

---

# Nunavut: An Example of Consensus Government in the Canadian Arctic

---

## Hunter Tootoo MLA

*This article provides an introduction to the territory of Nunavut and its place in the Canadian federation. It also offers an overview of the Legislative Assembly's structure and operations. It concludes with a discussion of some emerging challenges and opportunities.*



The territory of Nunavut is over two million square kilometres in size and spans three time zones. Approximately 85% of our territory's 33,000 residents are Inuit. The Inuit Language (which includes Inuktitut and Inuinnaqtun) and English are the major languages in Nunavut. There is a small Francophone community in Iqaluit.

There are 25 incorporated communities in the territory. Iqaluit, the capital, is the largest with a population of approximately 7,000 people. Grise Fiord, Canada's most northerly community, is the smallest, with a population of approximately 180.

### Constitutional Evolution

In 1971 the Inuit Tapirisat of Canada (ITC) was established to represent the interests of Canadian Inuit. During the 1970s, a number of proposals to negotiate a land claims settlement between Inuit and the Government of Canada were considered.

In 1982 responsibility for land claims negotiations with the federal government was transferred to the Tunngavik Federation of Nunavut (TFN), the regional organization representing the Inuit of the Eastern Arctic.

In 1990 an Agreement-in-Principle between the TFN and the Government of Canada was signed. In a plebiscite held in May of 1990, voters across the Northwest Territories approved the proposed

boundary for division of the territory.

In November 1992, Inuit in the Eastern Arctic voted to ratify the proposed *Nunavut Land Claims Agreement*. Following ratification, the *Agreement* was formally signed on May 25, 1993. It contains forty-two separate articles. Article 4, *Nunavut Political Development*, provided for the establishment of a "new Nunavut Territory, with its own Legislative Assembly and public government."

The *Nunavut Land Claims Agreement Act* and the *Nunavut Act* were passed by the Parliament of Canada in 1993 to ratify the *Nunavut Land Claims Agreement*, establish the territory of Nunavut and provide for its government's powers and responsibilities. The territory came into existence on April 1, 1999. The first sitting of the First Legislative Assembly of Nunavut was held on that day.

Unlike a province, Nunavut does not have complete control over public lands and resource management. The Government of Nunavut is pursuing a formal devolution agreement with the federal government that would see greater control over lands and resources transferred to Nunavut, and an agreement on the sharing of royalties from natural resource development, such as mining activities.

### Legislative Assembly of Nunavut

There have been a total of three Assemblies to date:

- 1<sup>st</sup> Legislative Assembly (1999-2004)
- 2<sup>nd</sup> Legislative Assembly (2004-2008)
- 3<sup>rd</sup> Legislative Assembly (2008 -)

During our Assembly's recent spring sitting, we reached the milestone of our 500<sup>th</sup> formal sitting.

The federal *Nunavut Act* establishes the powers and jurisdiction of the Legislative Assembly and the

---

*Hunter Tootoo is Speaker of the Legislative Assembly of Nunavut. This is an edited version of his presentation to the 50th Canadian Regional CPA Conference held in Quebec City in July 2012.*

---

government. For example, the Legislative Assembly has the authority to make laws in the areas of health, education, municipal governance, the administration of justice and direct taxation.

There are presently 19 Members of the Legislative Assembly, three of whom are women. The number of seats in the Legislative Assembly has remained unchanged since 1999.

An independent Electoral Boundaries Commission was established by the Legislative Assembly in the fall of 2010. The Commission's final report recommended that the number of seats be increased to 22.

Last year, the Legislative Assembly passed legislation to implement the recommendations of the Electoral Boundaries Commission. The changes will come into effect at the next general election.

Nunavut and the Northwest Territories are the only two Canadian jurisdictions that pursue a consensus approach to government. This approach has often been described as a fusion of Westminster-style structures and aboriginal views of deliberation and decision-making.

***Candidates for election to the Legislative Assembly stand for office as independents, not as members of a political party.***

Although unanimous agreement is not required for decisions in the Legislative Assembly, unanimity is generally regarded as a desirable outcome. The Regular Members of the Legislative Assembly, although regarded as an "unofficial opposition", do not view their role as opposing government initiatives for the sake of opposition itself. They are no "government-in-waiting."

Some areas of consensus government that have distinct characteristics include:

- Leadership selection and accountability;
- The budget and legislative process;
- Caucuses and Committees;
- Appointment of Independent Officers; and
- The tone of deliberation and debate in the House.

