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Consensus Government in the Northwest Territories:
Westminster with a Northern “Twist”

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The Canadian Study of Parliament Group (CSPG), as part of its efforts to foster knowledge and understanding of Canadian parliamentary institutions, is publishing a series of papers describing and analyzing the thirteen provincial and territorial legislatures. The papers are being made available free of charge, in both official languages, on the CSPG Web site. The views and opinions contained in these papers are those of the authors and are not necessarily reflective of those of the CSPG.

The current boundaries of the Northwest Territories (NWT) are what remain of a vast land originally purchased by the Dominion of Canada from the Hudson's Bay Company in 1870. Rupert's Land, as it was known at the time of purchase and sale, included most of current day NWT, Nunavut and Yukon and the provinces of Alberta, Saskatchewan, most of Manitoba, northern Ontario, and Quebec. The Territories' first premier, Frederick Haultain, actively discouraged the introduction of party politics to its nascent legislature during the late 1800s. When the provinces of Saskatchewan and Alberta were carved from the Territories' boundaries in 1905, the Territories' responsible and representative legislature was abolished and replaced by an appointed Commissioner and Council. For nearly half a century the Commissioner and Council consisted exclusively of federal civil servants residing in Ottawa. As such, they acted more as an interdepartmental committee of the federal government than a representative legislative body.

In the years to follow, representative and responsible government returned to the Northwest Territories in small increments, commencing with the addition of three elected members from the Mackenzie District in 1951. The size of the Council gradually increased, with more elected members added until, in 1975, the 15-person Council consisted entirely of elected members. Notably, this was the first time in Canadian history that a legislative body consisted of a majority of Aboriginal members. It was not until 1987 that the chairmanship of the Executive Council, or Cabinet, was assumed by an elected Member and the federally appointed Commissioner relinquished all remaining practical authority.

Party politics did not take hold under such a hybrid of appointed and elected Members. Although candidates representing political parties have been nominated in recent territorial elections, all have been rejected at the polls. By and large, residents of the Northwest Territories view political parties as "alien, southern-Canadian political institutions which would impede political development along distinctively Northern lines."ⁱ It is often suggested that the form of parliamentary democracy that has evolved in the NWT, absent political parties and commonly referred to as "consensus government," is a reflection of the political values of the Aboriginal people who constitute a majority of the Territories' population: a distaste for confrontation; a preference for decentralized power; a belief that the best decisions result from respectful and extensive dialogue; and a lack of enthusiasm for representative as opposed to direct democracy.ⁱⁱ While this is subject to ongoing debate, the fact remains that no concerted effort to introduce party politics into the NWT Legislative Assembly is foreseeable.

Structure and Operation

The structure and operation of the NWT Legislative Assembly has remained fairly constant since the return of responsible government in the mid-1980s. Following division of the NWT in 1999, both Nunavut and the remaining NWT maintained largely the same systems of government. On a fixed date every four years, a general election is held to return a single member from each of the 19 electoral districts. In the absence of political parties, candidates run as independents. Results are largely decided on the strength of each candidate's character and individual record as opposed to his or her party affiliation, ideology or suite of policy proposals. Acclamations are common. In fact, three of the four premiers since division were returned to the Assembly by way of acclamation. The rate of incumbency following each general election hovers around 66 per cent.

The 19 returned Members represent constituencies ranging in population from 800 to 3200 residents and in size from less than a square kilometre to an area larger than some Canadian provinces. Many smaller communities are predominantly Aboriginal while others, particularly Yellowknife, are ethnically diverse. Since 1975, a majority of the elected members of every legislature has been Aboriginal. In the current Assembly, eleven of nineteen Members are of Dene, Metis, or Inuvialuit heritage. Although Nellie Cournoyea became the second woman premier of a Canadian province or territory in 1991, women have been significantly underrepresented in the NWT. The current Assembly includes two women, neither of whom is on cabinet. In terms of the occupations of members prior to their election, a significant portion come from the ranks of the territorial public service or community and aboriginal governments. Only four lawyers have been elected to the Legislative Assembly since 1951 and only one of the current members, a pharmacist, is a professional.

