

## Aboriginal Self-Government in Nunavut

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*Aboriginal self-determination is seen as one way for Aboriginal people to assert their collective identity and improve their socio-economic and cultural status. Devolution to Nunavut illustrates many of the contemporary challenges of self-government. Canada's concerns over Nunavut's administrative capacity and their desire to retain control over natural resources and assert Canadian Arctic sovereignty have made the federal government hesitant to engage in devolution negotiations. Yet such concerns should be balanced with the inherent right to self-government, which is recognized in the Constitution Act, 1982. The cases of the Yukon and Greenland are useful in considering policy options for future devolution negotiations.*

### Introduction

While there is incredible diversity between First Nations, Métis, and Inuit communities in Canada, Aboriginal socio-economic indicators are much lower than for other Canadians. Aboriginal self-determination is increasingly viewed as a way for Aboriginal people to assert their collective identity and improve their socio-economic and cultural status. Because Nunavut has an Inuit majority, it is considered one of Canada's most advanced examples of Aboriginal internal sovereignty. The territorial government is seeking increased responsibility through devolution, which involves the transfer of jurisdiction from a sovereign central government to a sub-national local authority. Devolution negotiations are a complex and lengthy process. The conditions for the success of devolution agreements can include the level of administrative capacity, community cohesion, effective political institutions, financial constraints, and the extent to which centralized authorities are willing to cede authority (Natcher and Davis 2007, 272). If managed effectively, devolution of control over land and resource management may be the way for Nunavut to realize financial autonomy thereby enabling it to improve the quality of life for Nunavummiut. Devolution is also in Canada's best interest, as it solidifies Canadian

Arctic sovereignty claims. The devolution process, however, has been stalled by federal concerns over Nunavut's capacity to assume such responsibility. Examples of devolution in Greenland and the Yukon can provide valuable lessons going forward. The federal government, the Government of Nunavut, and Nunavut Tunngavik Inc. (NTI), the local Inuit authority, each have roles and responsibilities in ensuring the success of devolution.

### **Internal Sovereignty**

Traditionally, sovereignty refers to the formal independence of a state and the powers and responsibilities that are vested in state authority (Macklem 2001, 109). State sovereignty includes, but is not limited to, the monopoly over the legitimate use of force, effective control over territory, economic independence, a common collective identity, and a basic responsibility to provide civilian security. While states are the primary international actors, sovereignty is not necessarily exclusive to states. Canadian federalism has allowed multiple sovereign entities to govern the same territory with separate jurisdictional authorities (Macklem 2001, 110). Furthermore, rather than being based on a single collective identity, Canadian sovereignty includes multiple ethno-cultural groups, some of whom have chosen to assert their right to self-determination within Canada. This more inclusive vision of sovereignty can include Aboriginal groups who are seeking internal sovereignty (Macklem 2001, 124). Historically, Canadian sovereignty depends on maintaining the relationship between Canada's indigenous people and the Crown through treaties of peace and friendship (Macklem 2001, 122). Nunavut's self-determination is a contemporary example that Aboriginal and Canadian sovereignty do not have to be mutually exclusive, and can in fact be complementary.

### **Aboriginal Self-Government within Canada**

The history of Aboriginal people in Canada is both tumultuous and troubled. European colonial powers never acknowledged the political organization and historic land use of Aboriginal Canadians, and therefore ignored any pre-existing Aboriginal sovereignty (Macklem 2001, 121). It was not until 1973 when the Calder case formally recognized pre-existing Aboriginal titles to land that the Canadian government committed to settle all pending land claims (Légaré 2008, 344). The legitimacy of self-determination was

further entrenched when the Constitution Act, 1982 recognized all existing treaty rights as well as the inherent Aboriginal right of self-government (Macklem 2001, 101). Finally, in 2010 Canada issued a statement of support for the United Nations Declaration on the Rights of Indigenous Peoples, which recognizes the indigenous right to self-determination and to their traditional land, territories, and resources (UN 2008). Today, Aboriginal self-government is viewed as a way to right these past wrongs and for Aboriginal people to improve their socio-economic and cultural conditions (Henderson 2007, 15).

