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***Planning For Devolution - Principles,  
Process And Guidelines - Volume I -  
Overview***

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PLANNING FOR DEVOLUTION - PRINCIPLES,  
PROCESS AND GUIDELINES - VOLUME I -  
OVERVIEW

9-5-70 Reference Material  
Analysis/Review



**PLANNING FOR  
DEVOLUTION:**

**PRINCIPLES, PROCESS  
AND GUIDELINES**

**Devolution:**

*“transference, (as of rights,  
power or responsibility) to  
another; especially the sur-  
render of powers to local  
authorities by a central  
government.”*

**Volume One**

**Overview**

**Devolution Office  
GNWT  
1987**

# **PLANNING FOR DEVOLUTION: PRINCIPLES, PROCESS AND GUIDELINES**

A Guidebook for Departments of  
The Government of the Northwest Territories

## **Volume One Overview**

Devolution Office  
G N W T  
1987

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## DEFINITIONS

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### **Administrative Transfer**

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A transfer of resources and program responsibility of a subject within the GNWT's authority described in the NWT Act.

### **Agreement in Principle on Individual Transfers**

A federal/territorial agreement to begin negotiations on a particular item. A.I.P.'s would include provisional agreements on the objectives of the transfer and on many of the major issues or principles and processes for reaching agreements on outstanding issues. The purpose of the A.I.P. is for the parties to evaluate preliminary positions and to make a provisional judgment as to whether it is in the interests of the parties to continue negotiations.

### **Delegation**

The granting of administrative or legislative authority from one level of government to another. The senior level of government retains the ultimate authority.

### **Devolution**

The transfer of authorities from one level of government (the Federal Government) to another (the GNWT).

### **Federal/Territorial Framework Agreement**

An agreement between the Federal Government and the Government of NWT to establish a process and a schedule for negotiation.

The Framework Agreement would, among other things, contain provisions describing the process to be followed, the global funding allocated to the programs, participation arrangements for aboriginal organizations, target dates for transferring the various programs, and the authorities being sought and identifying residual authorities to be retained by the Federal Government.

### **Final Transfer Agreement**

The final agreement to transfer resources and program authorities to the GNWT.

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### **Letter of Intent**

A letter from the Government Leader to inform the Federal Government of the GNWT'S desire to begin negotiations.

### **Memorandum of Understanding on Devolution**

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An agreement signed between the Government of the Northwest Territories and the Dene/Metis on devolution.

### **NWT Act**

An Act of the Parliament of Canada which describes the powers granted to the Government of the Northwest Territories to make laws and to provide program and services.

### **Provincial-Type Authority**

An authority described in the Constitution Act whereby a province retains full powers to make policy or legislate.

### **Transfer Department**

The host department which will negotiate the transfer and eventually deliver any program being devolved from the Federal Government.

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## PREFACE

### **o Audience for the Devolution Handbook**

This handbook is intended for Deputy Ministers of the Government of the Northwest Territories, officials responsible for negotiating transfers and other individuals interested in political and constitutional reform.

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### **o Handbook Organization**

Two volumes of this handbook have been prepared. Volume I, Overview, is for the general reader who is interested in obtaining background materials to better understand the overall requirements of the **devolution** process. Volume II, for negotiators and other key individuals involved in negotiating transfer agreements, contains two additional sections; one on transfer procedures and processes, the other, detailed negotiators reference materials. A comprehensive set of appendices are also included in this volume. Copies of Volume 2 can be obtained by contacting the Devolution Office in Yellowknife.

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## Section I

### The Concept and Context of Devolution in the Northwest Territories

#### 1.1 INTRODUCTION

In 1984, the Government Leader announced in the Legislative Assembly that one of the priorities of the Government of the Northwest Territories (GNWT) was to continue progress towards political and constitutional development by taking over “provincial-type” powers held by the Federal Government. The first step in initiating this process was to request the Minister of Indian and Northern Affairs to begin negotiations towards the transfer of remaining provincial-type powers held by the Government of Canada. Subsequently, the Minister of Indian and Northern Affairs received support from the Federal Cabinet to begin negotiations with the GNWT.

The “evolution” initiative does not follow any precise legal formula. Generally, the term is used to cover the delegation of additional legislative powers from Parliament to the Legislative Assembly of the Northwest Territories, as well as the transfer of programs from the federal civil service to the territorial public service.

The Canadian Constitution defines the distribution of powers between the provincial legislatures and the federal Parliament; however, the provisions of the Canadian Constitution which relate to the distribution of powers do not apply to the two territories. In the Northwest Territories, the Northwest Territories Act serves to describe the powers granted to the territories by Parliament. These powers are subject to

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certain limitations set out in the Northwest Territories Act as well as to other acts of Parliament.

When the **devolution** exercise is complete, the Northwest Territories Act will contain a range of legislative powers that is as close to provincial legislative powers as possible. Any change in existing statutory powers is likely to be accomplished either by:

1. Parliament amending the Northwest **Territories** Act, or
2. **The** Governor-in-Council (the federal Cabinet) designating additional powers by **Order-in-Council** under section 13(z) of the Northwest Territories Act.

In **addition** to advancing the government of the **GNWT** constitutionally, the **devolution** exercise will assign responsibility to the **GNWT** for those federal programs normally established by a province to effect those powers.

## **1.2 OBJECTIVES**

The following objectives for **devolution** have been established by the Government of the NWT:

- 1) To promote the development of responsible and responsive government in the NWT.
- 2) To improve access by NWT residents to the decision-making process at the territorial and national level where their interests may be affected.
- 3) To avoid the duplication and redundancy in the provision of public services in the NWT.

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### 1.3 THE PRINCIPLES

Both the GNWT and the Federal Government have developed principles to guide transfer negotiations. The principles are outlined within the GNWT's devolution policy (Appendix 1). The Federal principles are attached as Appendix 2. It should be kept in mind that they are not "cast in stone", as situations often arise which will result in exceptions being made. The approved principles reflect the particular interest of local governments. The main points of agreement are described as follows:

- 1) It is the responsibility of the territorial government to initiate consultations with aboriginal organizations regarding their participation, if any, in transfer negotiations.
- 2) After a transfer has been agreed to, the GNWT may change program authorities or levels of service. However, any additional costs must be borne by GNWT fiscal framework.
- 3) No agreement has been reached on standards for operation and maintenance expenditures or capital replacement of the existing facilities.
- 4) Once negotiations begin and before a final transfer agreement is reached, the Federal Government will consult with the GNWT prior to making any changes to legislation or resource levels.
- 5) Resource requirements should be calculated on the basis of program needs and not on the existing situation (GNWT).