Following each general election and prior to the selection of a premier and cabinet, all 19 members meet in private over the course of several days to develop a strategic vision and priorities to guide the cabinet in governing the NWT for the life of the Assembly. These discussions take place within the Caucus, one of the most distinctive features of consensus government. In the absence of political parties, the Caucus consists of all 19 members, including the Speaker. In addition to setting broad strategic direction for each Assembly, the Caucus meets regularly when the Legislature is in session to discuss the scheduling of sittings, the timing of major debates, the appointment of independent officers of the House and administrative matters affecting all members equally. Disciplinary matters are also discussed in the Caucus and from time to time, politically sensitive issues concerning the NWT as a whole are added to the agenda. In theory, members are expected to participate in Caucus discussions free from cabinet solidarity or the expectations normally placed on those holding certain offices, such as Premier, Speaker, or committee chair. As Caucus meetings are held strictly *in*

camera, they are not intended to be a forum for decision making or holding the government to account.

Once Caucus has set out its priorities, a Speaker is elected by secret ballot. Members then proceed, again by secret ballot, to elect a cabinet consisting of a premier and six ministers. The premier is elected at large whereas by convention two of the ministers must represent constituencies from each of the NWT's three geographic regions, namely Yellowknife and north and south of Great Slave Lake. Although the premier assigns individual portfolios to each minister, he or she neither chooses who is appointed to cabinet nor has the authority to revoke those appointments. However, premiers can, and have signalled their loss of confidence in particular ministers by removing all their portfolio assignments. Unlike the prime minister or the provincial first ministers, the Premier of the Northwest Territories does not have the authority to seek dissolution of the Legislative Assembly, that is, call an election. Only the Commissioner on the recommendation of a majority of members may dissolve a Legislative Assembly prior to the conclusion of its fixed term. Without the structural power typically afforded first ministers in the Westminster tradition, the Premier of the Northwest Territories is truly a first amongst equals. To lead effectively, he or she must rely upon a mix of inspiration, persuasion, hard work, and experience.ⁱⁱⁱ

The remaining eleven so-called "regular members" are appointed to various standing committees of the House and, to a limited extent, work together to hold the cabinet to account. They do not, however, present themselves as a "government in waiting." Their ultimate goal is not to discredit, embarrass, or defeat the government. On the contrary, regular members, both individually and collectively through committees and the Caucus, work closely with the government to develop public policy. Unanimous support for its legislative and budgetary proposals is normally sought by cabinet, and is usually received. The concept of an "official opposition" is non-existent. This is not to suggest that cabinet is given free rein to govern in the absence of meaningful accountability and oversight. In fact, as regular members do not oppose the government on principle, their criticisms are viewed as more genuine and meaningful when presented. Ministers are sometimes removed from office and disagreements have boiled over into animosity and distrust, but this is neither the norm nor the expectation. As Graham White of the University of Toronto has observed, "it is the possibility and the frequency of accommodation, cooperation, and compromise that defines consensus government."

Committees

Pursuant to the *Rules of the Legislative Assembly*, standing committees of the Legislative Assembly are organized according to policy envelopes. The Standing Committee on Social Programs is comprised of five regular members appointed by motion of the House. As its name suggests, it is responsible for the oversight of those government departments and agencies that deliver social programs to the people of the NWT including the Departments of Health and Social Services; Education, Culture and Employment; and Justice. The Standing Committee on Economic Development and Infrastructure oversees those departments and agencies that provide “bricks and mortar” services such as Transportation, Public Works and Services, the NWT Housing Corporation and the Department of Industry, Tourism and Investment, which is responsible for business development in the NWT. The Standing Committee on Government Operations consists of five regular members and is focused on the oversight of those departments that provide central services to the government including the Departments of the Executive, Finance, and Human Resources. In addition to serving as the de facto Public Accounts Committee, the Standing Committee on Government Operations receives and reviews reports from the independent officers of the Legislature, including the Access to Information and Privacy Commissioner, the Languages Commissioner, and the Human Rights Commission.

