

NUNAVIK CONFERENCE ON
SELF-GOVERNMENT AND
THE CANADIAN CONSTITUTION

KUUJJUAQ, NUNAVIK, QUEBEC
NOVEMBER 26-28, 1991

AN ABORIGINAL SELF-GOVERNMENT
AMENDMENT AND THE INUIT OF NUNAVIK

THE CURRENT APPROACH FOR ENTRENCHING
ABORIGINAL SELF-GOVERNMENT RIGHTS.

Based on the current proposals by the federal government and most aboriginal organizations, a constitutional amendment to entrench self-government rights would work in two ways:

- 1) The Constitution would recognize and affirm the right of the Aboriginal Peoples to self-government (most aboriginal groups are currently demanding the recognition of the "inherent" right of self-government);
- 2) In addition, the Constitution would recognize and affirm the rights Aboriginal Peoples may acquire under self-government agreements (commonly referred to as the constitutional protection of self-government agreements).

A constitutional amendment based on these two points would work well for the creation of governments that are strictly aboriginal in nature. The first point would establish that Aboriginal Peoples are self-governing in their own right. In other words, the aboriginal right to self-government does not flow from, and is not dependent on the provincial or federal orders of government.

In this context, a constitutional amendment based on the first point would create space in confederation for an aboriginal order of government. This means that the constitution would recognize three orders of government in Canada; federal, provincial, and aboriginal. As is currently the case with the federal and provincial orders of government, an aboriginal order of government would generally be sovereign in its areas of jurisdiction, and its powers and authorities would be constitutionally protected.

By comparison, all other forms of government in Canada, including municipal, regional, and territorial governments, do not exist in their own right. Their existence, jurisdiction, and power flow from either the federal or provincial orders of government. For this reason, the existence, jurisdiction, and power of these other levels of government can be modified or revoked by the relevant provincial or federal government.

The second of the two points listed above would provide additional constitutional protection

for the Aboriginal Peoples' right to self-government. It would foresee the desirability of negotiating self-governments agreements, and it would further recognize and affirm rights Aboriginal Peoples may acquire through self-government agreements. For example, if an agreement provided an aboriginal government with jurisdiction over such matters as health, education, economic development, language and culture, etc, then the aboriginal group in question would have the constitutionally protected right to be self-governing in all these areas.

**ABORIGINAL SELF-GOVERNMENT AND A
NON-ETHNIC GOVERNMENT FOR NUNAVIK.**

As stated earlier, a constitutional amendment based on the two points described above would work well for the creation of governments that are strictly aboriginal in nature. A government which is strictly aboriginal in nature is an ethnic government. By definition, participation in such an ethnic government is open only to members of the ethnic group in question, and the jurisdiction, powers, and authority of an ethnic government is generally limited to the lands, resources, and people belonging to the ethnic group in question.

Sometime ago the Inuit of Nunavik rejected the notion of an ethnic government on the grounds that its jurisdiction and authority would have likely

been limited only to Inuit and their Category One lands. Under this type of ethnic government, Inuit would have had to forego the ability to govern many of the activities and much of the territory north of the 55th parallel.

Instead, Inuit opted for a non-ethnic or public government, a decision which was recently reaffirmed with the ratification of the NCC's draft constitution for a Nunavik Government. This decision means that the proposed Nunavik Government would be open to the participation of all residents of the region, Inuit and non-Inuit alike. This, in turn, means there would be no ground for restricting a Nunavik Government from exercising jurisdiction over the entire region north of the 55th parallel.

Needless to say, Inuit constitute the overwhelming majority north of the 55th parallel, and will therefore control a Nunavik Government for the foreseeable future. Nevertheless, this does not change the fact that a Nunavik Government will be a non-aboriginal government for the region of Nunavik.

This raises the question of how Inuit of Nunavik can benefit from the proposed constitutional amendments to entrench the Aboriginal Peoples' right to self-government and to create a third order of government within confederation.

An obvious problem is that a non-ethnic Nunavik Government will not be recognized as an aboriginal government, and therefore not be eligible for constitutional protection as a third order of government in Canada. In this context, a non-ethnic Nunavik Government will have no choice but to assume the status of a simple regional government with delegated powers and jurisdiction. Under these conditions, the provincial and federal governments will always be free to modify or revoke powers or jurisdictions they may have delegated to a Nunavik Government.

A possible solution to this dilemma is to have the Nunavik self-government agreement constitutionally protected. The logic behind such an approach is that Inuit would be negotiating and concluding an agreement based on their right to self-government. It follows that the agreement should be given the same constitutional protection that may be accorded to other aboriginal self-government arrangements.

Unfortunately, it is not so simple. When people speak about protecting agreements under the constitution, they are really referring to the fact that the constitution protects the rights that the Aboriginal Peoples acquire through agreements. The difference may seem insignificant, but it means that Inuit rights are protected, and not the entire agreement. In the case of a Nunavik Government, most of the rights, powers, and jurisdiction will be acquired by a non-ethnic body, and not by the

Inuit through an Inuit government. Since the rights, powers, and jurisdiction of Nunavik Government will not be acquired by the Inuit, they will not receive constitutional protection.

It is true that rights assigned directly to the Inuit under a Nunavik self-government agreement will receive constitutional protection. This is likely to be the case for various matters relating to culture and language (e.g. the Inuit right to receive Nunavik Government services in Inuktitut). However, the opportunity to obtain constitutional protection for Inuit rights are going to be limited under a non-ethnic government structure. In other words, under the current constitutional proposals, Inuit opting for non-ethnic government are less likely to benefit from the entrenchment of the Aboriginal Peoples right to self-government.