### **Nunavut is an Example of Aboriginal Self-government**

Nunavut is a public territorial government, but because 85% of its population is Inuit, Nunavut can be considered an example of Aboriginal self-government in Canada (Henderson 2007, 66). Nunavut is the manifestation of Inuit desires for political autonomy that were first articulated in the 1970s. Nunavut was not included under a previous treaty, which created the opportunity for the Inuit majority to lay their historical claim to their traditional territory (Légaré 2008, 343). After years of negotiation, the Inuit majority asserted self-determination for the first time by approving a referendum to carve their own political entity out of the existing Northwest Territories (NWT) (Légaré 2008, 346). In 1993 the Nunavut Land Claims Agreement (NLCA) was signed by the Government of Canada, the Government of Nunavut, and Tungavik Federation of Nunavut (TFN), the legal Inuit representative (White 2009, 59). The NLCA gained its legitimacy through the public referendum and is constitutionally protected under section 35 of the Constitution Act, 1982 (White 2009, 59).

While the principal motivation for the creation of Nunavut was the preservation and revival of Inuit culture, its future is precariously balanced on a complex array economic and social challenges (Légaré 2008, 336). The NLCA stipulates federal transfers in the amount of \$1.1 billion over 14 years to assist in the territory's political transition and to stimulate economic development (Henderson 2007, 67). While these transfers are vital to the creation of a new territorial governance structure, true autonomy requires a stable source of revenue that can emancipate the province from its overwhelming dependence on federal transfers (Cameron and Campbell 2009, 211). Given this dependence,

scholars remain sceptical of Nunavut's ability to meet its stated goals of healthy communities, unity, self-reliance, and continuing learning by 2020 as set out in the Bathurst Mandate (Légaré 2008, 350). Some Nunavummiut have already expressed their disappointment with the Aboriginal self-government experiment and feel that they enjoyed better services as part of the NWT (Légaré 2008, 350).

### **Nunavut's Financial Challenges**

Moving forward, Nunavut's finances will undoubtedly be the territory's biggest challenge. The Nunavummiut Government is in a particularly tenuous financial position due to its limited revenue and overwhelming budget commitments. Nunavut's extensive taxing authority is compromised by a relatively small tax base, and a relatively small private sector. Furthermore, unlike the provinces, Canadian territories lack ownership of their lands and natural resources (Loukacheva 2009, 103). The federal government retains ownership of 82% of Nunavut's lands and resulting resource revenues, while the Nunavut Tunngavik Inc. (NTI), which replaced the TFN as the Inuit's legal voice, gained control over the remaining 18% through the NCLA (Légaré 2008, 348). The territorial government is completely excluded from resource management, forcing Iqaluit to rely on federal transfers for 90% of its revenue (White 2009, 69).

Geographical remoteness, healthcare costs and energy prices have caused Nunavut's expenditures to increase an average of 6.5% annually, while the federal transfer formula restricts the increase of transfers to only 3.5% per year (Légaré 2008, 350). As of 2005, Nunavut had accumulated \$141 million in debt to compensate for their revenue shortages, bringing the territory dangerously close to the federally imposed debt ceiling of \$200 million (White 2009, 69). The solution to Nunavut's financial problems lies in the devolution of control over lands and natural resources to the territorial government, as this will provide an independent and stable revenue stream and contribute to economic autonomy (Cameron and Campbell 2009, 205).

**Devolution: Benefits for Nunavut**

There are four primary aspects of a devolution agreement: jurisdictional transfer of province-like authorities, transfer of the federal Northern Affairs Program; a resource revenue agreement, and a fiscal benefit (Government of Nunavut 2010). Devolution represents a huge opportunity for Nunavummiut. First, devolution would position the Government of Nunavut as the primary beneficiary of resource developments like oil, gas, gold, precious stones, and metals (Loukacheva 2009, 98). Pending a Canadian decision to export water, Nunavut could also benefit economically from its water endowments (Cameron and Campbell 2009, 204).

Second, the Government of Nunavut would control the pace and scope of resource development, as well as the terms for community involvement, thereby ensuring the benefit to local communities of resource development projects (Henderson 2007, 9). Third, a devolution agreement would create regulatory and legal certainty surrounding land-use, which would likely increase investment in resource development (Cameron and Campbell 2009, 208).

Fourth, the heightened demand for skilled labour due to increased resource development may bring training initiatives and industry employment programs, which would increase capacity (CARC 2006, 12). Finally, and most importantly, resource revenues and private sector development will reduce Nunavut's dependency on federal transfers and help Nunavut to achieve economic and political self-sufficiency (Cameron and Campbell 2009, 200).

