conducted under section 4 to fill the vacancy; or
- (b) the day of a general election conducted under section 3.¹⁰

Government

⁹ *As I mentioned above in my discussion of necessary changes to the Nunavut Act, I have assumed that the Premier, as distinct from the Legislature, does not need additional powers to implement land claims agreements and to enact laws in respect of Indians and Inuit. If I am mistaken, these specific powers should be listed as additional to those exercised by provincial Premiers.*

¹⁰ *My thinking here is that, if the person appointed stands in the special election (or general election contemplated by subsections 4(3) and 4(4)) and wins, the Premier has the option of confirming his or her appointment or appointing another locally-elected member. If the Premier opts for a confirmation, this would have the value of underscoring the fact that appointments from outside the elected membership of the Legislative Assembly are extraordinary and temporary measures only.*

- departments (4) The Premier may, with the approval by a majority of votes cast by members,
 (a) establish, merge, divide, abolish, and determine the location of departments of the Nunavut Territorial Government; and
 (b) determine the functions and activities of the departments.
- Selection of Executive Council 17. The Premier must either select or confirm the selection of an Executive Council within 60 days after the day that he or she is elected.
- Vacancy in office of Premier 18. (1) If the office of Premier is vacant,
 (a) a warrant for a special election must be issued under subsection 4(2); and
 (b) an Acting Premier must be appointed to exercise the powers, duties and functions of the Premier until a newly elected Premier is appointed.
- Election of Acting Premier (2) If an Executive Council is appointed before the office of Premier becomes vacant, the locally-elected members must elect by a majority of votes cast a person from among the Ministers to be appointed as Acting Premier. If an Executive Council is not appointed before the office of Premier becomes vacant, the locally-elected members must elect by a majority of votes cast a person from among themselves to be appointed as Acting Premier.
- Removal of Acting Premier (3) The locally-elected members may by a majority of votes cast
 (a) remove a person from the position of Acting Premier; and
 (b) in accordance with subsection (2), elect another person to be appointed as Acting Premier.
- Deemed vacancy (4) The office of Premier is deemed to be vacant¹¹ if the Premier
 (a) is either unable or unavailable to exercise his or her powers,

¹¹ *I am assuming, as you pointed out, that there is no need to specify that the Premier's office is vacant if he or she resigns or dies. However, if it is better to be specific about this, I would probably suggest "The office of the Premier is vacant if the Premier resigns or dies. The office is deemed to be vacant if..."*

duties and functions for a period that exceeds 100 consecutive days;
(b) becomes permanently incapable of exercising his or her powers, duties and functions; or
(c) does not select or confirm the selection of an Executive Council in accordance with section 17, and the Legislative Assembly adopts an expression of no confidence in the Premier by a majority of votes cast.¹²

Expression of
no confidence

19. (1) The Legislative Assembly may adopt an expression of no confidence in the Premier and the Executive Council by a majority of votes cast.

Budget

(2) The defeat of a budget resolution by a majority of votes cast is an expression of no confidence in the Premier and the Executive Council.

Dissolution
of Assembly

20. If the Legislative Assembly adopts an expression of no confidence under section 19, a warrant for a general election must be issued under subsection 3(3).

PART 4

EXECUTIVE COUNCIL

Aspects of this Part are new and are expressly included in my scheme, but other elements, such as provisions dealing with responsibilities of Ministers, powers of Ministers, the impact of absence, incapacity, inability, death, and resignation are not new. I will assume that, in relation to these matters, provisions similar in substance to those contained in the current NWT Legislative Assembly and Executive Council Act will be adopted by the Nunavut Legislative

¹² *In my original provision, I had a special election being called automatically if the Premier did not appoint an Executive Council within 60 days. You asked why I didn't just leave it to the Legislature to pass a vote of non-confidence. Under Option H, a non-confidence vote must result in dissolution of the Assembly, and I did not want dissolution in circumstances where the Premier is alone delaying the functioning of Government. This would be one of the checks on the Premier's power (similar to the arrangement in Israel). I have changed the provision to leave some room for the Legislative Assembly to decide whether or not to call a special election. The Assembly could have one chance under these circumstances to call a special election, and then would have to go the no confidence/dissolution route.*

I am not sure whether the structure of paragraph (c) is correct: the first part parallels paragraphs (a) and (b), but the second part of it, i.e. the reference to the vote of the Legislative Assembly may not. I would appreciate your feedback on whether this kind of paragraph structure is acceptable.

Assembly and incorporated into my scheme.

Composition of
Executive

Council **21.** The Executive Council is composed of the Premier and five Ministers¹³ who are appointed by the Commissioner on the advice of the Premier.

Responsibility
of Executive

Council **22.** The Executive Council is responsible for the overall management and direction of the Nunavut Territorial Government, including matters of policy.

Authority
of Ministers

23. (1) Each Minister must have authority over one department.¹⁴

Additional
authority

(2) A Minister may have authority over more than one department.

Responsibility
of Ministers

(3) A Minister is responsible for all matters arising within the department or departments over which he or she has authority.

Authority and
responsibility
of Premier

(4) If the total number of departments exceeds ten, the Premier may have authority over one or more departments. The authority and responsibility of the Premier over a department are the same as the authority and responsibility of Ministers under this section.

¹³ *You mentioned in your comments that a fixed number of Ministers seemed too rigid. The recommendation of 5 Ministers comes from the NIC's November 1996 report, "Nunavut's Legislature, Premier and First Election", which considered at some length the appropriate ratio of "non-Cabinet" MLAs to Ministers. It recommended either 20 or 22 MLAs and 5 Ministers.*

¹⁴ *You asked why my scheme has no Ministers without portfolio. The NIC "Footprints 2" and November 1996 reports recommend that the Nunavut government be made up of 10 departments. The November 1996 report recommends that the Executive Council have 5 Ministers and that each Minister be responsible for 2 departments. I am assuming that these recommendations reflect a concern to balance power between the Ministers and the Premier. I am leaving the Premier flexibility to assign authority over only one department to some Ministers, and over more than two departments to others. If the number of departments exceeds 10, the Premier may also have authority over one or more departments.*

Legislative Scheme #7

Proposition de mesures législatives #7

*Final Assignment: Nunavut
Presented to Professor J. M. Keyes
Faculty of Law, University of Ottawa
December 5, 1997*

Note to the client:

Attached is a second draft of the bill creating the office of Premier and setting out the mechanics of election to that office. This reflects option "H" in the Nunavut Implementation Commission Report. See page 69 of the report.

Please take a look at it and let me know what you think.

*1st Session, 1st Assembly,
47-48 Elizabeth II, 1999*

The Legislative Assembly of Nunavut

Bill _

An Act to create the Office of Premier and to provide for the election of the Premier.¹

Her Majesty, by and with the advice and consent of the Legislative Assembly of Nunavut, enacts as follows:

SHORT TITLE

Short title 1. This Act may be cited as the *Office of the Premier*² Act.

INTERPRETATION

Definition 2. In this Act "Assembly" means the Legislative Assembly.

PURPOSES

Purposes of the Act 3. The purposes of this Act are

- a. to create the office of Premier and define its powers and responsibilities;
- a) to authorize the election of the Premier; and
- a) to set out the rules governing the election.³
- c.

OFFICE OF THE PREMIER

¹ This Act is to be passed by the Legislative Assembly of Nunavut. That is why there is no reference to Nunavut - that is implicit and unnecessary.

² We are in agreement on the term "Premier".

³ We have agreed that

- issues of resources of the Premier's office and other administrative issues need not be addressed here &
- the truly detailed procedures and regulations as to how the election is carried out, including who is eligible to vote, polling districts, etc., are found in the (Nunavut) Elections Act and need not be included.

