



# NWT Plain Talk

## Devolution Edition



# The Story of NWT Devolution

**The Government of Canada's Northern Strategy has included a strong focus on providing Northerners with more control over their own economic and political destiny. Current negotiations to reach a final devolution agreement for lands and resources in the Northwest Territories is a key part of achieving that objective.**

You may wonder what NWT Devolution is or how it will actually change the way governments operate. The roots of the current devolution negotiations go back as far as 1898. That is the year the provinces of Alberta and Saskatchewan were carved out of what was then a much larger Northwest Territories. At that time, the Northwest Territories (which included what would later become Nunavut) was governed from Ottawa by a Commissioner and a Council appointed by the federal government.

In 1951, residents of the NWT were first able to elect members to the Territorial Council (which would eventually become the Legislative Assembly). Since then, there have been many important steps taken to change the way in which Northerners are governed and govern themselves. This has included the progressive transfer of powers to the Government of the Northwest Territories (GNWT). For example:

- Government moved to Yellowknife (1967)
- NWT Territorial Council fully elected for the first time (1975)

- Transfer of responsibility for education, social welfare, health, housing, public works, municipal government, cultural programs and services (1970s)
- Federally-appointed Commissioner of the NWT withdrawn from active participation in Cabinet (1986)
- Forest fire control and forest management transfer to the GNWT (1987)
- Transfer of responsibility for the delivery of health care services to Treaty Indians to GNWT (1988)
- NWT Territorial Council becomes known as the Legislative Assembly (1994)
- "Arctic A" Airports Transfer (1995)

Over time, through transfer payments, the GNWT has taken on more and more province-like powers from the Government of Canada along with additional financial resources. Today, the GNWT makes decisions on behalf of its residents in virtually all the same areas as a provincial government, with one important difference: the Minister of Aboriginal Affairs and Northern Development is still responsible for the administration and management of public ("Crown") lands, water resources, mineral resources and oil and gas management.

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NWT Devolution is an historic step in the political and economic development of the Northwest Territories and a key part of the Government of Canada's Northern Strategy. The signing of the Devolution Agreement-in-Principle (AiP) in January 2011 was a key milestone in the process. To help residents better understand NWT Devolution, this edition of Plain Talk provides a brief overview of the AiP, the issues that are still being negotiated and the Government of Canada's objectives as it negotiates towards a final agreement.



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The devolution of this last set of province-like powers to the elected representatives of the residents of the northern territories has been a federal and territorial objective for the past 30 years. The Yukon was the first territory to undertake devolution in 2003 and today, devolution is closer than ever to becoming a reality for the NWT.

The latest efforts to achieve a devolution agreement date back to the first meeting of the NWT Intergovernmental Forum in May 2000, when Aboriginal, territorial, and federal government leaders identified lands and resources devolution as a priority. All agreed that transferring the control of natural resources would promote the self-sufficiency and prosperity of the NWT by reducing its governments' reliance on federal funding.

Though negotiation towards this objective has taken time, devolution has remained a priority for the territorial and federal governments, as well as some of the NWT's Aboriginal groups.

On January 26, 2011, the Government of Canada, the Government of the Northwest Territories and the Inuvialuit Regional Corporation signed the Agreement-in-Principle (AiP) for NWT Devolution. The Northwest Territory Métis Nation signed on February 9, 2011 followed by the Sahtu Secretariat Incorporated on May 22, 2012.



## What is the Agreement-in-Principle?

An agreement-in-principle (AiP) is an agreement reached by parties to negotiate a final agreement. It usually contains most of the basic parts of what will form the final agreement, but without all the technical and legal details. An AiP is an important part of the negotiation process because it helps the parties establish common ground and identify areas where further negotiation is required.