Upon reading the principles of both governments, it will become apparent they are not always consistent, in fact, substantive differences exist in some areas. Inevitably, a "final deal" will involve compromise. Specifically, differences exist in respect to :

- 1) The method of determining the resource base *Program Needs* (GNWT) and the *Existing Resource Base* (Federal Government);
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- 2) The standards to be used in calculating operations and maintenance requirements and future replacement of existing capital facilities.

#### 1.4 THE PROGRAM

The Webster Dictionary defines **devolution** as:

“transference, (as of rights, powers, or responsibility) to another; especially the surrender of powers to local authorities by a central government.”

Given this definition, after a program has been transferred it would have to meet three tests: first, the GNWT would have complete funding and legislative authority; second, the Federal Government would relinquish its powers over the program except where necessary to protect the national interest; and finally, where a transfer concerns crown resources, ownership would be transferred. In essence, the GNWT is seeking transfer of powers and the resources necessary to fulfill responsibilities attached to these powers.

The programs included in the GNWT’s devolution program are outlined in Table 1.

Based on these proposed transfers, the final program transfers will fall into five major departmental structures as identified in Figure 1.

**Table 1**  
**Federal Government Departments/Programs to be Devolved**

Federal Department Branch	Program/Activity to be Devolved	GNWT Department assuming responsibility	Status of Devolution		
			Devolved	Under Negotia- tion	Not Com- menced
Health & Welfare Canada, Medical Services Branch	(a) Hospital Services, Dept. of Health Nursing Stations, Dental Health				
	(b) Public Health Ser- vices	"			
	(c) Extended Medical Benefits	"			
	(d) Occupational Health	"			
	GNWT Regions for Health				
	o Baffin		•		
	o Keewatin			•	
o Kitikmeot			•		
o Mackenzie			•		
o Inuvik			•		
Indian & Northern Affairs, Renewable Resources and Northern Environ- ment Branch	(a) Water Resources, Land Management, Forest Resources	Dept. of Renewable Resources		•	
	(b) Land Use Planning	"			•
	(c) Environmental Protection				
Northern Resource & Economic Planning Branch	Mining Policy and Management	Energy, Mines & Resources		•	
Northern Policy & Coordination Branch	Scientific Research	NWT Science Institute		•	
Transport Canada Canadian Air Transport Admin- istration Canadian Marine Transport Admin- istration	(a) B and C airports	Dept. of Municipal and Community Affairs		•	
	(b) Eastern Arctic Sealift	Government Services		•	