The Standing Committee on Priorities and Planning consists of all eleven regular members and serves as a caucus of sorts for those members who do not serve in cabinet. Its primary role is to coordinate the activities of standing committees and the consideration of government business while the Assembly is in formal session. Matters of broad strategic importance, including the budget and fiscal framework, are normally referred to and considered by this committee. It also undertakes periodic reviews of the performance of cabinet and individual ministers. Priorities and Planning meets *in camera* each morning before the commencement of each day’s formal proceedings to review the previous day’s business, coordinate statements and questions, determine the order of business in Committee of the Whole, and receive briefings from ministers.

The remaining two standing committees are the Standing Committee on Rules and Procedures and the Legislative Assembly Board of Management. The former includes four regular members and one minister who serves as deputy chair. In addition to considering and advising the Legislative Assembly on its standing orders, the Committee is the vehicle through which the Chief Electoral Officer and the Conflict of Interest Commissioner report to the Assembly. The Board of Management consists of two regular members and two ministers and is chaired by the Speaker of the Legislative Assembly. Its role is to provide for the administration of the

Legislative Assembly and the establishment of policies and regulations concerning the services provided to members and their use of public funds.

Standing committees play an active and important role in the creation of policy and the delivery of public services in the Northwest Territories. In the absence of party affiliations and discipline, members are free to engage in frank and honest dialogue with ministers regarding legislative, policy, or budgetary proposals. Ministers, as a matter of course, consult with their respective committees before finalizing or announcing major initiatives. Whereas the first time a non-government member in a partisan legislature would see the details of proposed legislation or the budget would be at formal introduction stage in the House, standing committee members in the consensus system are asked to comment on early drafts of bills and budgets before they are finally approved by Cabinet and tabled in the Legislature for public debate. Standing committees travel extensively throughout the NWT to consult the public on legislation referred to them by the House and these consultations frequently result in amendments to bills with, or more rarely without, the government's consent. Although there is no formal requirement for ministers to obtain the approval of committees for everything they do, a failure to work closely and collaboratively with committee on major public policy issues is considered inconsistent with the principles of consensus government.

Regular Members spend roughly the same number of days each year attending standing committees when the Legislature is not in session as they do in formal sittings of the House. In 2014 the Legislative Assembly sat in formal session for 48 days whereas committees met for an additional 44 days when the House was not sitting. Each committee is supported by a clerk, who works closely with the chair to coordinate meeting agendas and logistics, and an analyst who provides independent and objective research services. The Legislative Assembly currently employs three committee clerks and four full time research staff. The annual budget for standing committees, excluding member and staff salaries, is just over \$400,000, most of which goes for travel.

Budget

The total operating budget for the Legislative Assembly in 2014/15 was \$19 million. Sixty-one per cent of this figure relates to compensation and benefits for the 19 members, 30 Legislative Assembly staff and six independent officers reporting to the Assembly: the Chief Electoral Officer, Official Languages Commissioner, Conflict of Interest Commissioner, Information and Privacy Commissioner, Equal Pay Commissioner, and the NWT Human Rights Commission. Total expenditures on behalf of members are budgeted at \$6.2 million. In addition to compensation and benefits, the majority of this funding is used to provide each member with

an annual constituency expense allowance of approximately \$85,000 on average. Members may use these funds to retain staff, purchase equipment, and communicate with constituents through web sites, newsletters, and constituency meetings. The cost of leasing and operating a constituency office is covered from the Legislative Assembly's budget as are travel costs to and from session and committee meetings.

Distinctive Features

Although the look and feel of the NWT Legislative Assembly is distinctly Westminster, from gowned clerks to a near wholesale adoption of British rules of procedure, there are notable and important differences. Most obviously, the design and functioning of the legislative chamber is steeped in Aboriginal symbolism. The room is circular, representing the base of a traditional tipi or igloo. This unique shape was intended to avoid the confrontational appearance of most parliaments and symbolize a unity of purpose. Members are encouraged to wear traditional Aboriginal attire in the legislative chamber and, in addition to French and English, nine Aboriginal languages have official status.