There are 13 chapters in the 2011 NWT Devolution AiP. The first four explain principles that will apply to the AiP and the negotiation towards a final agreement. For example:

- The AiP does not create any legal obligations for any of the governments or groups who sign it and it does not limit their ability to take any legal positions later on.
- The AiP recognizes that there are seven Aboriginal organizations who could sign on to the AiP and take part in the negotiations to reach a final agreement (three have signed on so far).
- Nothing in the final Devolution Agreement will affect the Constitution of Canada and devolution will not give the NWT Legislature any more authorities than provinces under the Constitution.
- If there is any conflict between territorial laws and federal laws, the federal laws will apply.
- Nothing in the final Devolution Agreement will take away from Aboriginal treaty rights or the Crown's legal duties and obligations towards the Aboriginal peoples of the NWT, nor will a final agreement limit the Government of Canada's ability to negotiate land, resource and governance issues with Aboriginal groups.

These chapters also describe the process for negotiations and confirm what various words used in the AiP mean.

The rest of the chapters deal with specific topics that are subject to negotiation by the parties, including:

- Transfer of powers and responsibilities
- Post-devolution arrangements
- Waste sites

- Human Resources
- Transfer of federal properties, assets, contracts and records
- Financial matters and net fiscal benefit
- Implementation

### The Face of Devolution: Making the People Who Provide the Services a Priority

Negotiating devolution is not simply a matter of transferring jurisdiction for land and resource management, it is about retaining the experience and expertise of the federal employees who do this important work. In the end, the clients and stakeholders who rely on government to provide these services will not change and it is in everyone's interest to ensure a stable workforce through the transition from one government to the other. Once the final Devolution Agreement is signed and the parties enter the transition phase, a large number of federal employees in the NWT will have the opportunity to become employees of the GNWT. A large part of devolution negotiations will focus on ensuring that this is done efficiently and that staff are treated in a fair and respectful way.



# NWT Devolution

"The signing of this agreement-in-principle is an important step forward for the people of the Northwest Territories and builds on our government's ongoing commitment to giving Northerners a greater say over their own future."

John Duncan,  
Minister of Aboriginal Affairs and Northern Development

## Canada's Objectives

Canada is only one party to the negotiations that will lead to the final Devolution Agreement. As is the case in any negotiation, each party comes to the table with its interests and positions and must listen to and consider the interests in positions of the other parties in order to negotiate a final agreement that all parties can support.

The following are some of the Government of Canada's key objectives as it negotiates towards a final Devolution Agreement for the NWT.

- An agreement that is clear and certain with respect to jurisdictions, roles and responsibilities.
- An agreement that ensures existing rights holders, industry and others experience a smooth transition from federal to territorial control.
- Certainty as to who is responsible for all known waste sites in the NWT and a process for dealing with any new sites that may be discovered later on.
- A practical, logical approach to assigning responsibility for the management of waste sites that fits with the broader devolution of jurisdictions for lands and resources to the territorial government.
- That any employees affected as a result of devolution will be treated fairly, professionally and with respect.

- That the GNWT has a knowledgeable, experienced and stable workforce that continues to provide uninterrupted service to the public in respect of lands and resources.
- To provide the information necessary to allow for the GNWT to provide uninterrupted service to the public in respect of lands and resources.
- To ensure that the financial aspects of devolution allow the GNWT to maintain the current quality of service delivery in the devolved areas of responsibility.
- To create the mechanisms and incentives to promote new investments in the NWT to enable the GNWT to become increasingly self-sustaining.
- To ensure appropriate and equitable funding arrangements are in place for all provinces and territories in Canada.
- An Implementation Planning Committee will complete a number of tasks, including the development of an Implementation Plan that will form part of the final Devolution Agreement. This plan will not create legal obligations for the parties, but it will help put into practice the terms of the final Devolution Agreement and ensure the transfer of jurisdictions happens in an orderly way.
- To work with the other parties to ensure we negotiate a sound and comprehensive agreement and to put in place an implementation plan that ensures services to residents and other clients are maintained through the transition to the GNWT.



## Getting to a Final Devolution Agreement

In arriving at the AiP, the parties have been able to agree on many important principles and arrangements that will form the basis of the final agreement for devolution. Now, the parties must work out in more detail the many understandings and arrangements required to complete and formalize the agreement to prepare to make it happen. This requires the support of employees who are experts in the subjects under negotiation. It also demands hours of intensive analysis, discussion and negotiation by all parties.