Office of Premier established

4. There is hereby established an office of Premier who is chosen by popular election.

ROLE AND RESPONSIBILITIES OF THE PREMIER

Premier as Prime Minister

5. (1) The role and responsibilities of the Premier are those of a Prime Minister in a Parliamentary system of government⁴.

Premier to assign Ministerial portfolios

(2) They include the right to recommend to the Commissioner
(a) the appointment of members of the Executive Council and their responsibilities;⁵
(b) the appointment of a member of the Legislative Assembly as Deputy Premier who, if the Premier is absent, unable to act or, if the office of Premier is vacant, exercises the powers and duties of the Premier; and
(c) the dissolution of an Assembly.⁶

Premier to be member of Assembly

(3) The Premier is a member of the Assembly with all of a member's rights and obligations.

EXECUTIVE COUNCIL

Premier to preside over Executive Council

6. The Premier presides over the Executive Council⁷.

⁴ Examples added as agreed.

⁵ We agreed after the first draft that it is not necessary to mention that he can also fire his "Ministers". Also we agreed Ministers need not be members of the Assembly. Finally we agreed that this would require an amendment to the Nunavut Act, specifically to section 11: which will read: "*11. There is an Executive Council of Nunavut. Its role and how its members are appointed are set out in the laws of Nunavut.*"

⁶ Section 17 of the Nunavut Act will be amended to say: "*An Assembly lasts not more than 5 years from the date of the return of the writs for the general election, but the Commissioner may at any time, on the recommendation of the Premier, dissolve the Assembly*".

Note that under paragraph 5(2)(b), if the Premier's office is vacant, the Deputy will be able to recommend dissolution of the Assembly. Note also the restriction on the power of the Premier to dissolve the Assembly once a vote is taken on his impeachment (s. 14(3)).

⁷ As discussed. You suggested describing the Premier in terms of the head of the Executive. This would conflict with the Nunavut Act: 5. (1) *There shall be a chief executive officer for Nunavut, called the Commissioner of Nunavut, who shall be appointed by the Governor in Council.*

Role of Executive Council

7. The Commissioner exercises the government's executive powers, including those related to the its financial responsibilities, in accordance with the advice that the Executive Council provides.⁸

TERM OF OFFICE

Term of office

8. (1) A Premier holds office during the term of an Assembly unless removed from office under section 14.

Premier continues between Assemblies

(2) However, if an Assembly is dissolved, the Premier remains in office until replaced.

Only two consecutive terms

9. A person may be Premier during two consecutive Assemblies, but not more.⁹ An Assembly for which the person was chosen as Premier by its members under subsection 14(2) is not to be counted in applying this section.

ELECTION OF THE PREMIER

Eligible candidates

10. Any person may be a candidate for Premier if, on the day that the writ for the election of Premier is issued, the person is a resident of Nunavut and has already attained their eighteenth birthday.¹⁰

Election of Premier at least 40 days before nomination of members

11. The election of a Premier must take place at least 40 days before the close of nominations for the election of the members of the Assembly.¹¹

Fifty percent to win

12. (1) A candidate who is acclaimed or receives more than fifty per cent of the votes in the election becomes Premier.

Run-off election

(2) If no candidate receives that percentage, there must be a second election within 20 days.

⁸ As agreed I included a brief statement of the role of the Executive Council. This is authorized by the amendment to section 11 of the Nunavut Act discussed in footnote 5.

⁹ As agreed. You pointed out the difficulty raised by the possibility of "short" terms of office in cases of early dissolution. nevertheless we agreed to proceed with this section as drafted. It is probably desirable that a Premier who cannot bring about some stability to the House should not be re-elected to a third term.

¹⁰ As agreed.

¹¹ Changes made as agreed. Forty days required to allow time for run-off.

Only two eligible for run-off

(3) Only the two candidates who received the highest number of votes in the election are eligible to run in the second election. However, if as a result of the first election two candidates are tied for second place, they are both eligible to run in the second election, in addition to the candidate receiving the highest number of votes.

Simple majority wins second election

(4) The candidate who receives the highest number of votes validly cast in the second election becomes Premier.

SWEARING-IN

Premier to be sworn-in

13. Before assuming the duties of office, a Premier-elect must take the oath of office as prescribed by the Commissioner-in-Council.

REMOVAL OF PREMIER FROM OFFICE

*Removal requires vote of 3/4 of the Assembly
Premier not to vote
Premier not to dissolve Assembly within 6 months of vote*

14. (1) A Premier may be removed from office by vote of at least three-quarters of the members of an Assembly.¹²
(2) In this vote the Premier may not vote nor be counted as a member.
(3) A Premier may not recommend the dissolution of an Assembly until six months after it held an unsuccessful vote on removing him or her.

ELECTION OF NEW PREMIER

*New Premier to be elected in case of removal, resignation or incapacity
No popular election if more than 3 years of Assembly*

15.(1) If a Premier is removed from office, resigns, or becomes incapable of carrying out the Premier's duties within the first 3 years of an Assembly, the Commissioner must direct that a writ of election be issued for the election of a replacement¹³.
(2) If the removal, resignation or incapacity happens after the third year of the Assembly, it must appoint a Premier for the remainder of its term.

DISSOLUTION OF ASSEMBLY

¹² As agreed with 14(3) added.

¹³ As per our discussion, I have made a change not to restrict the choice of a new leader from among members of the Assembly.

Dissolution on non-confidence unless second vote confirms government

16. (1) If an Assembly passes a motion of non-confidence or defeats a money bill, the Commissioner must, after 30 days, dissolve the Assembly and issue writs for the election of its members and of a Premier, unless the Assembly votes a second time to confirm its confidence in the government.¹⁴

FUTURE AMENDMENTS

Amendment requires 2/3 of the members

16. This Act may be amended with the consent of at least two-thirds of the members of the Assembly.¹⁵

¹⁴ As per your suggestion. In the interest of plain language, I used the expression “defeats a money bill”. I don’t know (without a lot of research) of a better expression. I believe the meaning of this one is well understood. Since money bills are not introduced by the opposition, it is not necessary to add “by the government” unless you would prefer it.

¹⁵ As agreed.

Legislative Scheme #8

Proposition de mesures législatives #8

Drafting Seminar I
Exercise 7 - Nunavut

TO: DIAND, Tunngavik and Nunavut Implementation Commission

FROM:

Re: First Draft of Legislative scheme for direct elections of Premier of Nunavut

Date: December 8, 1997

Background

You have presented a number of options for an electoral scheme in Nunavut that have arisen out of a recent report of the Nunavut Implementation Commission (the "Report") on the idea of the direct election of Premier of Nunavut. The Report raises a host of fundamental issues, including the relationship of the Cabinet to the Legislature, constitutional constraints arising from the preamble of the *Constitution Act, 1867*, and the unique consensus style of politics in the North currently, which appears to have some basis in distinct cultural values among the aboriginal communities of the north. The Report does not preclude the codification of the status quo in the Northwest Territories (NWT).

Indeed, you have indicated a slight preference for the following options: the status quo, option L (status quo, with some legislative encouragement of the development of party politics), option H (direct election of Premier, run-off elections with initial election timed with municipal elections and final election timed with Assembly elections, Premier hires and fires Minister), and some combination of options L and H.

As confirmed in our first drafting meeting of November 27, 1997, you are prepared to let me, as drafter, make several important policy choices. You have indicated that you would like these choices identified so that the first draft can be easily reviewed, and further detailed instructions provided on the basis of a concrete preliminary legislative scheme. I understand that, given the breadth of the available options, the scope of the project and its importance, that you have decided to try a number of "trial balloons" in this regard. That is, a number of other drafters have been provided similar instructions. Ultimately, you would like to have developed for consideration a number of near complete legislative schemes, each possibly embodying quite different policy choices.