**Devolution: Benefits for Canada**

Canada would also benefit from a successful devolution agreement. First, land and resource management is often more efficient when administered by local rather than centralized authorities (Natcher and Davis 2007, 271). Therefore, the financial burden on the federal government and on southern tax payers would be reduced if Nunavut was able to generate sufficient revenue to meet its budgetary obligations. Second, strengthening Nunavut's internal sovereignty is a way for Canada to solidify its own Arctic

sovereignty. As Arctic ice continues to melt, the Northwest Passage and increasingly accessible resources deposits will present significant economic opportunities both for Canada and for Nunavut. These opportunities could be jeopardized by American and European assertions that the Northwest Passage is an international waterway and doubts regarding Canada's ability to assert sovereignty in the North (Loukacheva 2009, 87). Canada has responded by pointing to the NCLA and historical Inuit occupation to support their territorial claims in the Arctic (Cameron and Campbell 2009, 213). Yet in devolution discussions with Nunavut, Canada has asserted that Nunavut's territorial claim ends at the shoreline and that these same waterways belong to the Government of Canada (Irlbacher-Fox and Mills 2007, 9). Canada's international negotiating position would actually be strengthened by recognizing the legitimacy of Nunavut's territorial jurisdiction over their internal waters (Cameron and Campbell 2009, 213).

The question of subsea resources is especially controversial due to Canada's changing stance on the ownership of Arctic waterways. The Government of Nunavut and NTI have begrudgingly accepted a distinction between on-land and off-shore resources for the first round of devolution discussions with the hope that the federal government will eventually relinquish control over both types of resources (Cameron and Campbell 2009, 214). Many believe that Inuit historical occupation and use of both the land and the sea ice legitimizes Nunavut's claim to internal waterways as well as off-shore resources (Loukacheva 2009, 99).

### **The Current Status of Devolution**

The federal government has explicitly identified devolution as a vital pillar of their Northern Strategy, but despite commitments of successive Canadian governments, little progress has been made. Devolution negotiations will involve three key players: the Government of Nunavut and the Government of Canada will represent their respective constituencies, and NTI will represent Inuit Nunavummiut. The Conservative government appointed Paul Mayer as the Senior Ministerial Representative to assess the feasibility of devolution (Cameron and Campbell 2009, 216). Much to the chagrin of Nunavut Premier Paul Okalik, Mayer's report discouraged the federal government from continuing with

devolution negotiations due to Nunavut's critical lack of administrative and technical capacity (Cameron and Campbell 2009, 216). Currently, both the Government of Nunavut and NTI have secured a mandate to negotiate and appointed chief negotiators (Government of Nunavut 2010). The Government of Canada has yet to take either of these crucial steps, and they have cited Nunavut's capacity issues as the reason for their reluctance (White 2009, 68).

### **Nunavut's Capacity Challenges**

While Premier Okalik has criticized the federal government for using Nunavut's lack of capacity to stall negotiations, the territory's capacity shortfalls cannot be denied (White 2009, 68). High staff vacancies, high staff turnover, lack of staff housing in isolated communities, a high cost of living, and low levels of technical expertise among Nunavummiut have severely limited the territory's ability to meet its staffing requirements (White 2009, 71). The Government of Nunavut is also constrained by the added cultural expectations of Inuit Nunavummiut, which include language requirements, adequate Inuit representation in the public service, and cultural sensitivity according to Inuit Qaujimajatuqangit, which encompasses traditional Inuit knowledge (White 2009, 58). In addition to being a logistical barrier, Nunavut's capacity concerns may also undermine the autonomy of Aboriginal self-government. Inuit traditional knowledge of the land is extensive; however, the success of devolution also depends on technical, legal, and bureaucratic expertise (Natcher and Davis 2007, 273).

In many Aboriginal communities, these skills are lacking, which restricts the feasibility of Aboriginal recruitment and may force Aboriginal governments to rely on non-Aboriginal expertise (Natcher and Davis 2007, 273). First, the reliance on non-Aboriginal technical experts may jeopardize capacity building initiatives, thereby continuing the cycle of bureaucratic dependence (Natcher and Davis 2007, 273). Second, non-Aboriginal technical experts are often carried over from the previous centralized resource management regime, and lack the cultural sensitivity and knowledge that makes Aboriginal self-government so desirable. Despite their best intentions, non-Aboriginal management of Aboriginal governance structures can undermine Aboriginal autonomy.