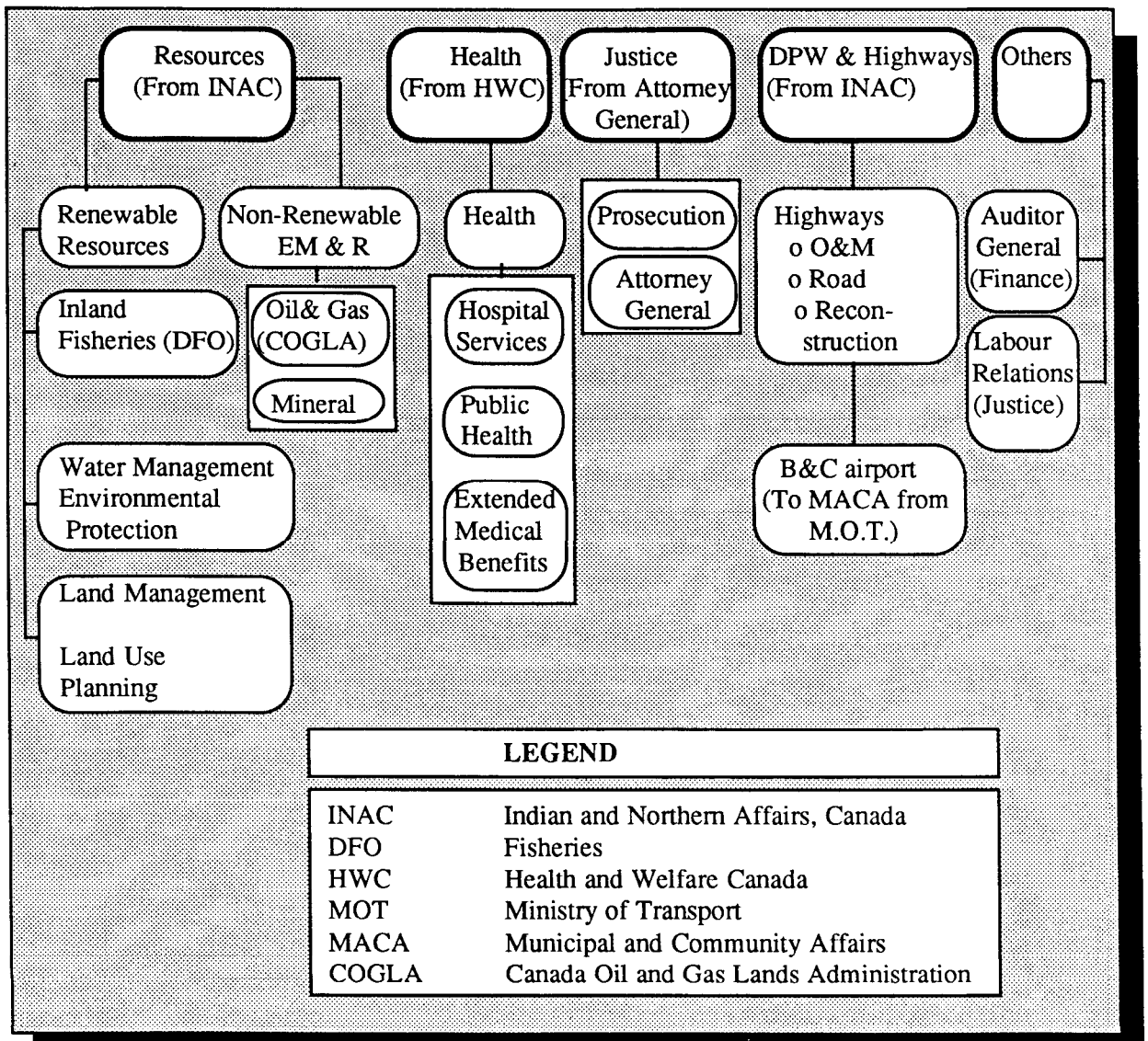
Current as of April 1, 1987

Federal Department Branch	Program/Activity to be Devolved	GNWT Department assuming responsibility	status of Devolution		
			Devolved	Under Negotia- tion	Not Com- menced
<b>DIAND</b>					
<b>Transportation</b> and Infrastructure	Highways	Public Works			
	- Operations/Maintenance	-----°			
	- Highway Reconstruction	-----*			
	- New Construction	-----	--●		
Justice Canada	Prosecutions	Justice & Public <b>Services</b>	-----	△△△△△△△	--●
<b>Labour Canada</b>	<b>Part V, Labour Code</b>	<b>Justice &amp; Public</b> Services or <b>Labour</b> Relations Board & Secretariat	-----	△△△△△△△	△△●
Fisheries & Oceans	Inland <b>Fishery</b> <b>Management</b>	<b>Dept. of</b> <b>Renewable</b> <b>Resources</b>	-----	-----	△△●

### 1.5 NEGOTIATING STRUCTURES

Structures used within the GNWT will vary depending on the scope and complexity

**Figure 1**  
**GNWT Departmental Responsibilities Following Transfer**



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of the program. However, in preparing to begin negotiations, it will be the sponsoring departments responsibility to ensure that:

1. A senior negotiator be given the authority to negotiate.
2. To the extent possible, the Senior Negotiator have no other operational duties that may divert attention from the negotiations.
3. Negotiations be conducted within approved mandates.
4. **Service** departments be directly involved in negotiations.
5. Conflict resolution procedures be established to resolve problems occurring during negotiations.

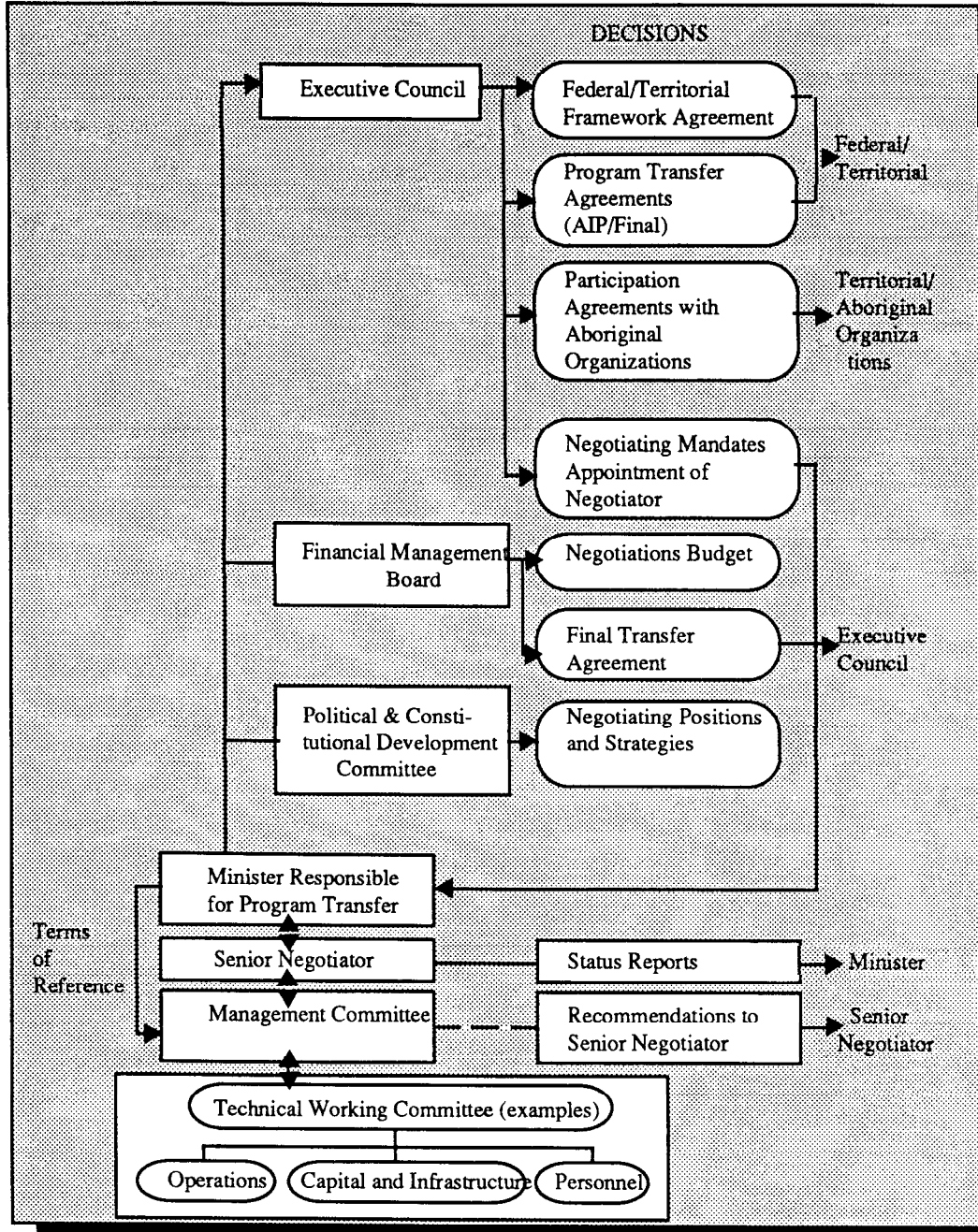
Figure 2 provides a sample organizational model for conducting negotiations.

Under the model process illustrated in Figure 2, the two central officials are the lead minister and the Senior Program Negotiator. The lead Minister is almost always the minister who will be responsible for the program following transfer. While the Minister may be constrained by the general federal/territorial framework agreement and by the negotiations mandate given by Executive Council, s/he will be the main contact from a political perspective in working with the public, other ministers, and the Legislative Assembly. The Minister will be included on the Cabinet Sub-Committee on Constitutional and Political Development when matters relating to assigned negotiations are included on the agenda.

The Senior Program Negotiator will report to the Minister on all issues outside the mandate and any other matters requiring resolution at a political level.