The Speaker, Premier and Cabinet Ministers are chosen by Members of the Legislative Assembly in a secret ballot selection process following the general election. The Members of the Executive Council (Cabinet) are formally appointed to office by the Commissioner of Nunavut, and serve at the pleasure of the Legislative Assembly as a whole.

In order to ensure the accountability of the executive branch of government to the legislature, the Commissioner may not appoint a majority of Members of the Legislative Assembly to Cabinet. At present, the Cabinet consists of eight members, including the Premier. The Premier has the prerogative to assign Ministerial portfolios, but cannot dismiss Ministers.

The Commissioner of Nunavut is appointed by the federal government by Order in Council. The position is similar to a provincial Lieutenant Governor. Formal Mid-Term Leadership Reviews of the Cabinet have been held during each of our three Assemblies.

The government's annual main estimates and departmental business plans are introduced in the winter sitting of each calendar year. To accommodate sealift deadlines, the annual capital estimates are introduced in the fall sitting of the preceding calendar year.

Standing Committees are provided with the opportunity to review departmental estimates and business plans during *in camera* meetings held prior to each budget session. This is to allow for the government to consider recommendations by Standing Committees on spending priorities prior to the finalization and introduction of the estimates.

Standing Committees are provided with the opportunity to review and comment upon plain language legislative proposals prior to bills being drafted and introduced in the Legislative Assembly.

Although many bills are amended during Standing Committee review, a significant number are ultimately passed by the House in unanimous votes. From time to time, Bills have been withdrawn as a result of concerns expressed by Standing Committees and MLAs.

The laws passed by the Legislative Assembly of Nunavut must be transmitted to the federal government after they are given Assent by the Commissioner of Nunavut. Although it has never used this power, the federal government could disallow any law made by the Legislative Assembly within one year of its enactment.

Two caucuses are formally recognized in the *Legislative Assembly and Executive Council Act*. These bodies do not have formal powers under the legislation. The Full Caucus (FC) consists of all nineteen MLAs, including the Speaker.

The Regular Members' Caucus (RMC) consists of all non-Ministers. The Speaker does not participate in this entity's deliberations. Both the Full Caucus and the Regular Members' Caucus elect Chairpersons and Co-Chairs.

---

The Full Caucus serves as a forum in which all 19 MLAs may deliberate in confidence and as equals on such matters as:

- Scheduling of House business;
- Setting of dates for general elections, by-elections and sittings of the House;
- General priority-setting;
- Review of House Bills and other matters under the jurisdiction of the Legislative Assembly; and
- Review of appointments of independent officers, prior to formal motions of appointment being moved in the House.

The Regular Members' Caucus meets during sittings of the Legislative Assembly to plan Members' activities in the House. The Chair of the Regular Members' Caucus may liaise with the Government House Leader and the Office of the Clerk of the Legislative Assembly on scheduling matters and the planning of House business.

The Chair of the Regular Members' Caucus does not have any formal powers with which to discipline members.

The ten Regular Members (MLAs who are not Ministers) of the Legislative Assembly serve on a number of Standing Committees. Standing Committees review Bills, scrutinize government spending and budget proposals and, from time to time, undertake special studies.

Standing Committees hold hearings on a variety of matters, including the annual reports of the Auditor General and other Independent Officers. The *Rules of the Legislative Assembly* provide Standing Committees with the authority to require the government to table formal written responses to their reports and recommendations.

Under the *Legislative Assembly and Executive Council Act*, Standing Committees have the legal power to compel the attendance of witnesses and call for the production of documents. During the 2<sup>nd</sup> Legislative Assembly, these subpoena powers were exercised on a number of occasions.

A number of Independent Officers are appointed by, and report directly to, the Legislative Assembly as a whole:

- The Integrity Commissioner;
- The Languages Commissioner;
- The Information and Privacy Commissioner; and
- The Chief Electoral Officer.

The Auditor General of Canada acts as the auditor for Nunavut, in the same way that the position serves the Northwest Territories and the Yukon.

Although MLAs vigorously question Ministers during oral question period, heckling is rare. Nunavut's

oral question period is sixty minutes in length, which is among the longest in Canada.