Recommendation

I have reviewed the options. I propose a scheme somewhat akin to one of the preferred options, namely a combination of L and H. However, the scheme I propose is better described as "A+" which is predominately a combination of options A (direct election of Premier in election simultaneous with Assembly, retention of "confidence", hiring and firing of Ministers), L (encouragement of party politics) and G&H combined (avoid loss of "political capital" through non-local *ex officio* members, but ensure "moral authority", with a weighted voting scheme rather than run-off elections, as noted in an endnote to the draft) and C (replacement of Premier possible

Drafting Seminar I
Exercise 7 - Nunavut

without triggering Nunavut general elections). The structure of the scheme is such that party politics may well be fostered, but without any explicit legislative incentives to “shape” the encouragement of party politics. For convenience, I shall label this proposed option simply as A+.

Rationale for Recommendation

Option H - distinguished

While one of the preferred options - “L and H combined” offered the apparent attraction on ensuring that a directly elected Premier would enjoy at least 50% support among voters, without unduly increasing electoral costs, it was ultimately rejected because it is based on an assumption that elections for the Assembly should be the provision in the NWT that elections occur every four years. Codification of this convention is undesirable since an important corollary of the central organizing principle that the Cabinet maintain the confidence of the Legislature is that the Legislature can, ultimately, compel an election at any time that it loses confidence in the executive (Cabinet).

While, the NWT convention for fixed period elections every four years appears relatively stable, it also appears to be founded in certain peculiarities of the NWT status quo, namely the collective disincentive for ordinary members to call a confidence vote vis-à-vis the entire Cabinet, including the Government Leader. Rather, the NWT status quo, with the Minister being hired and fired, on an individual basis, by the Legislature as a whole provides an incentive for ordinary members to call confidence votes in individual Ministers, thereby opening up opportunities for themselves, without requiring a general election which would put their own seat up for grabs.

As you agreed, it seems a poor idea to codify the four year fixed period election convention of the NWT status quo, at a time when fundamental changes to the status quo to directly elect a Premier and otherwise encourage the development of party politics, in a “Westminster style” Parliament are contemplated.

Accordingly, the notion of combining L and H, has been rejected in favour of combining L with a modified form of A, the direct election of the Premier at the same time as the rest of the Assembly. While this approach cannot guarantee that the directly elected Premier will have the moral authority of a majority mandate among all voters in Nunavut, it must be observed that in the current federal regime, and to a lesser extent in the provinces, it is relatively rare for a Prime Minister, or a Premier, to enjoy such a majority, as measured by the popular vote for her or his party in a general election.

As the endnote to section 9 of the attached draft indicates, the weighing of the ordered voting scheme goes some way to ensure the “moral authority” of the Premier, while avoiding the need, and expense, of run-off elections envisaged in option H. Another important advantage of option H, namely prior knowledge of “who would be likely to become Premier in advance of the closing date for nomination of candidates to Assembly elections” is to be retained in the proposed A+ option.

Option A - distinguished

An important organizing principle that drives option A is the constraint that flows from the preamble to the *Constitution Act, 1867*, namely that legislatures have constitutions “similar in principle to the United Kingdom”. As the Report notes, an essential feature of any such constitutional arrangements “similar in principle” to that of the U.K. is the condition that the real executive power in Cabinet be subject to the on-going confidence of the legislature. Given that this constraint in the preamble to the *Constitution Act, 1867* has substantive content in Canadian constitutional jurisprudence, it is important that any proposal for direct elections of a Premier of Nunavut be consistent with this essential feature, namely that the executive must at all times enjoy the confidence of the legislature. (As noted, it was partly for this reason that option H was rejected since the fixed period elections, implicit in option H, is inconsistent with this essential feature).

In addition, the *Nunavut Act*, assented to in 1993 (c. N-28), is founded on the assumption that the Government and Legislature for Nunavut will be based on similar guiding principles as found, not only in the current NWT but also in the black letter law and constitutional conventions guiding current federal and provincial arrangements in Canada. Given that the *Nunavut Act* is the legislative embodiment of a constitutionally entrenched treaty, arising out of the Nunavut Land Claims agreement (as itself embodied in the *Nunavut Agreement Act*), any proposal for a directly elected Premier in Nunavut should be consistent with the existing quasi-constitutional and statutory basis for Nunavut.

Finally, as the Report indicates there is a lack of interest, both in Nunavut and in the Rest of Canada, for political arrangements in the north that would fundamentally challenge the basic guiding principles for all governments of primary legislative competence to date in Canada. Indeed, any proposal that so challenged these guiding principles could have unpredictable, and far-reaching consequences, many of which could well be negative, both in Nunavut and elsewhere in Canada.

Accordingly, option A, which is informed by the fundamental guiding principles that are “similar in principle to the U.K.” and elsewhere in Canada, is a promising starting point for a legislative scheme for a directly elected Premier.

However, option A as presented in the Report, suffers from some serious defects:

- (i) a loss of “political capital” - unsuccessful Premier candidates would be unavailable for political office until the next election;
- (ii) over-concentration of power in Premier - all of the Cabinet would be beholden to the Premier, and indirectly the Legislature;
- (iii) difficulties of disciplining a Premier, if the only vehicle is the trigger of elections (which explains the indirect power held by an overly powerful Premier on the Legislature) and could cause overly frequent elections;
- (iv) double function of Premier - as head of executive and as member of the Assembly “with the privileges and responsibilities common to all members” could result in perceived inequities

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when the Premier acted in the interest of “her or his” constituency qua member, thereby causing or aggravating tendencies among the general electorate to be suspicious of the motives and integrity of elected representatives. (This disadvantage presumes that the Premier elect under option A would have a specific constituency. This potential aggravation of the “double function” problem is alluded to in the Report, although option A in the Report is not explicit on whether the Premier elect would also represent a limited geographical constituency within Nunavut, as an ordinary member would. Some “dual function” problems identified in the Report would inhere whether or not the Premier had a limited, or only a Nunavut-wide constituency.

A central feature of the proposed A+ option, that will go a long way to overcoming all of these identified disadvantage with option A in the Report, is to provide that all of Nunavut forms a special constituency for the election of a “Premier-elect”, as its member. Making this feature explicit within option A brings with it the potential to address the major difficulties identified within option A.

The principle of a loss of “political capital” can be overcome if the second place candidate, under certain conditions, becomes the “Opposition leader-elect”, the equivalent of her Majesty’s Leader of the Loyal Opposition.

“Political capital” can be further retained if, under certain circumstances, the third place candidate in this special Nunavut-wide constituency would be the Speaker-elect. This would allow Nunavut to avoid “wasting” one local or ordinary elected member, as in the current traditions elsewhere in Canada. However, that “saving” is gained at the expense of introducing a potential element of partisanship in the role of Speaker, despite the voting restrictions imposed by section 6 of the draft Bill. (See endnote attached to that provision).

The feature of option A+ that a clear Premier-in-waiting is identified could foster a means of disciplining a Premier (and therefore his Cabinet) without necessarily triggering new general elections, as spelt in the provisions of the draft allowing, preferentially, the Opposition Leader to test his ability to govern by commanding the confidence of the Assembly.

A feature of the non-partisan politics of the NWT status quo is that they are akin to perpetual minority governments under partisan legislatures elsewhere in the country, in that a majority of the legislature has no affiliation to the Cabinet (and no parties exist to discipline a wider segment of the Legislature for the Premier or Prime Minister). However, it is a feature of minority governments, particularly in the aftermath of a general election in which no party won a clearly dominant position, that the Queen’s representative may successively invite the leaders of the main parties to test their ability to obtain the confidence of the legislature without calling an immediate new election.¹

¹ The Smallwood government in Newfoundland eventually fell following the 1972 elections, but only after a period of several months in which both parties (who had obtained 21 seats each in the 42 seat legislature) vied to obtain the confidence of the legislature (a major problem was the appointment of a speaker!). Smallwood tried to appoint a Speaker and hang on with 20 remaining seats and the Lieutenant Governor was constantly threatening to require new elections pending the legislature putting its own house in order.