At the official level the **GNWT**, the Senior Negotiator becomes the focal point for all issues relating to a transfer being negotiated. **S/he** becomes responsible for devel-

Figure 2  
GNWT Structure for Negotiations





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oping the negotiations mandate, for establishing and chairing the Management Committee, for negotiating the transfer as well as bridging political and official levels.

The Management Committee is essentially an ad hoc committee of key GNWT officials established to manage the transfer process. The life of the management committee is limited to the period covering the negotiations. Its functions are to devise negotiations strategies, coordinating analysis and research, assessing federal positions, etc.

The Technical Working Committees perform an integral function in the transfer process by identifying and resolving the numerous technical issues that arise during negotiations. Subject areas covered by these committees would include Capital and Finance, Human Resources and Operations. Core membership would include affected departments and Central agencies. These committees would report to the Management Committee.

#### o Responsibilities of Other Government Departments

Service departments will have the same roles and responsibilities with regard to the transferring programs that they have with all existing GNWT programs. Those responsibilities and roles are as follows:

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prepare a post-audit of the transfer, one year after completion of the transfer. This audit would examine how actual expenses compared with budgets transferred and projected expenditures.

Financial Management Secretariat

provide independent analysis of all financial elements of a transfer.

Culture and Communications

assist with all aspects of public relations and public information preparation.

Justice

provide legal analysis of agreements and prepare any new

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**Municipal and  
Community Affairs**

or amended legislation. Should be involved in all legal aspects of a transfer.

handle all aspects of the transfer of lands and **facilities**.

**Public Works and  
Highways**

handle the design, construction and operations and maintenance of all government facilities.

**Personnel**

negotiate personnel agreements, prepare position papers on negotiation with the union, and handle all other personnel matters.

## 1.6 DEVOLUTION FRAMEWORK

The **devolution** of provincial-type authorities will occur within a negotiated government to government Framework Agreement.

- Statement of objectives
- Classification of subjects for negotiation
- Priorities
- Schedule
- Global resource targets
- Organizational structure and process for negotiations
- Description of residual authorities retained by the Government of Canada after devolution

Figure 3 illustrates the relationship between the general negotiations framework and the specific program transfer negotiations that follow.

### 1.6.1 Process for Negotiating Specific Transfers

Negotiations on specific transfers are conducted within the context of a formal **federal/territorial** Framework Agreement on **devolution** or separate guidelines

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adopted by both governments.

### **Stage One - Pre-negotiation**

While the Executive Council has given approval to a broad governmental framework for **devolution**, each program transfer will require further Executive or Ministerial approval prior to negotiation beginning. In preparing for negotiations, the officials responsible for the transfer must answer three questions: what program is to be transferred; why is it in the public's best interest to proceed with a transfer; and what objectives should be established for the transfer. The rationale in each case should be incorporated within the negotiator's mandate. These questions are discussed in the following sections.

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#### **What program is being transferred?**

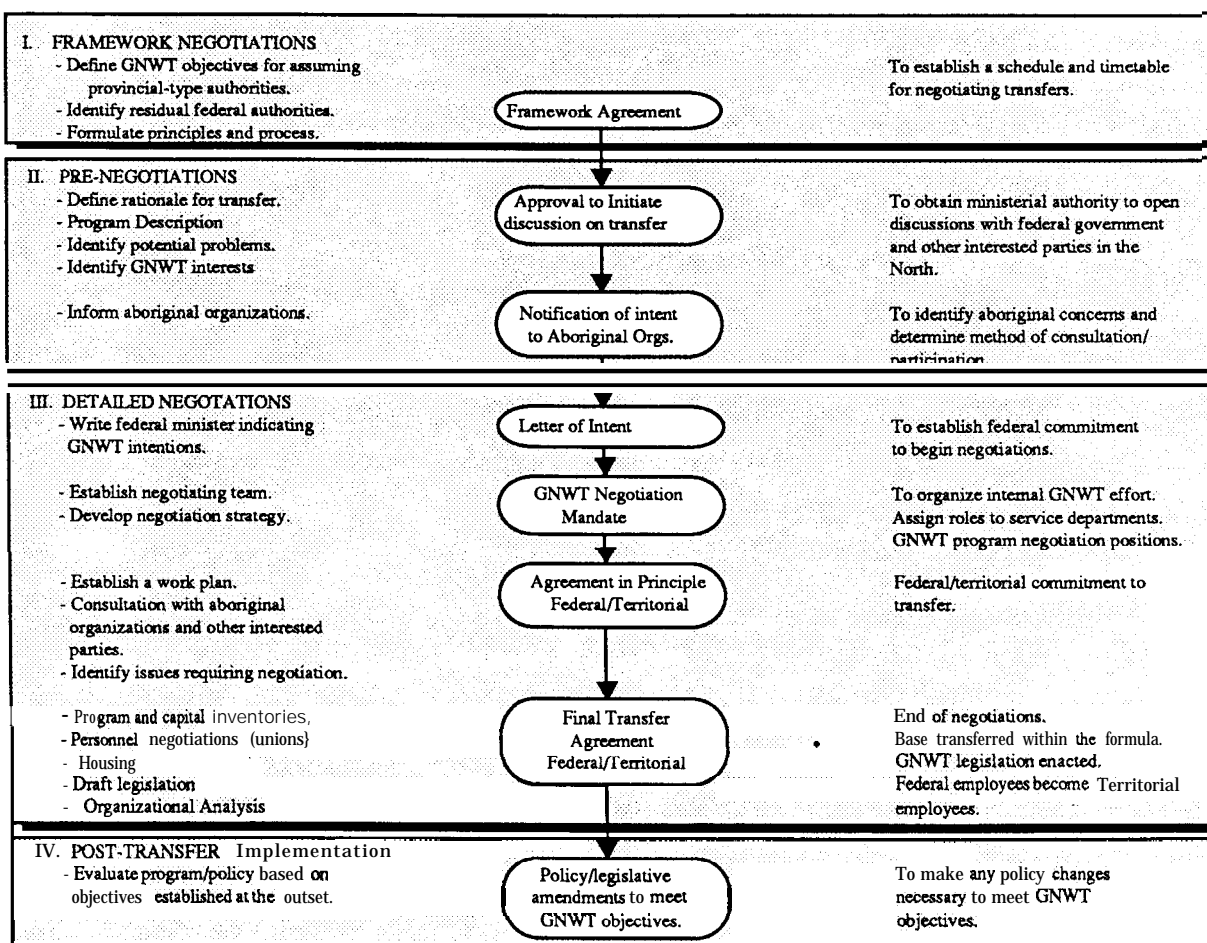
Before negotiations begin, it is important that a thorough review is undertaken of the program to be transferred. This may involve having an independent program and financial audit conducted. Information collected will include program and policy descriptions, expenditure and revenue trends, (3 years actual+ current and budget) legislation relevant to the program, organizational structure, etc. The purposes of this review are to determine the feasibility of undertaking a transfer and to identify the major issues associated with the transfer.