Because of the size of the NWT and the sparseness of its population, unique efforts have been made to ensure that all members of the public have access to the proceedings of the Legislative Assembly. In addition to regular standing committee consultations outside the capital, the Caucus holds an annual summer retreat in one of the smaller communities. Not only does this provide the residents of these communities with unique access to their elected leaders, it exposes all members to the reality of life in the most rural and remote parts of the Territories. In recent years, the Speaker and the Sergeant-at-Arms have visited one or more small communities with the Mace of the Legislative Assembly and spoken to residents and school children about consensus government. High school students from across the NWT are invited

to serve as pages during session and in alternating years the Speaker's Office hosts youth and elders parliaments.

Most debate is conducted in English; however, the daily proceedings of the House are simultaneously interpreted in two of the eleven official languages on a rotating basis. If a member requests interpretation services in one of the official languages other than those scheduled, every effort is made to accommodate the request. The proceedings of the House and select committee meetings are broadcast throughout the NWT on radio and television and across Canada on direct-to-home satellite and the internet. The proceedings are rebroadcast on television in each of the official languages slated for interpretation that day.

In addition to live and archived audio and visual records of the Assembly's proceedings, the Legislative Assembly's web site provides public access to a wide array of documents including bills, motions, tabled documents, committee reports, and detailed reports of members' attendance, travel, and expenditures. A 2010 pilot project gave residents from across the NWT the ability to initiate and sign petitions on the Assembly's website. The initiative was judged a success and in 2012 the standing orders were amended to make the Northwest Territories the second jurisdiction in Canada to make e-petitions available to its residents.

For those accustomed to boisterous parliamentary debate, the relative civility of the NWT Legislative Assembly stands out immediately. When a member is speaking, interruptions, heckling or sidebar conversations are frowned upon. The Speaker is seldom required to intervene to bring order to debate. On those rare occasions when a member's conduct is deemed unparliamentary, sincere apologies are usually offered and accepted. For the most part, oral question period is used to get answers or public commitments from ministers as opposed to attempting to discredit, embarrass, or score political points. Seldom is there an exchange between a regular member and a minister that is not parenthesized with the words "please" and "thank you." All members share a common lounge to the rear of the Chamber where they socialize and dine together during breaks in the sitting day.

Not only is debate civil, it is also relatively thoughtful and genuine. In the absence of party discipline, members are able to speak freely on behalf of their constituents or present their individual perspectives on matters under debate. Minds are frequently changed and positions modified to reach solutions that a majority can support. The rules of the House allow for extensive debate of issues. There are few time limits imposed on members' speeches and those that do exist are customarily set aside with unanimous consent. In fact, unanimous consent is routinely obtained to extend oral question period beyond its daily, and generous, one hour. Although any member may move closure of debate, such procedural guillotines are rarely used. The rules of the House place greater emphasis on free and extensive debate than they do on efficiency or time-management. In this sense, the NWT Legislative Assembly is truer

to the notion of parliament as a forum for the free and open exchange of ideas than its partisan counterparts.

Consensus Government

Consensus government provides all elected members the opportunity to play a direct and meaningful role in shaping public policy. As mentioned earlier, the strategic vision and priorities for the government are established by all members prior to the election of a cabinet. This helps to ensure that the views of all the NWT's regions and people are reflected in the government's mandate. In the absence of political parties, all members have an equal opportunity to let their names stand for and serve on cabinet. Because of cabinet's perennial minority, the input of all members is sought and often accommodated. Standing committees provide non-cabinet members with the rare opportunity to scrutinize and influence budgets, legislation, and policy proposals well before they are drafted or formally introduced in the House. By the time that legislation and budgets are introduced in the Legislative Assembly, they have typically been the subject of intense review by regular members and standing committees. The opportunity for every elected member to play a direct and meaningful role in the crafting of public policy, regardless of ideology or party affiliation, is viewed by many as the very essence of consensus government.

Whereas opposition members in party-based parliaments must often wait for a change of government to effect real change, consensus government as practiced in the NWT allows for more frequent course corrections from outside the ranks of cabinet. Private members' bills are given the same priority as government-sponsored legislation and are an effective way for the House to impose its will on a reluctant cabinet. The fact that they are rarely used is likely an indication that members are generally able to meet their legislative objectives by working closely with ministers and cabinet. Because ministers are appointed by the House as a whole, their accountability and responsiveness to members is quite strong. As with any minority government, cabinet must have the support of at least a portion of those members outside its own ranks to govern. It cannot impose its agenda on the Legislative Assembly. Because the premier does not have the power to dissolve the Legislature, cabinet cannot speak over the heads of regular members in a direct appeal to the electorate. Both "sides" of the House must work together to govern effectively.