### **Self-rule in Greenland**

Another example of an Aboriginal self-determination is self-rule in Greenland. Greenland and Nunavut share many common features such as geographic isolation, lack of physical infrastructure, large resource deposits, a majority Inuit population, low socio-economic indicators, and reliance on a public rather than a private economy (OECD 2002, 191). The people of Nunavut and Greenland have both asserted some measure of self-determination as a way to improve their socio-economic condition and their cultural status (BBC 2009). In 2009, Greenlanders voted in favour of self-rule, which allowed Greenland to assume responsibility over all their internal matters including land and resource management (BBC 2009). Greenland depends on the federal government transfers for 50% of its revenue, which is a much lower percentage than all three Canadian territories and more importantly, it is a lower percentage than before Greenland won its autonomy (OECD 2002, 193).

Greenland has complete discretion over the funds it receives from Copenhagen, which further supports self-determination and political capacity within the territory (OECD 2002, 192). Local control, however, is not without its risks. These so called “block grants” can adversely affect local resource rich economies similar to the “Dutch disease”, as transfers artificially increase wages and price levels in relation to economic productivity, thereby undermining the competitiveness of investments in non-resource industries (OECD 2002, 192). When discussing devolution and federal transfers from Ottawa to the Northern territories, the “Dutch disease” must be a consideration.

### **The Yukon Case**

Another example of devolution closer to home is the Yukon. In 2003, the Yukon became the first Canadian territory to successfully assume control of province-like responsibilities, including control over all territorial land and natural resource (Cameron and Campbell 2009, 202). While devolution is an important achievement, the effectiveness of the Yukon devolution agreement is contested. There were high hopes amongst the First Nations in the Yukon that local administration would be more appropriate and responsive to Aboriginal concerns, but the Yukon’s legislation and processes largely mirrored those

of the federal government (Natcher and Davis 2007, 276). Critiques of the devolution process also accuse the Yukon of selling out on the issue of net fiscal benefit, which is the portion of the territorial resource revenue that is exempted from the federal transfer formula (Cameron and Campbell 2009, 203).

Under the current agreement, the Yukon is entitled to keep the first \$3 million in resource revenue, and any excess revenue is offset at a rate of 100%, meaning that for every excess dollar of revenue, the Yukon's federal transfer is reduced by 1 dollar (Cameron and Campbell 2009, 203). Furthermore, the devolution agreement did not reduce the Yukon dependency on federal transfers as expected (Cameron and Campbell 2009, 204). It did, however, make the Yukon the sole decision maker in terms of the pace and requirements of resource development (Cameron and Campbell 2009, 204). In addition, while the net fiscal benefit formula was highly criticized, the Yukon has yet to exceed the \$3 million resource revenue cap, so federal transfers have not yet been affected.

### **Policy Options**

Devolution will be an exceptionally complex process, as it will involve the negotiation of federal, territorial, and Aboriginal interests, which may be in competition. The examples of Greenland and the Yukon, as well as Nunavut's existing experience with devolution provides some valuable lessons on how each actor can contribute to a successful devolution agreement. Recommendations for each actor can be separated between actions that should be taken prior to devolution, during the negotiation process, and during the implementation phase.

#### *Prior to Devolution*

Prior to devolution negotiations, the federal government should adjust their Northern Strategy to acknowledge the mutual dependency between Canadian Arctic sovereignty and Nunavut's self-government (CARC 2006, 9). The government should also clarify their position on ownership over the internal waterways in Nunavut, which will have implications for ownership of off-shore resources. If Canada declines to recognize Nunavut's claim over these waterways, this could undermine Canada's international

claims to sovereignty in those waters (CARC 2006, 9). The NTI has also recommended that the federal government involve remote Nunavummiut communities in Resolute Bay, Grise Fiord, and Arctic Bay to strengthen Canadian Arctic sovereignty (Loukacheva 2009, 96).

Finally, the federal government should seek a mandate to negotiate devolution from cabinet and appoint a chief negotiator as a precursor to negotiations.

To create the conditions for successful devolution negotiations, Nunavut must address their capacity issues. The territorial government should build on Mayer's recommendation to develop a comprehensive human resources strategy to address both immediate staff vacancies and build long term technical expertise (Cameron and Campbell 2009, 216). Likely, such a strategy will involve partnerships between territorial authorities and federal, Aboriginal, and private actors. The Yukon devolution process can provide important lessons for the devolution negotiating team. Shortcomings of the Yukon devolution process highlight the need for clear objectives and terms for negotiations, a comprehensive scoping exercise, and adequate resourcing and technical expertise for negotiation parties prior to discussions (Cameron and Campbell 2009, 204).