#### **Why is a transfer in the public's best interest?**

It may not always be in the public's best interest for the GNWT to assume program authority over a particular program. The programs requiring the most scrutiny are discretionary programs which may be better carried out by the federal government but are being transferred for financial reasons. The main criteria to be used in making this judgment are the stated objectives and priorities of the GNWT or evidence that the level of services could be improved through GNWT delivery.

#### **What objectives have been established for the program transfer?**

**Figure 3  
GNWT/Federal Governments  
Transfer Process**



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Assuming that a transfer will further GNWT's goals, it will be important for negotiators to know the limits of what constitutes an acceptable "deal". In particular, it will be necessary to decide on resource levels required to deliver a program at an acceptable standard and the level of authority required to achieve program objectives.

## **Stage Two - Negotiations**

After a thorough review is conducted, recommendations are normally made to Executive Council to request the federal government begin negotiations or remove the program from the devolution agenda. If a recommendation is made to proceed, it will be necessary to obtain a mandate from the Executive Council to begin negotiations. The specific approvals being sought should include: a statement of objectives for the negotiations (authorities required, acceptable resource levels, time table on a base year); a description of the programs and services involved including a definition of program objectives based on GNWT priorities; a budget for conducting negotiations; and description of the structure and process to be used during the negotiations.

Once a mandate is obtained, it will be necessary to negotiate an agreement in principle with the federal government on the program transfer. This will generally take the form of a final transfer agreement and clearly indicate subjects which will require negotiations. Executive Council must approve the Agreement-in-Principle. The Agreement-in-Principle is a critical step in the Devolution Process as it contains the agreement on the key elements of the transfer. Following the Agreement-in-Principle, the remainder of the negotiations are primarily a "cleaning up exercise". The subsequent negotiations should be completed within six (6) months.

Negotiations are complete once a transfer has been agreed to by the Executive Council and the federal Cabinet, including appropriate Treasury Board and Financial Management Board approvals.

Following completion of negotiations, there will normally be a number of outstanding issues which will require resolution. A person within the sponsoring department should be assigned the task of following up and reporting on progress.

## **Stage Three - Post-Transfer Implementation**

In some cases, there will be no requirements following the transfer; the program will continue to function exactly as before or these steps will have been taken prior to the transfer coming into effect. In other cases there will be the need to provide for special requirements to integrate the program within the departments program base.

Inevitably, program transfers will involve organizational changes. The reorganizations should be planned prior to beginning the negotiations. Wherever practical, major reorganizations should not be undertaken during the transfer. This maintains program continuity as much as possible. Reorganizations planned prior to negotiations beginning may be implemented through a transfer.

There are several activities which may be required after transfer of a program. These include:

- o retraining
- o review and rewrite program policies and objectives;
- o public information program
- o recruitment of vacant positions

In addition, for all programs, it maybe useful to conduct a post audit to measure the success of the transfer against the original goals, objectives and guidelines as set out by the client department. This should occur at least one year after program transfer and probably again after five years or as required according to GNWT policy.

This audit could be a two part audit: the financial audit completed by the GNWT Financial Management Board while the program audit could be completed by another department of the GNWT or through an external assessment.

### **1.7 FACTORS TO BE CONSIDERED IN A TRANSFER**

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### 1.7.1 Legal Considerations

It is critical that transfer negotiations properly identify the powers required to meet GNWT objectives for transferred programs. The type of powers are discussed in the following sections.

#### Devolution Options

During a program devolution, the Federal Government might transfer to the Northwest Territories certain public property presently controlled by the Federal Government together with legislative powers directly relating to this public property. Alternatively, a transfer might only embrace legislative powers or simply powers to administer a particular program. For example, in the recent forestry transfer the Federal Government initially agreed to transfer proprietary and legislative control of forest resources to the Northwest Territories. Ultimately, however, only certain legislative and administrative powers were transferred,

#### Legislative Control

A transfer of legislative control over natural resources, in the absence of proprietary control, may be a very limited power, particularly in a situation where the Federal Government continues to hold these resources as the public property of Canada. All legislative powers given to the Legislative Assembly by the Northwest Territories Act are subject to other acts of Parliament. The Legislative Assembly would have no authority to limit the federal government use of its public property. In order to derive revenue from lands owned by another party the province would normally exercise its power to tax. However, when the owner of the property is the Federal Government, it is immune from taxation by any other government by reason of section 125 of the Constitution Act, 1867.

#### Delegation of Administrative Powers

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The Federal Government may delegate administrative powers to a territory. In a practical sense such a transfer would allow some territorial discretion in the administration of a program. The Federal Government retains all powers to legislate in relation to the subject matter. Normally an administrative transfer would be governed by a written agreement.

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### Management Contracts

The Federal Government may enter more limited management contracts with the territorial government. The relationships between the parties will be governed by the contract. In such a situation the Federal Government would retain all powers to legislate in respect of the subject matter of the contract.

### Effect of Devolution on Comprehensive Aboriginal Claims

Section 35 of the Constitution Act, 1982 provides for constitutional protection of settlement agreements. Future aboriginal claims agreements therefore might contain provisions that will affect the exercise of provincial-type authority. For example, the Comprehensive Claims Policy (December 1986) contemplates negotiations relating to the participation of aboriginal peoples in public management bodies.

#### 1.7.2 Effects on Transferring Employees

Of all the issues that occur during **devolution**, transfers of employees are the most critical and the most sensitive. The Federal principles established for transferring employees are listed as follows (these are agreed to by the GNWT):

- o All federal public servants appointed pursuant to the Public Employment Act and affected by transfer actions will be offered jobs with similar levels of compensation by the Territorial Government.
  - o Information will be made available on the transfer processes to all affected personnel and their duly recognized bargaining authorities at the earliest possible date.
  - o The Federal and Territorial Governments will ensure respectively that the
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total resources ...**required** to maintain the program including crown-owned employee housing ...**will be transferred**.