Here are some of the issues still being discussed:

- The process Canada would use to "claim lands" when necessary
- What must be done to repeal, replace or amend all the federal laws and regulations for devolution to happen as well as what these legal changes will mean in practical terms for government structures and systems
- The issue of "unauthorized occupiers or users" of Crown land, also commonly referred to as "squatters"
- An arrangement between Canada and the GNWT to help make post-devolution cooperation on resource development easier between the on and offshore areas
- Work to review Canada's inventory of waste sites and agree on an approach for handling the remediation of waste sites and the many legal and practical arrangements required to implement that approach
- Detailed provisions related to human resources, including how job offers will be handled, how transition will happen and conditions of employment after devolution
- Technical and detailed work required to inventory and transfer properties, assets, contracts and records, including the important work of identifying the specific requirements associated with electronic records
- The process that will be used for regular reviews to ensure that the Net Fiscal Benefit remains consistent with the principles applied with other territories and provinces
- An agreement among the GNWT and the Aboriginal organizations who are parties to the AiP that describes how the Net Fiscal Benefit will be shared

## From Paper to Reality: The Important Task of Implementation

While the final Devolution Agreement is being negotiated, the Implementation Planning Committee is hard at work on a number of important tasks, including the development of an Implementation Plan that will become part of the final Devolution Agreement. While this plan will not create legal obligations for the parties, it will help provide practical guidance on how the terms of the final Devolution Agreement will be put into practice to ensure the transfer of jurisdictions happens in an orderly way. Once the final Devolution Agreement is signed, the parties' work is not done. They will move into an intensive phase of implementation and transition where the nuts and bolts of devolution will be clarified and put into place in order to be ready for the Effective Date, when NWT Devolution becomes a reality.

## AiP Highlights

### TRANSFER OF POWERS AND RESPONSIBILITIES

- **Chapter 5** describes which powers and responsibilities for lands and resources (minerals, oil and gas, and waters in the onshore) will be devolved and how this will happen. Specifically, the AiP says:
  - Canada will introduce new laws and amend or repeal other laws and regulations in order to give the NWT Legislature the power to make laws and regulations about lands and resources. To avoid disruptions during this transition, the GNWT will need to introduce some legislation that mirrors the federal legislation before these changes happen.
  - Key pieces of federal legislation involved in this process will include: the *Northwest Territories Act*, the *Northwest Territories Waters Act*, the *Mackenzie Valley Resource Management Act* (MVRMA), the *Territorial Lands Act*, the *Canada Oil and Gas Operations Act* and the *Canadian Petroleum Resources Act* as well as regulations that come under these laws.

- Any existing rights on public lands (such as mineral rights) and rights related to waters (such as water licenses) which were issued by Canada before devolution will not be affected.
- Even after devolution, the federal government will still have the right to "claim" lands needed for certain purposes such as the settlement of land claims, the creation of national parks and for national security reasons.
- The Government of Canada will keep powers in relation to land and waters in certain areas, including offshore marine areas, fish and fish habitat in the onshore and the offshore, and for offshore resources, including oil and gas.
- **Chapter 6** deals with how the GNWT and participating Aboriginal organizations will negotiate arrangements for post-devolution resource management. Canada is not directly involved in this part of the negotiations, but the AiP states:
  - The parties recognize and appreciate that Aboriginal governments are landowners with established or emerging powers over settlement lands and resources.

- Post-devolution the GNWT and Aboriginal governments should work together to ensure that public lands and settlement lands can be administered in a way that is effective, coordinated and that honours Aboriginal and Treaty rights.
- **Chapter 7** recognizes that after devolution, Canada, the GNWT and the Inuvialuit Regional Corporation will all have roles and responsibilities related to the management and administration of oil and gas resources.
  - The AiP sets out a broad framework for coordination and cooperation across these jurisdictions in order to facilitate orderly development, particularly where oil and gas resources straddle, or potentially straddle the onshore and offshore.
  - It is contemplated that such arrangements would pertain to: rights issuance processes, the regulation of operations and royalty regimes.