The members who serve in this uniquely northern adaptation of the Westminster model have expressed a high level of support for maintaining its fundamental features and, more precisely, keeping party politics out. In a recent survey of members of the 16th Legislative Assembly, 100 per cent expressed the view that consensus government will continue to serve the needs of the

Northwest Territories in the future. The introduction of party politics was opposed by 87 per cent.^{iv} The few attempts to elect candidates on a party banner have failed. It is unclear whether these electoral failures were a rejection of the individual candidates, their parties, or party politics in general. It would appear that consensus government is an adaptation of the Westminster system that best reflects the values and traditions of the people of the NWT. However, as with any political system, the perceived benefits of consensus government come with certain trade-offs and have, at times, been overstated.

The notion of consensus government as a system wherein all members treat one another with absolute respect and civility is part myth, part reality. Although it is true that debate on the floor of the NWT Legislative Assembly is generally more respectful and less puerile than in most partisan Legislatures, acrimony and angry exchanges do occur. Because such occurrences are not simply part of the landscape in consensus government, they tend to become personal and often carry over outside the Chamber walls. Insults have been uttered, coffee cups have been thrown, and threatening notes and gestures have been brought to the attention of the Chair. The selection of the premier and cabinet by all members in secret ballots has, on occasion, resulted in lasting feelings of betrayal. Several non-confidence motions have been moved against sitting premiers and on occasion ministers have been removed from office or forced to resign by their colleagues. Although oral question period is a relatively respectful and genuine exchange, members often use the preambles to their questions to make political statements, continue debate, or influence ministers to admit to things on the public record to which they would not otherwise admit. Ministers, in turn, are as skilled as their partisan counterparts at tailoring answers to oral questions to meet their own political ends.

While the accountability relationship between ministers and regular members, and between members and their constituents is strong under consensus government, the same cannot necessarily be said of the government's accountability relationship with the public at large.^v In the absence of political parties, the public is not given the opportunity at election time to choose between competing visions of the NWT's future. Individual candidates may present a preferred ideology or suite of policy options, but because the strategic vision and priorities for the government are established by all members after the election, the voter never truly knows what he or she will get if his or her preferred candidate is elected. In fact, the correlation between how an elector casts his or her vote and the selection of the premier and cabinet is very weak as these decisions are made by the members themselves after the election. The result is usually a cabinet made up of seven individuals with very different backgrounds, priorities, and ideological predispositions. Similarly, the public is not given the opportunity to pass judgement on the performance of the government as a whole at election time. Members tend to base their re-election campaigns on constituency issues as opposed to the record of the government as a whole. As one observer noted just over 25 years ago, the people "have no

opportunity to make choices as to how they will be governed. One could be forgiven for thinking that they merely select individuals whom they trust to seek a 'fair' share of the money."^{vi}

Because the government does not have to collectively defend its record at election time, the focus of cabinet and of individual ministers tends to be on maintaining the confidence of the regular members. It has been argued that this preoccupation with keeping at least a portion of regular members on side requires the cabinet to implement a system of shifting alliances with various regular members. As the policy focus of members is to get a fair share of programming and infrastructure dollars for their respective communities, governance and accountability are preoccupied with the equitable distribution of scarce resources as opposed to the implementation of territory-wide policies and programs. A cynic might argue that consensus government is more about arithmetic – convincing three regular members to vote with the government on any given issue, at any given time - than true consensus-building.