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Exercise 7 - Nunavut

Under this proposal, the Opposition Leader would exercise a constant threat against the Premier's position (particularly if the general elections had been close), as he or she could theoretically be able to forge an alliance of members of the Legislature (and possibly disaffected Ministers) that could immediately command support of the Assembly, thereby bringing down a Premier (and those of his Ministers that stuck with him) without necessarily requiring the Commissioner to call a general election (under analogues of existing conventions applicable to newly formed minority governments in the rest of Canada).

This proposal shares the feature of option A - that "ordinary", non-Cabinet, members would not be overly anxious to try and test the confidence of the Premier (and his loyal Ministers), since the Commissioner's discretion to invite the Opposition Leader to try and form a new government without requiring new elections would not be automatic, and indeed would likely be constrained as new constitutional conventions to deal with this situation were worked out in analogy with those elsewhere in Canada. However, the theoretical possibility that this could happen, in the right circumstances, means that ordinary members had a credible threat of discipline, short of actual causing new elections. The credible threat of this discipline would be constant constraint on the Premier, likely motivating the liberation of creative efforts at consensus and a healthy dialogue with the Opposition Leader (and those members who were seen to forge alliances with him or her). As in the rest of Canada, the incentives of minority government, when faced with credible alternative Premiers, could motivate some very creative legislative programmes and a very active executive.²

This proposal would also share one of the major advantages of option G over option H, namely that the likely leaders of Nunavut would be identified before the general elections. Like partisan politics in the rest of the country, voters in the Nunavut-wide elections for Premier, would know who the players were in the contest for Premier when casting their ballots simultaneously for their local constituency member. Any informal or stated allegiances as between the local candidates and the contestants for Premier could influence their respective decisions in either direction, just as a local constituency in partisan politics may gain, or lose, attractive to a local voter depending on the voter's feelings about the party leader associated with the local candidate.

Option L - refined

Like Option L, the proposed option A+ builds in incentives to form "parties" at least in the sense of "personality cults" around strong, proposed leaders (either Premiers or Opposition Leaders), as was the case with early development of political parties in the U.K. The proposed option A+ differs from option L in that no attempt is made to formalize, the informal rules favouring partisan politics elsewhere in Canada. Option L suffers from the defect identified in Chapter 9 of proceeding in part from a highly controversial premise that "the emergence of party politics in

² In recent times, federal politics has seen majority governments arising from the regionalization of opposition parties (or in the Conservative era of the late 80's the forging of alliance essentially across those regionalized interests). However, if one casts one's mind back to 1972 to 1974, one sees probably the most creative period of any Trudeau government, when a minority government was spurred on by the tacit consensus of other parties, notably the NDP under Mr. Lewis).

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Nunavut would be an indication of political maturity” (resulting it is suggesting from the liberation of political forces that had been diverted in the project to create Nunavut in the first place). Option L tries to finesse this controversial premise, by a “not controversial” second proposition that “democratic institutions and practices cannot be designed 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”. (pp. 68-69)

Option L anticipates codifying the rules of Parliamentary procedure, and tax incentives, that favour political parties and confer benefits in Parliament on “official status” parties as means of “minimizing suggestions of force feeding” party politics.

Option A+, in the creation of a position of Alternate Premier - Elect hopes to achieve a structure which could favour Nunavut-based party politics, within a system that originates in consensus style politics, thereby going further than option L in refusing to force feed the shape of any party politics that the system may encourage. Despite the professed objective of Option L, it is submitted that the proposed option A+ minimizes this force feeding further than Option L does.

Moreover, the manner in which option A+ proposes to achieve this objective is deliberately based both on maintaining the consensus style politics of the north, the basic structure of the arrangements between the executive and the legislature in Nunavut and on maintaining all the essential features of a constitution “similar in principle to the U.K.” In this regard, the conventions and the rules of legislative procedure that grow up in Nunavut, need not be fixed by its initial legislation, but can take advantage of the rich traditions and precedents from constitution caselaw and conventions of Parliamentary procedure. In this way, it is hoped that a Nunavut-grown solution can be found to the challenges of adopting to change and creating a sufficiently strong executive to govern effectively into the next century.

Please review the attached second draft of the Bill in light of your comments on the first draft submitted on November 17, 1997 and our subsequent meeting of November 27, 1997. Please provide the further instructions requested, and make any other comments. Should you believe that other persons interested in the political development of Nunavut would like to review the draft, please do not hesitate to provide them with a copy.

for Nunavut eyes

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1st Session, 1st Assembly
49 Elizabeth II, 1999

The Legislative Assembly of Nunavut

BILL A-1

An Act to provide for the direct election of the Premier of Nunavut, the Opposition Leader of Nunavut, the Speaker of Nunavut and to establish certain rules governing the relationship between the executive government, exercising the powers the executive including those of the Executive Council of Nunavut, and the Legislative Assembly of Nunavut

CONSIDERING THAT the *Constitution Act, 1867* provides that the constitutions of the federal and provincial governments in the Canadian confederation are to be similar in principle to that of the United Kingdom; and

CONSIDERING THAT the Inuit of the Nunavut Settlement Area and Her Majesty in the right of Canada entered into a Land Claims Agreement in May, 1993 that is ratified and declared valid in an Act referred to as the *Nunavut Land Claims Agreement Act* assented to on June 10, 1993; and

CONSIDERING THAT the Lands Claims Agreement prevails over the *Nunavut Land Claims Agreement Act* to the extent of any inconsistency; and

CONSIDERING THAT subsection 35(1) of the *Constitution Act, 1982* provides that "the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed"; and

CONSIDERING THAT the *Constitutional Amendment Proclamation, 1983* enacted subsection 35(3) of the *Constitution Act, 1982* to further provide that "for greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired"; and

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CONSIDERING THAT the Land Claims Agreement is, therefore, a treaty protected under the constitution of Canada; and

CONSIDERING THAT article 4 of the Lands Claims Agreement commits the Government of Canada to establish Nunavut as a territorial government; and

CONSIDERING THAT an Act of Parliament entitled *An Act to establish a territory to be known as Nunavut and provide for its government and to amend certain Acts in consequence thereof*, referred to as the *Nunavut Act*, was assented to on June 10, 1993; and

CONSIDERING THAT it is desirable to provide for the direct election of the Premier, the Opposition Leader and the Speaker, and to make certain amendments to the executive government for Nunavut and its relation to the Legislative Assembly for Nunavut, consistent with the political, cultural and historical traditions of Nunavut and with a constitution similar in principle to that of the United Kingdom; and

NOW, THEREFORE, the Queen¹, by and with the consent of the Legislative Assembly of Nunavut, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Premier Direct Elections Act*.

INTERPRETATION

Definitions

2. The definitions in this section apply in this Act.

"by-election" «
élection
partielle »

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"by-election" means an election of a local member during a session of the Assembly that is held as a result of the vacancy of the seat for the local electoral district.

"laws of
Nunavut"²
« lois de
Nunavut »

"laws of Nunavut" means the ordinances of the Northwest Territories and the laws made under them that have been made that are duplicated or continued for Nunavut under section 29 of the *Nunavut Act* as they may be amended, repealed or rendered inoperative by laws made by the Legislature.³

"local
electoral
district
«french term»

"local electoral district" means an electoral district described in Schedule 1.

"local member"
«french term»

"local member" means a person elected as a member of the Assembly for a local electoral district.