The negotiators will be required to undertake a number of activities prior to finalizing a transfer agreement including:

#### Review of Union Contracts

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For those employees who are classified (covered by a union contract), contracts will be analyzed to develop a basis for determining equivalency between **GNWT** and Federal contracts. This will include identifying procedures to effect a transfer (Eg. six-month layoff notice must be given prior to a transfer coming into effect).

Based on experience to date, some of the adjustment measures introduced for **transferring** employees include:

- 1) The matching of salary and benefits to those being received prior to a transfer.
- 2) Eligibility for federal job competitions.
- 3) Retention of all accumulated seniority benefits,
- 4) Other matters as negotiated between the parties.

#### Classification of Job Descriptions

It will be necessary to rewrite all job descriptions according to the **GNWT** classification standards. Following a transfer, the transferring employee will generally be in the same position in terms of both salary and benefits.

#### organization Analysis

It will often be necessary to redefine the organizational environment prior to a transfer being completed. As a consequence, it will be necessary to reclassify **transferred** jobs. This should be completed at, or near, the beginning of negotiations so

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that transferring employees can make an informed career choice.

### Transitional Measures

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Prior to transfer negotiations commencing, it will be necessary to develop a communications plan to ensure that employees are informed of progress. Other issues requiring an understanding between the parties to a transfer include filling positions vacated during the transfer, vacant positions, transfer of training and development funds, and application of affirmative action guidelines.

### **1.7.3 Financial Arrangements**

The Northwest Territories (and Yukon) financial arrangements with the Federal Government are unique in Canada. Unlike provinces, the Territories do not participate in the Fiscal Equalization Program due to the large difference between the territories' fiscal capacity and fiscal need.

In place of equalization, the Territories have entered into fixed tax rate formula financing agreements with the Federal Government. The objective of these formula financing agreements is to:

- o ensure the Territories have adequate base funding to provide levels of service to NWT residents comparable to the services enjoyed by other Canadians, and
- o provide incentives to the Territories to raise own-source revenues.

The formula used is comprised of three basic elements:

- o The Base - the base is the total gross expenditure amount that is required each year to provide the current level of service to NWT residents. The original base amount was negotiated at the outset of formula financing and is increased by negotiated base adjustments for such things as program transfers and the impact of federal initiatives on the Territories. In addition to negotiated base adjustments, the base is increased annually by the application of the P-L escalator.
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o Provincial-Local Escalator - the provincial-local government (P-L) escalator is the annual multiplier applied to the base to increase the funding available to the Territories to deliver services to NWT residents. It is intended to provide for demographic and inflationary increases. The escalator is calculated as a three year moving average of the annual aggregate growth in the expenditures of provincial and local governments in Canada.

o Own-source Revenues - Own-source revenues are those sources of income to the territories other than the annual operating grant from the Federal Government. They include such items as personal and corporate income tax, commodity taxes, licences, fees and permits, interest income, recoveries, transfer payments under cost-shared programs and Established Programs Financing. To calculate the annual operating grant receivable from the Federal Government, own-source revenues are deducted from the gross expenditure base of that year. It should be noted that certain revenue sources are not included in the total of own-source revenues that are used to determine the annual grant level. These are identified in Appendix B of the Agreement.

The other important aspect of the formula financing agreement is the “fixed tax rate” concept. When the formula was negotiated it was felt that the tax effort of the Territories should accrue to the benefit of the NWT residents who would be paying any increased taxes. As a result, a special provision was made that the total calculation of own-source revenues, that would be deducted from the annual gross expenditure base to determine the annual operating grant level, would be based on current year volumes at the tax rates in effect as of March 31, 1985. The resulting amount was termed “hypothetical own-source revenues”.

The result of this provision is that the effect of rate initiatives on own-source revenues accrues to the benefit of the Territories, and does not merely reduce the amount of the operating grant. However, an important qualifier must be made. If the own-source revenue item tax rate is based on the price of a particular commodity, and that price is subject to inflationary pressures, then the expectation is that the tax rate must increase proportionally to any price in-

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crease, or the relative “tax burden” will not be maintained (i.e. ad valorem taxes, liquor profits, most expenditure recoveries such as staff house rentals).

The final aspect of formula financing which must be discussed is the “revenue fail-safe”. The purpose of the revenue fail-safe is to safeguard the Territories and Canada from revenue shortfalls and windfalls. Its application is quite simple. At the beginning of each fiscal year the parties to the formula financing agreement project the value of the P-L escalator for that year, as well as the level of hypothetical revenues. Based on the projections of these two formula components, the year’s operating grant level is estimated. At the end of the year, if the actual hypothetical own-source revenues were greater or less than the amounts used to estimate the operating grant level, then the level of the operating grant is adjusted to compensate. This adjustment provision is termed the “revenue fail-safe”.

It is important to understand the elements of the formula financing agreement prior to entering transfer negotiations. If you require assistance, please contact the Financial Management Secretariat. An example of the application of the formula is found in Appendix 3.

#### **1.7.4 Aboriginal Participation**

Devolution, division, claims agreements, constitutions for future governments of the Western and Eastern Arctic, and to a lesser extent the entrenchment of the constitutional right to aboriginal self-government through the First Ministers Conferences will define the form and style of future northern governments.

Although devolution, division and constitutional development are public processes, special arrangements or guarantees of aboriginal involvement in public administration included in future claims agreements may have significant effects on the design of post devolution programs, policies and administrative arrangements. Therefore, it is essential that where resource management rights have been officially agreed to that aboriginal organizations be involved.

GNWT/DENE Metis Memorandum of Understanding (M.O.U.)

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Prior to beginning negotiations with the Federal Government, the GNWT attempted to develop northern consensus on the subjects to be devolved and the degree of involvement of aboriginal organizations in the **devolution** negotiations. On April 24, 1986, a formal agreement on **devolution** was signed with the Dene/Metis.

Under the agreement the various **devolution** subjects were divided into three categories. The subjects identified in each category are listed as schedules to the agreement. The schedules have never received formal ratification. Formal participation agreements in accordance with the M.O.U. have been signed as part of the Health transfer.

These three stages further divide into six major steps; the balance of this section outlines each of these steps in greater detail (See Figure 4).