#### *During Negotiations*

The negotiating teams will have to balance competing priorities of the three parties involved. To address Nunavut's capacity issues, Mayer recommends an incremental devolution process to be coupled with capacity building initiatives. A staged process has partly been implemented through the differentiation of on-shore and off-shore resources, as the first round of negotiations will address on-land resources only (Cameron and Campbell 2009, 216). The negotiating team should also ensure that the devolution agreement includes adequate financial and technical resources for creating new land management bodies and regulatory regimes, capacity building mechanisms to support a territorial human resource strategy, and a revenue sharing structure that is balanced and fair for all beneficiaries (Cameron and Campbell 2009, 216).

Another key issue will be determining an appropriate net fiscal benefit arrangement, which will determine Nunavut's entitlement to federal transfers. In order for Nunavummiut to support a devolution agreement, negotiators must avoid the situation that occurred in the Yukon where residents felt they got the short end of the fiscal benefit stick. The NTI may be able to provide an Inuit perspective to ensure that the majority of Nunavummiut are satisfied with the net fiscal benefit arrangement.

#### *Implementation*

If the negotiating parties successfully reach a devolution agreement, the Government of Nunavut will have no easy task in implementation. The immediate economic impact and the royalty structure of resource development will no doubt be at the top of the list. The territorial administration will have to balance the desire for low royalty rates to encourage investment in a jurisdiction with an already high cost of doing business, and the revenues from higher royalty rates that have not discouraged investment in other jurisdictions (CARC 2006, 11). Many believe that if energy prices remain high, the demand for northern hydrocarbons will spur development despite high royalty rates (Irlbacher-Fox and Mills 2007, 11). Some experts recommend that Nunavut implement a tax and royalty regime like the Yukon's, which accounts for resource prices (Irlbacher-Fox and Mills 2007, 12).

Another possibility is for Nunavut to maintain a relatively lenient royalty regime and use other revenue recovery mechanisms (Irlbacher-Fox and Mills 2007, 12). Other jurisdictions have introduced Non-renewable Permanent Funds (NPFs), or Heritage Funds, to ensure that future generations can benefit from the development of non-renewable resources (Irlbacher-Fox and Mills 2007, 14). Such funds can be used to convert exhaustible resource capital into other more enduring types of capital through social, human, or physical investments, and they can also protect economies against the boom and bust nature of a resource economy (Irlbacher-Fox and Mills 2007, 16).

While NPFs collect revenue from all non-renewable resource development projects, Impact Benefit Agreements (IBAs) are negotiated between local communities and

individual companies for specific projects. IBAs require individual companies to adhere to various standards or engage in community projects in such areas as environmental, social, cultural, financial, business development, or employment and training (Irlbacher-Fox and Mills 2007, 17). IBAs could be one way for the territorial government to engage industry in capacity building initiatives and increase employment amongst Nunavummiut. Resource extraction depends on clear and stable regulatory regimes.

The current investment climate in Nunavut is affected by regulatory uncertainty and bureaucratic inefficiency, meaning that an effective transition strategy is vital to the continuation of business development (Mayer 2007, 41). This is not to say that industry concerns should supersede those of the territorial government, only to say that if devolution discourages investment, Nunavut's economic self-sufficiency may be compromised. The federal and territorial land management authorities must work together to ensure a smooth transition to reduce any disruptions to current investments and resource development projects (CARC 2006, 12).

Finally, to mitigate the risk of the disappointment in the Yukon where the Aboriginal governance structure essentially mirrored the centralized structure, the territorial government and the NTI must work together to consider the Inuit perspective and to ensure adequate accountability in land management (Natcher and Davis 2007, 273). These mechanisms could include community consultation and participation, a role for NTI in land and resource management, IBAs, and capacity building initiatives.

### **Conclusion**

Canadian sovereignty allows for multiple sovereign authorities and has depended on multicultural identities, both of which have allowed Aboriginal Canadians to assert self-determination. As a majority Inuit jurisdiction, Nunavut can be seen as an example of Aboriginal self-government, and the territory is seeking to expand its sovereign authority through devolution of jurisdiction over land and natural resources. Canada can also benefit from devolution, as a strong and independent Nunavut could help secure Canadian Arctic sovereignty as well as contribute to Canada's economy. The experiences

Nunavut, the Yukon, Greenland provide some valuable lessons for the pending devolution negotiations. Throughout the devolution process, the federal government, the territorial authority and the NTI all have vital roles and responsibilities in developing and implementing a successful devolution agreement. If successfully implemented, devolution may be the key to Nunavut's economic and political autonomy, which will improve the socio-economic and cultural status of Inuit Nunavummiut.

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