As noted above, the ability of regular members to play a direct and meaningful role in the crafting of legislation, budgets, and policies is viewed as one of the defining characteristics of consensus government. It is also a double-edged sword. Draft legislation, budgets, and policies are presented to regular members in advance of their formal introduction in the House on the condition of strict confidentiality. While this gives non-cabinet members the unique opportunity to influence the final product, it also furnishes them with information that they must keep to themselves for several months, even if it will have negative consequences for their constituents. Furthermore, the substantive debate between cabinet and regular members on matters of public policy tends to take place behind closed doors as opposed to on the floor of the House. By the time legislation, budgets and policies are made public, regular members are, as a rule, satisfied with the final product or with their ability to effect further change. It has been argued that the subsequent debate on the floor of the House is "the theatric face of a discussion that was already held in private."^{vii}

There is little doubt that consensus government in the NWT concentrates less power in the Premier and Cabinet than is the case in other mainstream parliaments. It has also been argued that this diffusion of power discourages strong and visionary leadership. Because the premier holds relatively little structural power, his or her ability to impose a course of action on cabinet or the House is significantly weakened. This is most pronounced by the inability of the premier to select and remove members of cabinet at his or her discretion and to dissolve parliament and trigger an election if he or she is faced with an unworkable legislature. Although cabinet is frequently able to encourage the requisite number of regular members to support it on most issues, the implementation of universally unpopular policies, regardless of their merit, is a constant challenge. This is most evident when a government is required to implement far-

reaching fiscal austerity measures or policy changes that negatively impact powerful interest groups.

It has been suggested that the tendency for NWT premiers to not seek a second term of office results in a lack of policy continuity from one government to the next. The opposing view is that the absence of competing political parties results in too much continuity. There has never been a premier elected who did not serve on the cabinet of the previous Assembly. Invariably, the cabinet of each successive government includes members who served in the cabinet of the previous government. As these tend to be the more experienced and influential members of the Legislative Assembly, their opinions and priorities carry added weight around the cabinet table. Because there are no parties to present competing views of the Territories' future, the wholesale overhaul of public policy that tends to happen when one governing party is replaced with another seldom occurs. Similarly, in the absence of party platforms and ideology, newly-elected governments have no common political lens through which to view the suite of policy options available to them. Because each cabinet assumes power without a clear and common mandate from the electorate, the public service is left with the task of coordinating the priority-setting process with members following each election. This is a difficult task for a professional public service that prides itself on political neutrality. It is certainly not a recipe for bold and innovative public policy.

For many of the reasons noted above, consensus government has been widely criticized by academics, pundits, and the public at large. While constitutional development discussions have taken a back seat to other priorities in recent years, it is clear that the NWT exists in a state of political disequilibrium. The implementation of Aboriginal self-government agreements, the devolution of more province-like powers from the federal government, and increasing resource wealth will all put pressure on the system as it exists today. In the absence of a full and focused dialogue about how the NWT's predominant political institution should evolve in the face of these challenges, some view party politics as the cure to its perceived ills and the only viable response to its shortcomings. No laws prevent political parties from finding their way into the Northwest Territories Legislative Assembly. If more than one candidate were ever to be elected on the same party ticket, the resulting impact on the Assembly's processes and traditions would be significant and, in all likelihood, irreversible. For this reason, the people of the Northwest Territories must ensure that such monumental change is of their own making and is implemented with a full understanding of what the trade-offs would be. The same can be said to those who feel that a move towards more consensus-based structures is the answer to the perceived problems that mainstream parliaments face today.

ⁱ Graham White, "Westminster in the Arctic: The Adaptation of British Parliamentaryism in the Northwest Territories," *Canadian Journal of Political Science*, XXIV:3 (Canada: September 1991), 503.

ⁱⁱ *Ibid.*, 521.

ⁱⁱⁱ Graham White, *Cabinets and First Ministers* (Vancouver: UBC Press 2005), 60.

^{iv} Stephen Dunbar, *Seeking Unanimous Consent: Consensus Government in the Northwest Territories*, Master's Thesis, Carleton University, Department of Political Science (2008), 82.

^v Jim Bell, "A Time for Candour: Could the NWT's Noble Experiment in Consensus be in Trouble?" *Arctic Circle* (September/October 1991), 11.

^{vi} Graham C. Eglinton, "Matters of Confidence in the Legislative Assembly of the Northwest Territories," *Third Report of the Special Committee on Rules, Procedures and Privileges*, October 1986.

^{vii} Tim Querengesser, "The (Non) Vicious Circle," *Up Here* (January-February 2009), 56.