### WASTE SITES

- **Chapter 8** describes general concepts for this part of the negotiations:
  - Waste sites are described as sites where human activity has had an impact on the environment or human health or safety and no identifiable person or organization remains legally responsible.
  - Canada's responsibility for remediating waste sites will be limited to sites created before devolution and for which there is no operator identified who is responsible for the site.
  - The GNWT will be responsible for sites created under its administration and control and for operating sites assessed under modern regulatory regimes.
  - Canada will prepare a preliminary inventory of waste sites. The parties will then form a joint working group to review, study and categorize the inventory of waste sites.
  - The Giant Mine will remain a federal site after devolution. It is covered by a separate agreement and is not included in this chapter.

### HUMAN RESOURCES

- In **Chapter 9** of the AiP the parties recognize that devolution will affect many federal employees who work in the areas of responsibility that will be transferred to the GNWT.
- The AiP describes some of the conditions that will apply to the job offers that will be made to affected federal employees.

### PROPERTIES, ASSETS, CONTRACTS AND RECORDS

- **Chapter 10** of the AiP recognizes that, as part of devolution, the Government of Canada will need to transfer some buildings and significant amounts of equipment and information that are associated with the areas of responsibility that will be taken over by the GNWT.
- Some federal buildings and leases will be transferred as they are, though the Government of Canada will arrange for the necessary environmental site assessments and address any issues as required by the guidelines set by the Canadian Council of the Ministers of the Environment.
- The chapter also deals with how a number of other assets will be dealt with, from equipment to information technology, files and records, copyright, contracts and agreements.
- These details are important to ensure a smooth transfer of responsibility and uninterrupted services to the public.

### FINANCIAL MATTERS AND NET FISCAL BENEFIT

- There is no doubt that financial issues are critical to a successful devolution agreement.
- In **Chapters 11 and 12** of the AiP, the parties have already agreed to the main financial arrangements for devolution.
  - One-time payments: Canada will provide the GNWT a total of \$26.5 million in payments (over a number of years) to help pay for the cost of getting set-up to take on these new responsibilities.
  - On-going funding to the GNWT: The amount the GNWT can receive through the existing Territorial Formula Financing Grant (TFFG) will be increased by \$65.3 million (this amount will continue to be adjusted annually for inflation). This increase reflects the costs of providing services related to its new responsibilities.
- Funding to Aboriginal Organizations: Aboriginal Organizations who are parties to the final Devolution Agreement will be entitled to receive on-going funding of up to \$3 million each year and up to \$3.9 million in one-time payments over a number of years, for transitional and capacity building activities. The Inuvialuit Regional Corporation will also be entitled to receive \$100,000 towards its costs to negotiate a cooperation and coordination agreement with Canada and the GNWT related to oil and gas resources.
- Net fiscal benefit: After devolution the GNWT will be the government that collects royalties and other resource revenues. Normally, in Canada, as a province or territory's sources of revenue increase, its federal transfer payments decrease. In order to ensure devolution provides an overall financial benefit to the residents of the NWT, the AiP specifies that the territorial government will be able to keep 50% of resource revenues without losing any of the TFFG payments described above. This exception will apply until this amount reaches what is called a "fiscal capacity cap" (equal to 5% of the GNWT's total annual spending). Once the cap is reached, the amount of federal transfers will begin to decrease.

### IMPLEMENTATION

- In **Chapter 13** of the AiP, the parties agree that an Implementation Planning Committee (IPC) will be established and include representatives from Canada, the GNWT and Aboriginal organizations who are party to the AiP. The IPC's role is to manage the work required to prepare for implementation of the final Devolution Agreement.



# Devolution Q&A

## How is a final Devolution Agreement being negotiated? What does the "Main Table" do?

The Parties to the AiP will negotiate numerous issues including land exclusions, transfer of government assets, human resources, oil and gas administration, waste sites administration, etc. Negotiation of such a complex agreement will require work at many levels.

The "Main Table" is headed up by senior negotiators with a mandate on behalf of their respective governments to resolve issues that can't be addressed at the working group level. This group engages in high-level negotiations and is supported by several working groups made up of subject-matter experts who meet regularly. An Implementation Planning Committee has also been established to figure out the process and activities required so the parties are ready for the Effective Date.