"*Nunavut Act*"
«la loi sur le
Nunavut»

"*Nunavut Act*" means chapter 28 of the Statutes of Canada, 1993, as amended.

"Nunavut
electoral
district" «
circonscription
du Nunavut»

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"Nunavut electoral district" means the electoral district consisting of all the eligible voters in all the local electoral districts.⁴

"Opposition
leader-elect"
«french term»

"Opposition Leader-elect" means the candidate with the second-most first-choice votes in the Nunavut electoral district during a general election of members of the Assembly.

"Premier-elect"
«insert french
term»

"Premier-elect" means the candidate with the most first-choice votes in the Nunavut electoral district during a general election for members of the Assembly.⁵

"Speaker-elect"
«french term»

"Speaker-elect" means the candidate obtaining the third-most first-choice votes in the Nunavut electoral district.

Inconsistency

3. (1) This Act prevails to the extent of any inconsistency with any other law of Nunavut.

Laws of Canada

(2) Every law of Canada, including the *Nunavut Act*, is to be so interpreted and applied as not to repeal, amend or infringe any provision of this Act unless it is expressly declared by an Act of the Parliament of Canada that it is to operate despite this Act.⁶

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Electoral
districts

4. There are 14 local electoral districts as named and described in Schedule 1, plus the Nunavut electoral district.

Members - local
electoral
districts

5. (1) Each local electoral district returns one member to the Assembly.

Members -
Nunavut
electoral
district

(2) The Nunavut electoral district returns the Premier-elect, the Opposition Leader-elect, who become members of the Assembly for that district if,

(a) in the case of the Premier-elect, she or he is ratified under section 10;

(b) in the case of the Opposition Leader-elect, she or he is ratified under section 11.⁷

Speaker

6. (1) A person who receives at least 10% of the first-choice votes cast in the Nunavut electoral district is the Speaker-elect.

(2) The Speaker-elect is considered to have been elected by the members of the Assembly as its Speaker under section 19 of the *Nunavut Act*.⁸

Election by
members

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(3) If subsection (1) does not apply, the Assembly elects one of its members to be Speaker, who presides over the Assembly when it is sitting.

Vacancy,
absence or
incapacity

(4) For greater certainty, subsection (2) applies in any case after the Speaker for an Assembly resigns, vacates the office of Speaker or is either absent or otherwise incapable of assuming, or continuing in, the office.

When Speaker
votes

7. (1) The Speaker may not vote on matters before the Assembly, except to decide a vote on a motion

(a) on the appropriation of money from the Consolidated Revenue Fund of Nunavut under paragraph 15(a);

(b) of non-confidence in the executive government under paragraph 15(b); or

(c) to test the confidence of the Assembly in a proposed new executive government under subsection 16(2).

ELECTIONS

Elections

8. A person who is entitled to vote in a general election for members of the Assembly may also cast a vote:

(a) for a candidate in the person's local electoral district; and

(b) for one or two candidates in the Nunavut electoral district, ranked in order of the person's preference for Premier.

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Affiliated
candidates -
electoral
parties

9. (1) The ballots for candidates in a general election, or a by-election, for members of the Assembly may include one or both of the following beside the name of a candidate:

- (a) a name of a party, or some other, affiliation or grouping of candidates in the election; and
- (b) a symbol for the party, affiliation or grouping.

Condition -
Approval of
leader

(2) The chief electoral officer may not include a name or symbol beside the name of a candidate on a ballot unless

- (a) the party, affiliation or grouping is registered with the chief electoral officer for the election and, if it has a leader, the leader is identified;⁹
- (b) the candidate submits a request to the chief electoral officer in the prescribed form; and
- (c) the candidate's request is approved by the leader of the party, affiliation or grouping, if it has a leader.

Leader -
candidate

(3) A leader of a party, affiliation or grouping of candidates registered

- (a) for a general election may not be a candidate in a local electoral district; and

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(b) for a by-election may be a candidate in the by-election only if the immediately past leader of the party, affiliation or grouping was the Premier or Opposition Leader for the session of the Assembly, but has vacated that position and a member of that party, affiliation or grouping occupies the position, if it is occupied.¹⁰

EXECUTIVE

Ratification of
Premier-elect

10. (1) On its initial sitting following a general election, the Assembly must ratify the Premier-elect as a member of the Assembly for the Nunavut electoral district, if the Premier-Elect receives

(a) at least 40% of the votes cast for first-choice candidate in that district; or¹¹

(b) at least 30% of the votes cast for first-choice candidate and more than 35% of the votes cast for second-choice candidates in that district.¹²

Assembly
ratification

(2) If the Premier-elect is not ratified under subsection (1), the Assembly may ratify the Premier-elect as a member of the Assembly for the Nunavut electoral district by a majority vote of its local members.¹³

No ratification

(3) If the Premier-elect is not ratified

(a) when paragraph (1)(a) applies, the Commissioner may declare a constitutional crisis under paragraph 17(d) and immediately dissolve the Assembly and require a new general election of members of the Assembly to be held; or

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(b) in any other case, section 16 is to be considered to apply, with appropriate changes.

Ratification of
Opposition
Leader-elect

11. (1) The Assembly must ratify the Opposition Leader-elect as a member of the Assembly for the Nunavut electoral district, and by virtue of that ratification as Opposition Leader, if the Opposition Leader-elect receives

(a) at least 25% of the votes cast for first-choice candidate in that district; or

(b) at least 15% of the votes cast for first-choice candidate, being the second-most votes cast for first-choice candidate, and more than 40% of the votes cast for second-choice candidate in that district.¹⁴

Assembly
ratification

(2) If the Opposition Leader-elect is not ratified under subsection (1), the Assembly may ratify the Opposition Leader-elect as a member of the Assembly for that district, and by virtue of that ratification as Opposition Leader, by a majority vote of

(a) its members; or

(b) those of its local members who did not vote to ratify the Premier-elect under subsection 10(2).¹⁵

No ratification

(3) If the Opposition Leader-elect is not ratified when paragraph (1)(a) applies, the Commissioner may declare a constitutional crisis under paragraph 17(d) and immediately dissolve the Assembly and require a new general election of members of the Assembly to be held.¹⁶

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Invitation to
form executive
government

12. The Commissioner may invite the Premier-elect to be Premier and form a cabinet of ministers to act as an executive government, when

(a) the Premier-elect is ratified as a member of the Assembly under section 10; and

(b) the Commissioner is satisfied that the Premier-elect and the cabinet have the confidence of the Assembly.

Cabinet

13. (1) The Premier may invite members of the Assembly to be ministers of the cabinet in the executive government, with or without portfolio.

Size of Cabinet

(2) The maximum number of ministers, including the Premier, in the executive government is the least whole number that is equal to or greater than one-third of the members of the Assembly, including ratified members from the Nunavut electoral district.¹⁷

Tenure of
Ministers

(3) The Premier may, at will, dismiss a minister from the cabinet.

Executive
government

14. (1) The Premier and the members of the Assembly who have accepted the Premier's invitation to be ministers in her or his cabinet are the executive government.

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Members of
Executive
Council

(2) The Premier and her or his cabinet ministers are considered to be recommended by the Assembly to be appointed by the Commissioner to the Executive Council of Nunavut under section 17 of the *Nunavut Act*.

Powers of
executive
government

(3) Subject to section 17, the executive government exercises all the powers of the executive in the Government of Nunavut, including the powers of the Executive Council of Nunavut.¹⁸

Tenure of
executive
government

(4) The executive government serves until it is replaced by a new executive government

(a) during the session of the Assembly for which the executive government was appointed; or

(b) at the beginning of the first sitting of the next session of the Assembly, after the one for which the executive government was appointed, that is formed by the returns in a general election held immediately after the Commissioner dissolves the Assembly.