***Visitors to our Legislative Assembly often remark on the relatively decorous nature of proceedings. To illustrate this point, I would note that since April 1, 1999, not a single MLA has been "named" by the Speaker and ejected from the House for breaches of order.***

Unanimous consent is frequently sought and received to waive provisions of the *Rules of the Legislative Assembly* to facilitate the conduct of House business. On occasion, the daily question period is extended by unanimous consent.

Although the principle of Cabinet solidarity applies to Ministers when voting on most matters before the House, Regular MLAs are free to vote as they deem appropriate. When casting deciding votes, the Speaker is advised according to traditional procedural principles. Formal motions are often moved to express the sentiments of the House on a variety of issues.

Proceedings of the Legislative Assembly take place in the Inuit Language and English. Our *Hansard* is produced in both Inuktitut and English on a daily basis.

The Management and Services Board (MSB) has authority over the operations of the Office of the Legislative Assembly, the provision of services to Members, the administration of Members' indemnities and allowances, and other areas of responsibility. The MSB is analogous to the Board of Internal Economy of the House of Commons.

The MSB conducts recruitment and selection processes for the Independent Officers of the Legislative Assembly. The Board's recommendations for appointment are discussed by Full Caucus prior to formal motions being moved in the House.

The Board is composed of five MLAs: the Speaker, who serves as its Chairperson, three Regular MLAs and one Minister. Board approval is required for amendments to statutes that fall under the jurisdiction of the Legislative Assembly, such as the *Legislative Assembly and Executive Council Act*, the *Nunavut Elections Act* and the *Integrity Act*.

Elections Nunavut, an independent office of the Legislative Assembly, is responsible for administering

---

territorial general elections, by-elections and plebiscites. Its offices are located in the community of Rankin Inlet.

The Legislative Assembly provides support to the Order of Nunavut Advisory Council, which was established in 2010. This body, which consists of the Speaker of the Legislative Assembly, the Senior Judge of the Nunavut Court of Justice and the President of Nunavut Tunngavik Incorporated, reviews nominations to the Order of Nunavut, which is our territory's highest honour.

Just ten years ago, the proceedings of our legislature were recorded on tape cassettes. We recently undertook a process to convert these to a digital format that will ultimately reside in our territorial archives. Our library has been converting documents of historical interest to digital formats that will be web-accessible.

Our remote location can pose challenges to effective information technology management. Bandwidth limitations hinder our ability to fully maximize such tools as webstreaming of our proceedings.

Viewers in our twenty-five communities can watch the televised proceedings of the Legislative Assembly on their local cable stations. However, households that subscribe to Direct-to-Home satellite television services cannot. In cooperation with the Legislative Assembly of the Northwest Territories, we have requested the Canadian Radio- television and Telecommunications Commission (CRTC) to modify its rules to require satellite providers to carry our broadcasts.

In the fall of 2010, the Standing Committee on Rules, Procedures and Privileges considered the issue of the use of new technologies in the Chamber and committee rooms, including laptop computers and hand-held electronic devices, including blackberries and iPads. A number of our Members are active users of social networking tools.

We are presently in a trial period. For example, although Members are permitted to use their devices during the proceedings of the Committee of the Whole, electronic devices must be shut off during oral question period.

In preparation for the expansion of seating in our Chamber to accommodate the additional Members who will be elected at the next general election, we are also reviewing technological upgrades at Members' desks to facilitate expanded use of technology.

In considering the experience of other jurisdictions, we have noted that some provinces and territories have also established positions to address such issues as whistleblower protection and to provide general ombudsperson services to the public.

Given our jurisdiction's small population, recruitment of independent officers in highly specialized fields is an ongoing challenge.

The Management and Services Board has recently undertaken a number of initiatives to strengthen the framework within which these offices account to the Legislative Assembly for their management of financial and human resources, while fully respecting their independence in such areas as the investigation of complaints and making of recommendations. Initiatives include:

- Clarifying the authority of the Board to issue directives in respect to independent officers' financial management, human resources management, contracting and procurement activities;
- Holding annual meetings with independent officers to review their proposed budgets and business plans prior to their being incorporated into the main estimates of the Legislative Assembly; and
- Developing formal *Position Profiles* for all independent officers that include clearly-defined expectations and accountabilities.

Finally, the Legislative Assembly will expand in size from 19 to 22 seats at the next general election. This will require a review of the size of Cabinet, the number, size and mandates of Standing Committees and a review of certain procedural rules, including the length of oral question period and the number of questions that each Member is permitted to pose. Currently, each Member is permitted to ask up to one main question and three supplementary questions.