## What are the Working Groups?

A number of working groups have been established and more will be established as they are identified by the Parties. These groups are comprised of technical subject experts that are tasked with producing information in support of detailing provisions within the final Devolution Agreement. The following joint working groups have been established:

- Waste Sites
- Oil and Gas
- Delineation
- Human Resources
- Property, Assets, Records and Contracts (PARC)
- Legal
- Communications

## What role will the Government of Canada continue to play in the NWT after devolution?

After devolution, the biggest change people will see in the Government of Canada's presence in the NWT will be within Aboriginal Affairs and Northern Development Canada. This department's role will fundamentally change. Here are the main ways you will continue to see AANDC staff in the regional and national offices continue to be involved in the NWT:

- overall federal coordination
- intergovernmental relations
- negotiation and implementation of land claim and self-government agreements
- Indian and Inuit programs and services
- management of federal obligations related to contaminated sites
- management of northern offshore oil and gas

Federal departments that have a Canada wide role in the management of lands and resources such as the National Energy Board, Natural Resources Canada, Environment Canada and Parks Canada may see the way they do this work in the NWT change as a result of devolution.

Devolution will not significantly change the role the Government of Canada plays in areas such as taxation, Territorial Formula Financing and other major transfers, infrastructure, economic development, transportation and national defence.

## What does devolution mean for Aboriginal people in the NWT and what is being done to include them?

Aboriginal people have long played an integral role in the political development of the NWT, from the Berger inquiry in 1977, to the first land claim agreement signed with the Inuvialuit in 1984, to the first combined land claims and self-government agreement that created the Tlicho Government in 2005.

The Government of Canada strongly believes that NWT Devolution provides an opportunity for Aboriginal people to help shape the future of the territory and share in the economic benefits that will flow from devolution. Regional Aboriginal organizations are encouraged to sign the AiP and participate in the negotiation of the final agreement. If they choose not to sign, the Government of Canada will consult Aboriginal groups to hear and consider their views as negotiations proceed.

Regardless of the choice Aboriginal groups make on this issue, the Government of Canada intends that nothing in the final Devolution Agreement will take away from Aboriginal treaty rights or the Crown's legal duties and obligations towards the Aboriginal peoples of the NWT. In addition, nothing in the Devolution Agreement will limit the Government of Canada's ability to negotiate land, resource and governance issues with Aboriginal groups now or in the future.

## What is the relationship between the devolution negotiations and the Action Plan to Improve Northern Regulatory Regimes?

Canada's Northern Strategy promotes northern economic and social development and environmental protection. Devolution of land and resource management and responsible resource development contribute to these objectives and are key pillars in Canada's Northern Strategy.

The implementation of changes to the regulatory regime in the North will ensure that the regulatory system that is devolved is as efficient and effective as possible. The GNWT is invited to participate in discussions about these changes and Canada fully recognizes the interests the Government of the NWT has with regard to proposed changes to the land and water board structure in the Mackenzie Valley.

## When is devolution going to happen?

In early 2011 Canada, the GNWT, the Inuvialuit Regional Corporation, and the NWT Métis Nation commenced the negotiation of a final Devolution Agreement. The Sahtu Secretariat Incorporated joined those negotiations when they signed on in May 2012. The Parties are making best efforts to complete the final Devolution Agreement as quickly as possible.

## When will the agreement take effect?

Once a final Devolution Agreement is reached by the negotiators at the Main Table, it will require formal approval by the Parties to the AiP. Legislation will be drafted for approval in Parliament and the territorial legislature. Once legislation is approved, the necessary steps will begin to complete implementation of the Agreement and make the transition to the new way of operating. The day of the official transfer will be called the Effective Date and it will likely be one to two years after the final Devolution Agreement is signed.

## What devolution negotiations are NOT about

**NWT devolution negotiations are specifically dealing with issues related to the transfer of administration and management of land and resources from the Government of Canada to the territorial government. Devolution negotiations are not:**

- meant to correct or revise any perceived problems or gaps in existing federal programs
- a way to address any issues the parties may have with fiscal relationship between the federal and territorial government or the transfers that form part of this relationship
- a Land Claims negotiation

## Got something to tell us?

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