Consultation on
duration of the
Assembly

15. The Premier must consult with the Commissioner about the duration of the Assembly as soon as is feasible after the Premier's executive government fails to win the support of a majority of the members of the Assembly who vote

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(a) on a motion to appropriate money from the Consolidated Revenue Fund of Nunavut; or

(b) on a motion declared to be a motion of non-confidence in the executive government.

New executive government

16. (1) Before the Commissioner dissolves the Assembly under section 17 of the *Nunavut Act*, the Commissioner may invite the Opposition Leader, or some other member of the Assembly, to be Premier by forming a cabinet to act as a new executive government, if the Commissioner is satisfied that the Opposition Leader and her or his cabinet or that other member and her or his cabinet, as the case may be, have the confidence of the Assembly.

Confidence vote

(2) The Opposition Leader, or the member of the Assembly, invited to be Premier under subsection (1) is the new Premier and the members of her or his cabinet are the new cabinet ministers in a new executive government, if they receive the support of a majority of members of the Assembly who vote on a special motion to test the confidence of the Assembly in that new executive government.

Timing of vote

(3) The vote on the special motion of confidence must be held as soon as is feasible after the invitation.

Relacement of executive government

(4) On receiving the confidence of the Assembly in a special vote, the new executive government replaces the executive government that served until immediately before that event.

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Residual
executive
powers

17. (1) The executive powers vested in the Commissioner under section 7 of the Nunavut Act are residual in nature and consist of the power

- (a) to dissolve the Assembly under section 17 of that Act;
- (b) to invite the Premier-elect under section 12 to be Premier by choosing a cabinet that has the confidence of the Assembly to serve as the executive government;
- (c) to invite the Opposition leader, or the other member of the Assembly so chosen, under section 16 to test the confidence of the Assembly in her or his proposed new cabinet to serve as the new executive government during a session of the Assembly; or
- (d) to take whatever steps are considered expedient, during a period of constitutional crisis, to restore, as soon as is feasible, responsible government consisting of an executive government that has the confidence of the Assembly.

Convention

(2) The exercise of the residual executive powers of the Commissioner under paragraph (1)(a) is constrained by the the rules of subsections 10(3) and 11(3) and the conventions that apply to the circumstances at the time of the exercise of those powers.¹⁹

CONSEQUENTIAL AMENDMENTS

R.S. N.W.T., c.
L-5

*Legislative Assembly and Executive Government Act, as continued
with the modifications required as a law of Nunavut, under
section 29 of the Nunavut Act²⁰*

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18. Section 2 of the Act of the Legislative Assembly of the Northwest Territories entitled the *legislative Assembly and Executive Government Act*, as continued as a law of Nunavut and modified under section 29 of the *Nunavut Act*, is repealed.

19. (1) Subsection 3(2) of the Act is repealed.

(2) Subsection 3(4) of the Act is repealed.

20. Section 4 of the Act is repealed

21. Subsection 5(1) of the Act is repealed.

22. Section 55 of the Act is repealed.

23. Section 56 of the Act is repealed.

24. Section 57 of the Act is repealed.

25. Section 58 of the Act is repealed.

COMING INTO FORCE

Coming into
force

26. This Act, or any provision of this Act, or any provision of any Act enacted or amended by this Act,²¹ comes into force on a day or days to be fixed by order of the executive government.

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Endnotes

1. The "Queen" is referred to as she is the head of state for Canada, just as the federal and provincial governments do not enact by the "Governor General" or Lieutenant Governor", but by the Queen. However, given that Nunavut is a territory, not a province, with a direct representative of the Queen, as its titular head of state, constitutional issues may be raised by this enacting clause. It is retained to provide a sense of equivalency with other jurisdictions in Canada, despite the formal territorial status.
2. The "laws of Nunavut" occurs only once in the bill, in the interpretation provision of section 3, but a definition is used so as not to clutter that provision unnecessarily with technical information.
3. A simple reference to section 29 of the *Nunavut Act* is not sufficient, since it is drafted currently to apply to all laws, written or common-law and both territorial and federal, that are applicable to Nunavut. If the *Nunavut Act* amendments come into force before Nunavut is established and change s. 29 to pick out just the written laws of Nunavut, as continued and duplicated from their counterparts in the Northwest Territories, immediately before section 3 of the *Nunavut Act* comes into force, then this definition can be simplified.
4. Note that the Nunavut electoral district cannot, by definition, have a by-election since it only exists for a general election.
5. The definition links the premier-elect to a general election, thereby avoiding the accumulation of premier-elects over general elections that may be held from time to time. The same point follows in regard to the opposition leader-elect and the speaker-elect.
6. Because the *Nunavut Act* is federal, one cannot apply a subsection (1) interpretation. This "rule of construction" in subs. (2) is probably as strong an interpretation rule that can be applied to this quasi-constitutional document, given that technically all of Nunavut laws are subordinate federal legislation. It is modelled on the Canadian Bill of Rights rule of construction, which attempted to give something of a constitutional

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status to the Bill, despite the rule against Parliament binding a future Parliament by statute. Note that in the Charter era, in a case involving a Manitoba School Board, the Supreme Court of Canada, did give the Canadian Bill of Rights, and this rule of construction, a quasi-constitutional force.

7. This provision may raise questions as to whether it is consistent with section 13 of the *Nunavut Act*, which reads:

"13. There is hereby established a Legislative Assembly of Nunavut, each member of which is elected to represent an electoral district in Nunavut." It is suggested that s. 13, properly interpreted, does not require a one-to-one relationship between members and districts, but permits a many-to-one relationship. Section 13 merely prohibits a one-to-many relationship with one member representing more than one district.

8. This provision is drafted as a "deeming provision" to avoid the need to ask the federal government to amend section 19 of the *Nunavut Act*. However, it may not be effective, since it could be interpreted as an attempt to amend s. 19 of the *Nunavut Act* indirectly. (See J.M. Keyes *Executive Legislation*, chapter 10). Further consideration of this provision is necessary. An amendment to section 19 of that Act might be required.

9. Consequential amendments may be required in the electoral law under the laws of Nunavut when this bill is tabled in the Assembly in order to permit a party registration system for elections in Nunavut. See the endnote to the consequential amendments, below.

10. Note that, by definition, there can be no by-elections in the Nunavut electoral district and that every by-election is uniquely tied to a local electoral district, hence the provision need not spell out these matters. Also note that if an incumbent Premier vacates the office, or is discharged as leader of a party, during a session of the Assembly, the rules governing replacement of the executive government are flexible enough to allow an interim leader who is a member of the Assembly to assume the mantle of Premier, pending the successful by-election of a new (permanent) leader of the party, assuming here that the party effectively controls the Assembly. Note also that the definite article "the session of the Assembly" is used since the definition of by-election is tied to a

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session of the Assembly.

11. The condition that "no other candidate obtained more votes for first-choice candidate" need not be stated in this provision, given the definition of Premier-elect. Corresponding comments follow about the Opposition Leader-elect.

12. This provision provides a mechanism akin to a run-off election, as in option H, in that an attempt is made to ensure that the Premier has sufficient electoral support to act with moral authority. There may be so many candidates for Premier that it would be very difficult to obtain a sufficient majority of "first-choice" votes. Hence, the need to create a vote ranking system. At the same time, note that having the Premier elected at the same time as local members imposes a significant disincentive to run. If candidates, without a serious chance of winning (at least the first 3 positions) run, they will be out of luck, without an opportunity to become an ordinary member. An advantage of this provision as against the run-off election system (apart from the reasons discussed in the backgrounder) is that one avoids the incentive with the advance initial vote envisaged by option H to run for Premier only to increase one's profile for the subsequent general election.