**APPENDICES**

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## APPENDIX 1

### **GNWT DEVOLUTION POLICY**

Policy approved June, 1987. The policy is currently being revised and will be issued on approval of Executive Council

The Government of the Northwest Territories is responsible to the Legislative Assembly for furthering the political and constitutional objectives of the people of the Northwest Territories for access to and control over public decisions made at the community, regional, territorial and national level. To fulfill this policy, the GNWT is seeking transfer of provincial-type powers retained by the Federal Government.

This policy is based on the following principles:

1. Political and constitutional development must be advanced in ways that will protect aboriginal rights.
2. The processes for the transfer of powers will be designed to allow those most affected by a particular transfer to have access to information which may affect their interests and to participate where necessary when interests are not being represented by the GNWT.
3. Negotiations on transfers will be conducted between the Government of the Northwest Territories and the Government of Canada in accordance with mandates approved from the respective cabinets.
4. After powers have been transferred, the GNWT may exercise its authorities in any manner deemed to be in the best interests of the people of the NWT including delegation to regional or community bodies.

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5. That the basis of calculating resources to be transferred should be program needs and not the existing program financial base.

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6. Once negotiations on the transfer of a program have commenced with the Government of Canada, the Government of Canada shall not knowingly diminish the resources dedicated to such a program or make significant legislative or policy changes without prior consultation.

7. The Governments of Canada and the Northwest Territories will ensure that all employees affected by a transfer are treated fairly and openly.

8. The Governments of Canada and the Northwest Territories will undertake to identify and expeditiously enact all appropriate authorities and legislation prior to a final transfer agreement. The Government of Canada will identify any residual authorities that remain.

9. The negotiation process will be carried out to minimize disruptions to existing programs and to the program being transferred.

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Government Leader and  
Chairman of the Executive Council

Reference

For elaboration of this Policy refer to Directive.

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## Appendix 2

### GUIDELINES FOR FEDERAL PROGRAM TRANSFERS TO THE TERRITORIAL GOVERNMENTS

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The federal government shall, in transferring programs to the territories, be guided by the following principles:

1. The timing, conditions and nature of transfers of federal programs or federal control and administration of resources (eg. forestry) shall be developed in concert with territorial governments and shall reflect territorial government priorities. DIAND shall provide a focus for information and coordination for such transfers.
2. Full consultation with native groups shall occur with the intent to resolve concerns they may have with respect to transfers.
3. Program transfers shall take into account native claims and must be consistent with claims agreements ratified by all parties and with native claims settlements.
4. There shall be developed, within the transfer process, appropriate measures for public information and communications.
5. **The** federal government will ensure that the total resources devoted to programs to be transferred (including capital and regional office/Ottawa Program Service Costs) are identified and made known prior to and/or during the negotiation process, and that those required to maintain the program will be transferred; and
  - a) Crown owned employee housing normally associated with the program will be identified and transferred;
  - b) Existing capital infrastructure associated with the program, as well as historic and current capital forecasts and expenditures shall be disclosed;

c) Once negotiations on the transfer of a program have commenced with a territorial government and a date for transfer established, the federal government shall not diminish the resources dedicated to such program before the established date of transfer without prior consultation with the territorial government;

d) While it is recognized that the quality of service associated with a transferred program may increase through local delivery, it is not the intention that the cost-base of the program and its delivery will be increased upon transfer. Post-transfer costs for enhancement of the program being transferred will be the responsibility of the Territorial Government;

e) As the transfer parties agree, and where it can be proven necessary, there may be one-time only additional expenditures occasioned by a program transfer to the territorial governments. Any such expenditures will be negotiated between the two parties.

6. The federal government shall, as a first priority in every instance, seek guarantees from territorial governments that all federal public servants appointed pursuant to the Public Service Employment Act and affected by transfer actions will be offered positions with similar levels of compensation by the territorial governments. For those employees who do not accept such positions, the federal government shall attempt through established employee assistance program(s) to find alternative placements within the federal public service.

7. Information will be made available on transfer processes to all affected personnel and their duly recognized bargaining authorities at the earliest possible date. Full consultation will occur between federal officials and the respective bargaining authorities on the best procedures for dealing with affected personnel.

**8. The** federal government shall undertake to identify and expeditiously enact all appropriate authorities and legislation prior to final transfers and will identify prior to the finalization of any transfers, any residual federal responsibilities which remain, as well as overlapping or joint responsibilities, if any. Upon completion of a program

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transfer, the program will become the responsibility of the transferee.

9. A program transfer will not be construed in any manner to prejudice further constitutional development for the Territories.

It is the desire of the federal government that the territorial governments cooperate with the federal government in the transfer process:

a) To provide their priorities for transfers and work with federal departments in the development of the timing, conditions and nature of individual transfers;

b) To consult with native groups with the intent to resolve concerns they may have with respect to transfer;

c) To work with the federal government in the development of appropriate measures for public information and communications;

d) To disclose any existing territorial capital infrastructure associated with a program to be transferred;

e) To consult fully with federal officials and the bargaining authorities of transferring employees on the best procedures for dealing with personnel affected by transfers and, more particularly to offer positions with similar levels of compensation to all federal public servants appointed pursuant to the Public Service Employment Act:

f) To, in cooperation with federal officials, identify and enact appropriate legislation and authorities prior to the finalization of any transfers.

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## APPENDIX 3

### EXAMPLE OF 1986-1987 FUNDING FORMULA

#### Escalator Application

Base Year 1982-83	Escalator 1983-85	Escalator 1985-86	Escalator 1986-87	Escalated Expenditure Level
451,000	1.218	1.071	1.115	656,000

#### 1986-87 Grant Calculation

Escalated expenditure level - **656,000**

Less: Territorial Government revenue,  
recoveries and transfer payments  
at current year volumes and base  
period tax rates **210,000**

Indicated federal grant **446,000**

#### 1986-87 Revenue Framework Calculation

Federal grant 446,000

Plus: 1) Revenues, recoveries and transfer payments at current volumes X base period tax rates	210,000
2) Revenues and recoveries at current volumes X the difference between base period tax rates and current period tax rates	4,000
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Total revenue framework	660,000

\*NOTE: The above values are an example only, and are not intended to reflect the current actual GNWT calculation.

