

Commentary

Devolution in the Northwest Territories: Progress or Poison?

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When the Northwest Territories achieved devolution of lands and resources from Ottawa in April, it was a historic moment in Canada's political evolution. But a key test of devolution's nation-building potential will be how well it supports real aboriginal-government partnership. On that score, there is cause for concern.

On the first day of April, the citizens of Canada's Northwest Territories (NWT) [collectively took control](#) over the land beneath their feet for the first time in their nearly 150-year history. Previously, federal ministers in Ottawa had the final say on land use and resource development there. Now territorial ministers in Yellowknife do. No less important, the NWT now shares with Ottawa the considerable royalties yielded by its natural wealth—oil, diamonds, rare earths, tungsten, base metals and more.

With this ['devolution' of control](#), the NWT took a historic step in its political evolution within Canada. Although still a territory created and limited by federal statute, the NWT assumed powers typically reserved for provinces, which share in the Canadian Crown. As significant as it was locally, NWT devolution was also a nation-building event – and a [sequel to](#) Yukon devolution in 2003.

In practice, nation building in the Canadian North has meant building a durable system of shared governance with aboriginal peoples – in the NWT, the Gwich'in, Inuvialuit, NWT Métis and Akaitcho, Dehcho, Sahtu and Tlicho Dene. This contrasts with the constitutional development of much of southern Canada, which long preceded Supreme Court decisions confirming aboriginal rights and title. For this reason, NWT devolution can be fully understood only against a backdrop of decades of [modern treaty making](#), by which aboriginal peoples have been recognised as co-governors of their traditional lands.

Through their treaties, the NWT's aboriginal governments are guaranteed a share of the regulatory powers that the 'public government' of the NWT (GNWT) now exercises through devolution. The GNWT and aboriginal governments have also [agreed to share](#) some resource revenues. In this context, devolution will fulfil its nation-building promise only if it [fosters collaborative partnership](#) between aboriginal and public government.

But there is already cause for concern, on three counts. First, the Akaitcho and Dehcho have not finished negotiating treaties. With devolution, the GNWT now sits across the table in Ottawa's place. Moreover, the GNWT now derives political and fiscal power from the very land and resources the Akaitcho and Dehcho claim. The GNWT may well prove more able than Ottawa at sharing governance, but treaty making is complex and sensitive. The Akaitcho and Dehcho [worry about the risk](#), and they have so far refused to accept a share of resource revenues from the GNWT [lest it prejudice](#) negotiations.

Second, after the devolution agreement-in-principle was unveiled in 2011, the Gwich'in [loudly criticised](#) the GNWT for selling the territory's natural wealth too cheaply. The GNWT had accepted not only a 50-50 split of resource royalties with Ottawa, but also a cap on the total take. The Gwich'in complained that both split and cap were too low - and that large excess royalties would flow to Ottawa were the resource industry to grow strongly.

As I have [argued elsewhere](#), the cap does seem particularly unfair, and sets an unwelcome precedent for resource-revenue sharing in the Canadian North. Defined as a small percentage of a hypothetical and dubious figure that Ottawa uses to represent the GNWT's budgetary need, and [lacking any connection](#) to a clear vision or fiscal plan for the territory's future development, the cap appears to reflect nothing more than Ottawa's interest in limiting its own costs.

Indeed, the GNWT responded to its critics that, after several years of negotiating, no better deal could be had. Reluctant to reopen its hard-won agreement, the GNWT insisted that aboriginal governments would have to [take or leave it](#). In the end, the Inuvialuit, NWT Métis, Sahtu, Tlicho and – after electing new leadership – [even the Gwich'in](#) had decided it would be better to be counted in than left out. But if in coming years Ottawa siphons off comparatively large royalties from the territory, aboriginal discontent will surely rekindle.

Third - and perhaps most serious – the NWT devolution bill presented to Parliament introduced an unpleasant surprise. Expected were the legalities necessary to transfer Ottawa's control of lands and resources to the GNWT. Unexpected was a proposal for [sweeping changes](#) to the regulatory system the GNWT would inherit, and which gave practical effect to the shared governance enshrined in aboriginal treaties.

Concerned that the NWT's regulatory system was [too complex to attract investment](#), Ottawa proposed to abolish most treaty-based local land-management boards in favour of a centralised

'superboard'. With fewer local members, the superboard potentially implied diminished aboriginal powers. Unaware that this proposal would be bundled with devolution until the bill was read in Parliament in January, most of the NWT's aboriginal governments [were incensed](#) by what they saw as Ottawa's last-minute and unilateral move.

Ottawa responded coolly, claiming simply to be acting on a [long-standing recommendation](#) to rationalise the NWT's regulatory system. For its part, the GNWT [disavowed the superboard](#) - but perhaps tellingly it also [disavowed responsibility](#) for informing its aboriginal partners that Ottawa would link the superboard to devolution, despite knowing Ottawa's intention months before. Indignant at taking one step forward with devolution, only to be pushed two steps back with an unwanted superboard, aboriginal governments called on Parliament to separate the two.

Put to a vote, [a motion to divide the bill failed](#), and both devolution and superboard passed together. The Sahtu and Tlicho have [retaliated with lawsuits](#) accusing Ottawa of infringing on treaty rights. If the courts rule against them, it may merely set the stage for [grassroots resistance](#) to resource development on their traditional lands. No one who shepherded the NWT down the long path to devolution would have wished for such an outcome.

Instead, what they presumably wanted was meaningful progress towards the political maturity of the NWT - and of Canadian Confederation. And [seen as a whole](#), devolution is without doubt a great political achievement. The control and royalties the NWT has won are unlikely ever to be rescinded. But devolution's legacy - its nation-building promise - depends fundamentally on how well aboriginal peoples and government now cooperate to overcome the new risks to their partnership. What seems political progress today could turn political poison tomorrow.