Please verify that these numbers are appropriate for (a) and (b). At our last meeting of November 27 you appeared to indicate that they look reasonable. Note that if less than 30% of first choice votes are obtained, the candidate must garner at least half the vote among the at least 70% who did not vote for him or her to get the requisite 35% of second-choice votes.

Note also that the elected Speaker idea is retained in this draft, as you did not indicate, when invited by footnote 10 of the first draft, in our Nov. 27 meeting that you wanted to drop it out of concern to decrease any incentive for fringe candidates to run, in the hope of getting the consolation prize of Speaker? Dropping the elected Speaker idea may also recommend itself as a means of ensuring the non-partisan nature of the Speaker's role (however, the provisions on section 7 giving the Speaker a limited voting role go some way to address that concern). Please confirm your policy decision to retain the elected Speaker aspect.

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13. This provision, coupled with subs (3)(b), has two functions: (i) it is a fall-back, in extraordinary circumstances where the subs. (1) conditions are not meet, but yet the majority of elected local members support the Premier-Elect; and (ii) it reinforces the provisions above which provide support for nascent party politics by mimicking the tradition that the Premier is the person who has the support of the majority (party) in the legislature.

The provision is silent on what procedures - public/private meeting, secret/open vote - for local members to decide on this issue. This is consistent with a long tradition among Westminster-style legislatures to minimize the formalities in the immediate post-election period, before a proposed government has to test its support in the legislature (following an invitation to do so by the Queen's representative (the Formal Executive)). Please indicate, if statutory formalities on this issue are desired, or if the tradition of allowing customary practice to grow and develop will be maintained. As you did not indicate a preference at our Nov. 27 meeting, the "silence" option is retained on these procedures.

14. In this scenario, the first place candidate would likely have received a large majority, but here the second-place candidate gets about half of the support in the second vote among the 85% of did not choose him first. As discussed in our last meeting of November 27, you are to verify that these are numbers desired.

15. Para. (b) is necessary to prevent abuse by the majority (who, ex hypothesis, will support the Premier-Elect, particularly if party politics are operative. Para. (b) will allow the majority of those not support the Premier-Elect, to ratify the Opposition Leader-elect (this may be an opposition party), in the extraordinary circumstances where the conditions in subs. (1) are not satisfied.

16. This provision is required to act as a final "constitutional hammer" (in addition to check of para. 2(b)) to prevent abuse by the Premier who, ex hypothesis, will control a majority of members of the Assembly, or when the members of do not support the Premier-elect, aslo do not support the Opposition-leader elect, despite his electoral support (i.e. when the provisions of para. 2(b) will not be effective).

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17. A particular number, e.g. one that currently represents one-third of the number in the Assembly, is not chosen to allow for flexibility as the number of districts changes. Stating this as a general rule, rather than a number, makes the one-third principle transparent, and avoids any need for parallel amendments to this provision as amendments are introduced to increase (or decrease) the number of electoral districts.

18. This provision means that the Executive Council may, in effect, consist of all present and past Premiers and cabinet ministers, but only the current executive council exercises any of its powers. In other words, the past members of the executive government retain honouring membership in the E.C. and can refer to themselves as the "Honourable" or the "Right Honourable" as the case may be, like the Privy Council in constitutions "similar in principle" to the U.K.

19. This provision reinforces the rule in the *Reference re the Patriation of the Constitution* (1981) that constitutional conventions are constitutional rules (but limited to "political enforcement"). It may go further and provide a basis upon which those rules could be enforced in the courts.

20. The consequential amendments provided for in this draft are not to be regarded as final, but minimal and provisional. It may be desired to repeal the entire *Legislative Assembly and Executive Council Act*, as continued as a law of Nunavut, under section 29 of the *Nunavut Act*, and replace the remaining provisions within the context of this Act.

21. Currently this phrase is simply "boilerplate" with no application. However, it is retained in this draft as circumstances may well change before the bill is tabled, on or after April 1, 1999 when Nunavut is scheduled to come into existence, such that provisions of other Acts will be enacted or amended in the consequentials. Similarly, it may be necessary to include some conditional amendments near the time of tabling of the bill, particularly if the planned *Nunavut Act* amendments are not in force, in whole or in part, or if important changes in NWT legislation that will be continued (duplicated with modifications) for Nunavut under section 29 are contemplated.

Legislative Scheme #9

Proposition de mesures législatives #9

PREMIER OF NUNAVUT AND EXECUTIVE COUNCIL ACT

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*The Commissioner of Nunavut, by and with
the advice and consent of the Legislative Assembly,
enacts as follows:*

PREMIER OF NUNAVUT AND EXECUTIVE COUNCIL ACT

PART I

Purpose and Status of the Act

Purpose

1. The purpose of this Act is to reflect in legislation the desire of the people of Nunavut to have a direct vote in the election of the leader of the Legislative Assembly of Nunavut (the Premier). This Act:

- (a) establishes the office of Premier of Nunavut;
- (b) prescribes the role and powers of the Premier;
- (c) provides for the election of the Premier, by popular vote, from among the Members of the Legislative Assembly; and
- (d) establishes the Executive Council of Nunavut.

Amendments to the Act

2. Amendments to this Act require a two-thirds majority of the Assembly.

PART II

Office of Premier and Election Procedures

Office of Premier Established

3. The office of the Premier of Nunavut is established.

Role and Authority of Premier

4. The Premier has all the authority and privileges traditionally held by a leader of government in a Parliamentary system, including the authority:

- (a) to recommend Members for appointment by the Commissioner to the office of Deputy Premier and to the Executive Council;

- (b) to recommend Members for appointment by the Commissioner as Ministers responsible for the administration of the departments as established in *The Organization of the Government of Nunavut Act*;

- (c) to chair meetings of the Executive Council;

- (d) to ask the Commissioner to dissolve the Assembly;
and

- (e) to represent Nunavut at ceremonial and other national and international events.

Election of Premier

5. The Premier of Nunavut must be elected from among the Members of the Assembly in accordance with this Act.

Term of office of Premier

6. The Premier holds office from the time he or she is declared elected by the Chief Electoral Officer until the Assembly is dissolved by the Commissioner as set out in Part IV.

Electoral vote

7. (1) The election is by vote of the residents of Nunavut who are qualified to vote in a general election.

Nunavut Elections Act applies

(2) Except as specifically set out in this Act, the *Nunavut Elections Act* applies to an election under this Act.

Timing of vote

8. The election must be held no less than 14 days and no more than 28 days after the day a general election is held.

Eligibility of candidates

9. (1) All Members are eligible to be candidates in an election.

Declaration of candidacy

(2) In order to stand as a candidate in an election, a Member must inform the Chief Electoral Officer in writing of his or her intention to do so no later than 3 days after the writ for the election is issued.

Simple majority

10. (1) The Chief Electoral Officer must declare as elected the candidate who receives the most votes in the election.

Tie broken by resolution of Assembly

(2) If there is a tie among the candidates receiving the most votes, the winning candidate must be selected - from among those

who tied - by the Members in an ordinary resolution of the Assembly.

Timing of tie-breaking resolution

(3) The vote on the tie-breaking resolution must be held no later than 3 days after the day of the election.

Candidates eligible to vote on resolution

(4) For greater clarity, Members who stood as candidates in the election are eligible to vote on the tie-breaking resolution.

Part III

Deputy Premier and Executive Council

Deputy Premier

11. (1) The office of the Deputy Premier of Nunavut is established.

Commissioner to appoint on Premier's recommendation

(2) No later than 10 days following the day on which the election of the Premier is held, the Commissioner must appoint a Member of the Assembly, on the recommendation of the Premier, to be the Deputy Premier.