The solution to this problems requires that the Inuit of Nunavik take steps to ensure aboriginal self-government amendments be worded in such a fashion that they will not penalize aboriginal groups seeking to exercise their right to self-government through non-ethnic arrangements. This could be accomplished if the proposed amendment is consistent with the following:

1. That the right of the Aboriginal Peoples to self-government means that Inuit can opt to negotiate, and enjoy their rights through, non-ethnic government arrangement;

2. That the right of the Aboriginal Peoples to self-government shall form the basis and provide the rationale for the powers, jurisdictions, and resources to be negotiated by Inuit for non-ethnic government;
3. That the right of the Aboriginal Peoples to self-government means that the powers, jurisdiction, and resources of a non-ethnic government can not be modified or revoked by the relevant federal or provincial government without the consent of the Inuit group in question.
4. That the right of the Aboriginal Peoples to self-government means that any non-ethnic governments negotiated by Inuit shall have the special responsibility to preserve and promote the distinct society of the Inuit in question;
5. That all the self-government rights acquired by a non-ethnic government negotiated by Inuit shall be recognized as having been acquired directly by Inuit, and that Inuit can opt to exercise these rights under an Inuit government structure if they can no longer do so under the non-ethnic government.

RECOGNITION OF THE RIGHT OF THE THE ABORIGINAL PEOPLES TO SELF-GOVERNMENT (THE INHERENT RIGHT)

ethnic government

That the right of the Aboriginal Peoples to self-government means that the Inuit, Indians, and Metis are entitled to their own Aboriginal Governments (ethnic based governments);

That the right of the Aboriginal Peoples to self-government shall form the basis and provide the rationale for the powers, jurisdictions, and resources to be negotiated in self-government agreements;

That the right of the Aboriginal Peoples to self-government constitutes a third order of government in Canada, and as such, the powers, jurisdiction, and resources of aboriginal governments are constitutionally protected from intrusions by the federal and provincial governments;

Each aboriginal government is accountable only to its own aboriginal group, and therefore, each aboriginal government automatically has a special responsibility to preserve and promote the distinct society of its aboriginal group;

A self-government agreement can be used to set out the exact powers and jurisdiction of an aboriginal government, and all the rights acquired by the aboriginal party to such an agreement will be given constitutional protection.

non-ethnic government

That the right of the Aboriginal Peoples to self-government means that Inuit can opt to negotiate, and enjoy their rights through non-ethnic government arrangement;

That the right of the Aboriginal Peoples to self-government shall form the basis and provide the rationale for the powers, jurisdictions, and resources to be negotiated by Inuit for non-ethnic government;

That the right of the Aboriginal Peoples to self-government means that the powers, jurisdiction, and resources of a non-ethnic government cannot be modified or revoked by the relevant federal or provincial government without the consent of the Inuit group in question.

That the right of the Aboriginal Peoples to self-government means that any non-ethnic governments negotiated by Inuit shall have the special responsibility to preserve and promote the distinct society of the Inuit in question;

That all the self-government rights acquired by a non-ethnic government negotiated by Inuit shall be recognized as having been acquired directly by Inuit, and that Inuit can opt to exercise these rights under an Inuit government structure if they can no longer do so under the non-ethnic government.

"THE NUNAVIK ACCORD"

**RESOLUTION OF THE NUNAVIK CONFERENCE
ON SELF-GOVERNMENT
AND
THE CANADIAN CONSTITUTION**

**KUUJJUAQ, NUNAVIK, QUÉBEC
NOVEMBER 26, 27, 28, 1991**

WHEREAS the Inuit Tapirisat of Canada is seeking to entrench the Aboriginal Peoples' inherent right to self-government in the Canadian Constitution; and

WHEREAS this right of self-government will be the starting point for the establishment of self-government arrangements for all Aboriginal Peoples of Canada, including the Inuit of Nunavik; and

WHEREAS the inherent right of self-government, in and of itself, may be interpreted as being exclusively an ethnic right which applies only to the establishment of ethnic-based aboriginal self-government arrangements; and

WHEREAS the Inuit of Nunavik have opted to pursue territory-wide non-ethnic self-government arrangements for Nunavik;

THEREFORE BE IT RESOLVED:

THAT this conference calls on the Inuit Tapirisat of Canada to work actively to ensure that any constitutional amendment to entrench the Aboriginal Peoples' right to self-government, including the inherent right of self-government, be worded in a manner which fully accomodates the following:

1. that the right of the Aboriginal Peoples to self-government means that Inuit can opt to negotiate, and enjoy their rights through non-ethnic government arrangement;
2. that the right of the Aboriginal Peoples to self-government shall form the basis and provide the rationale for the powers, jurisdictions, and resources to be negotiated by Inuit for non-ethnic government;
3. that the right of the Aboriginal Peoples to self-government means the powers, jurisdiction, and resources of the non-ethnic government cannot be modified or revoked by the relevant federal or provincial government without the consent of the Inuit group in question;
4. that the right of the Aboriginal Peoples to self-government means that any non-ethnic governments negotiated by Inuit shall have the special responsibility to preserve and promote the distinct society of the Inuit in question;
5. that all the self-government rights acquired by a non-ethnic government negotiated by Inuit shall be recognized as having been acquired directly by Inuit.

THAT this conference calls on Makivik to take all measures necessary to promote the positions of the Inuit of Nunavik regarding non-ethnic government vis à vis the entrenchment of aboriginal self-government rights, including making the appropriate representations to various governments, committees and commissions.

Passed
Nov 28-91.