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Normally, when an agreement to transfer has been reached, a base year is selected to provide a starting point for calculating funds allocated to the program. When negotiations are completed, the negotiated amount (base program funds) is included in the Territories gross expenditure base. In subsequent years, program funding increases are provided for, as a result of the application of the P-L escalator to the increased gross expenditure base. It is very important to ensure that, if the base year selected for calculating funds allocated to the program is prior to the year in which the transfer will take effect, that adequate inflationary adjustments are negotiated to the base amount before it is added to the gross expenditure base.

As a rule, there are four types of funding involved in each program transfer:

**1) Direct Program Funding in the Department**

This involves operational funding budgeted and expended within the department that is specifically allocated to the program. This funding is normally expended on direct payments or services to the program client or is related to the administration of the program.

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## 2) Indirect Program Funding in the Department

This involves operational funding budgeted and expended within the department that is not specifically allocated to the program. This funding is normally for services to the program itself rather than directly expended on the program client. In most departments, some administrative and management services are grouped in organizational units distinct from the individual programs. These service groups then provide services to the program on an as required basis. This makes the determination of an appropriate allocation of the budget of these service groups to the program difficult, but necessary. Common examples are personnel, finance, administration and policy sections, as well as the offices of senior department management.

## 3) Indirect Program Funding Outside the Department

This involves operational funding budgeted and expended on the program by departments other than the one in which the program is contained. Like service groups within the departments, these external funds are normally expended on services to the program rather than to the program client. Common examples are building lease and maintenance costs for office space and staff housing (i.e. Public Works Canada ), legal services (Department of Justice), and purchasing and contract services (Department of Supply Services).

## 4) Capital Funding

This involves funding which may or may not be budgeted within the department and is expended to:

- a) annually replace field equipment, office furniture and equipment, specialized tools, computers etc., and
- b) periodically replace larger capital assets such as mobile equipment, buildings and facilities or works associated with the program.

In the case of annual capital replacement funds, a budget is normally built into the program base and is relatively easy to identify. Occasionally, however, these funds are budgeted in a service **group** within the-department and are much more difficult to break out.

The most significant identification problem will be for periodic capital replacement funds. In almost all cases it will be necessary to arrange for a site inspection of all major capital assets. This inspection will identify deficiencies that should be corrected before transfer (or funding provided with the transfer) plus the condition, remaining useful life and replacement value of each major asset.

From the information compiled by the site inspection, it is then possible to calculate the amount of base funding that should be provided on transfer. The calculation would be as follows:

$$\frac{\text{Total Replacement Cost of All Assets}}{\text{Weighted Average Remaining Useful Life of All Assets}} = \text{Capital Base Funding Required}$$

This calculation can be based on all assets, specific groups of assets or individual assets depending on the nature of the assets and their homogeneity.

In some special cases an alternate approach to funding for replacement of major capital assets may be appropriate. However, technical expertise within the GNWT should be sought to review any alternate method chosen.

Before concluding this discussion on program funding, it is appropriate to mention revenues that may be associated with a program. In most cases the revenues that are associated with a program will be deducted from the funding associated with the program when the calculation of the appropriate gross expenditure base adjustment is

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made. As a result, examination and verification of revenue amounts is equally as important as for expenditures. In reviewing revenues it is important to determine:

- Who has traditionally collected the revenues and are these collection resources part of the transfer?

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- What has been the historical relationship between revenues and expenditures in the program? Is the level of revenue directly linked to the level of expenditures?

- What has been the historical level of uncollected versus billed revenues? How is this accounted for within the program?

- How sensitive is the level of revenues to actions by program staff?

- How are revenue rates determined? Who authorizes a change?

- Upon transfer, will the GNWT still be eligible for the same revenue arrangements?

- Once transferred, can these revenue sources be identified separately?

In assessing the future resources required to deliver a program, a number of tests should be applied:

1) Are future needs being met by the program predictable? Are they controllable? If not, are the costs (above those provided for by the formula financing P-L escalator) of meeting these needs provided for; i) in the base transfer? ii) in recourse to the federal government?

**WHAT IS THE FINANCIAL RISK ASSOCIATED WITH FUTURE PROGRAM NEEDS? HOW IS THIS RISK BEING MINIMIZED?**

2) Have sufficient funds been provided to meet annual capital asset replacement requirements plus meet the cost of replacing all major capital assets when their useful life is over?



**3) Are** there real cost differences in delivering the program between the federal government and GNWT? These can be due to:

- lost economies of scale
- regional cost differences
- different standards and government-wide policies
- different collective agreements and employee benefit packages

Have these cost differences been identified? How are they to be mitigated or funded?

**4) Are** there one time program transfer costs? Have these been identified and funding negotiated?

**5) Have** all the revenues associated with the program been identified? Is there potential for substantial changes in revenues?

**6) Are** there any significant events associated with the program that maybe the result of external causes or previous federal commitments that may affect the costs associated with the program being transferred? (i.e. litigation, contract provisions, pending legislative revisions, public reviews, regulatory hearings etc.)

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**APPENDIX 4**

**MANDATE OUTLINE**

**TITLE:** \_\_\_\_\_

**PROGRAM DESCRIPTION**

- 1) Describe existing program (who are the stakeholders and what needs are being met by the program).
- 2) Identify source of authority (statute/policy).
- 3) Identify current resources assigned to program.

**RATIONALE FOR TRANSFER**

- 1) Why is a transfer being initiated at this time?
- 2) What are some of the current problems and what effect will a transfer have on them?

**GNWT OBJECTIVES FOR UNDERTAKING TRANSFER**

**PROPOSAL SUMMARY**

- 1) Describe proposal in brief including:
  - (a) What powers are being sought?
  - (b) What resources are needed to meet objectives?
  - (c) Develop bottom line positions and contingencies.

**CONSULTATIONS**

- 1) Identify stakeholder interests and develop plan for meeting their information needs.

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## **STRUCTURE FOR NEGOTIATIONS**

- 1) Identify lead negotiator and reporting relationship.
- 2) How are the other government departments' information needs to be met?
- 3) Identify resources required to complete transfer (include one time personnel costs, facility inspections, stock inventories, legal counsel and drafting of legislation).

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## **ISSUES**

- 1) Effect on claims
- 2) Impact on other government initiatives.
- 3) Impact on existing programs/organization.

## **WORK PLAN**

- 1) Identify critical dates.
  - 2) Work to be assigned to other parties.
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-