Role and authority of Deputy Premier

(3) The Deputy Premier:

(a) has the authority, privileges and duties assigned to the Deputy Premier by the Premier; and

(b) if the Premier resigns, dies, is incapacitated, or, for a period of more than 20 days, is absent or ill, acts in the place of the Premier and has for that purpose, the authority and privileges of the Premier.

Term of office of Deputy Premier

(4) The Deputy Premier holds office from the time of appointment until the earlier of

- (a) the dissolution of the Assembly; and
- (b) the revocation of the appointment under section 14.

Establishment of Executive Council

12. (1) The Executive Council of Nunavut is established and consists of the Premier, the Deputy Premier, and Members appointed under subsections (2) and section 13.

Appointment to Executive Council

(2) The Commissioner must appoint to the Executive Council all Members recommended for appointment by the Premier.

Appointment as Minister

13. The Commissioner must appoint as a Minister responsible for the administration of a department established under *The Organization of the Government of Nunavut Act* any Member recommended for appointment by the Premier. A Member may be appointed to be responsible for more than one department.

Revocation of Appointments

14. (1) The Premier may at any time recommend to the Commissioner that the appointment of any or all of the following be revoked:

- (a) the Deputy Premier;
- (b) a Member of the Executive Council; or
- (c) a Minister.

The Commissioner must immediately revoke the appointment on receiving that recommendation.

No revocation without Premier's recommendation

(2) The Commissioner may not revoke an appointment in the absence of a recommendation by the Premier to do so.

Part IV

Dissolution of the Assembly

Circumstances resulting in dissolution

15. The Commissioner must dissolve the Assembly:

(a) immediately on receiving a request for dissolution from the Premier;

(b) except if a stay of dissolution is requested as set out in section 16, no later than 5 days after the day on which

(i) a resolution of non-confidence is passed by the Assembly; or

(ii) a budgetary measure put forward by a Member of the Executive Council is defeated in the Assembly; and

(c) no later than 10 days after the day the Premier resigns, dies or is incapacitated.

Dissolution not automatic

16. (1) If the Assembly passes a resolution of non-confidence or defeats a budgetary measure put forward by a Member of the

Executive Council, the Commissioner may not dissolve the Assembly if, in order to take steps to regain the confidence of the Assembly, the Premier asks the Commissioner, in accordance with this section, to stay the dissolution.

Time limit for making the request for stay of dissolution

(2) The Premier must make the request to the Commissioner for a stay of dissolution in writing and no later than 24 hours following the vote on the resolution of non-confidence or the vote on the budgetary measure, as the case may be.

Limitation on number of requests for stay of dissolution

(3) The Premier may not make more than two requests for a stay of dissolution in any session of the Assembly.

Vote on remedial steps

(4) The Premier must put forward a resolution for a vote of the Members on the steps taken under subsection (1) within 5 days of the day the Assembly would have otherwise been dissolved.

Assembly dissolved if remedial steps defeated

(5) If the resolution referred to in subsection (4) is not passed by the Assembly, the Commissioner must immediately dissolve the Assembly.

Part V

Interpretation

Definitions

17. The definitions in this section apply in this Act.

Assembly

“Assembly” means the Legislative Assembly of Nunavut as established by section 13 of the *Nunavut Act* (Canada).

Chief Electoral Officer

“Chief Electoral Officer” means the person appointed to that office under section XX of the *Nunavut Elections Act*.

Commissioner

“Commissioner” means the Commissioner of Nunavut appointed by the Governor in Council under subsection 5(1) of the *Nunavut Act* (Canada).

General election

“General election” means a general election for Members of the Assembly as defined in section 2 of the *Elections Act*.

Election

“Election” means an election for Premier held under this Act.

Member

“Member” means a Member of the Legislative Assembly of Nunavut.

Retain seats

18. For greater clarity, during their terms of office, the Premier, Deputy Premier and other Members of the Executive Council, retain their seats as Members of the Assembly and continue to represent their respective constituencies.

Part VI

Coming into Force

Coming into force

- 19.** The Act comes into force on a day to be set by the Commissioner in Council.

Legislative Scheme #10

Proposition de mesures législatives #10

An Act to Provide for the Organization of the Government of Nunavut

The Commissioner, by and with the advice and consent of the Legislative Assembly of Nunavut, enacts as follows:

Short title

1. This Act may be cited as the *Government Organization Act*.

Interpretation

2. The definitions in this section apply to this Act.

“Minister” means a person appointed to the Executive Council.

“Electoral District” has the same meaning as in the *Nunavut Electoral Districts Act*.

PART I

ESTABLISHMENT OF GOVERNMENT

Premier

Eligibility

3. A person who wishes to stand as a candidate for election for Premier must be
- a. at least 18 years old on the date of election;
 - b. a resident of Nunavut;
 - c. nominated to stand for election by at least 10 residents of Nunavut who are at least 18 years old.

Timing of Election

4. (1) An election for Premier shall be held at least five weeks before elections for the Legislative Assembly and a run-off election, if required, shall be held on the same day as the elections for Legislative Assembly.

Election Procedures

5. (1) The candidate who receives more than 50 per cent of the valid votes cast is

elected as Premier.

(2) If no candidate receives the required percentage of votes, a run-off election shall be held between the two candidates who received the highest number of votes in the initial election. The candidate who receives the highest number of votes is elected as Premier.

Replacement Candidate

(3) If a candidate under subsection (2) does not stand in the run-off election, he or she shall be replaced in that election by the candidate who received the next highest number of votes in the initial election.

Death or Resignation of Premier

6. Within 45 days after the death or resignation of the Premier, the Commissioner shall appoint a person who is at least 18 years old and a resident of Nunavut as Premier for the balance of the term of the Legislative Assembly.

Legislative Assembly

Composition

7. The Legislative Assembly is composed of the Premier and 17 members. Each member is elected to represent an electoral district.

Eligibility

8.(1) A person who wishes to stand as a candidate for election to the Legislative Assembly must be

(a) at least eighteen years old on the date of election;

(b) a resident of Nunavut; and

(c) nominated to stand for election by at least 10 residents of the electoral district within which he or she seeks election who are at least 18 years old.

(2) A candidate may only stand for election to the Legislative Assembly in one electoral district in a each election. A candidate who is nominated for election in more than one electoral district is disqualified from seeking election in all electoral districts.

Close of Nominations

9. Nominations for election to the Legislative Assembly close seven days after the day

of the election for Premier.

Election to Legislative Assembly

10. The candidate who receives the highest number of votes in an electoral district is elected to the Legislative Assembly as the representative for that district.

EXECUTIVE COUNCIL

Number of Members

11. The Executive Council consists of the Premier and at least 6, but not more than 10 Ministers.

Eligibility

12. Only persons who are resident in Nunavut and at least 18 years old are eligible to be appointed as Ministers.

Appointment and Removal of Ministers

13.(1) The Commissioner may, on the recommendation of the Premier, appoint Ministers or remove them from office.

(2) The Premier may determine the functions of Ministers.

(3) A Minister who is removed from office continues to sit as a member of the Legislative Assembly.

Functions of Executive Council

14. The principal functions of the Executive Council are

- (a). to advise the Commissioner on the exercise of executive powers; and
- (b). to present an annual budget for Nunavut to the Legislative Assembly.

Deputy Premier

Appointment and Removal

15.(1) The Commissioner may, on the recommendation of the Premier, appoint a Minister as Deputy Premier or remove him or her from office.

Functions

(2) The Premier may determine the functions of the Deputy Premier.

Removal of Executive Council

16.(1) The Legislative Assembly may, by a simple majority vote, initiate proceedings to remove the Executive Council for non-confidence.

(2) Thirty days after the initial vote, a second vote shall be held and if the Legislative Assembly, by simple majority, votes to remove the Executive Council for non-confidence, the Commissioner shall dissolve the Legislative Assembly.