

# Devolution

FOR  
DUMMIES

By Guy Quenneville

***Chances are, the average NWT resident doesn't have a clue what devolution is. I know I didn't – that is until I launched myself into an obsessive quest to define, in the most digestible terms possible, what devolution will mean for the NWT - and why you should care.***



- How much money is at stake when it comes to resource revenues from Imperial Oil's Norman Wells production field?
- How are the the GNWT's new land, water and resource management duties going to simplify the regulatory process for miners?
- Who thinks the GNWT is getting a raw financial deal - and why?

***The answers to these questions – and more! – are but a flip of the page...***





Let’s start with some numbers, shall we?

**\$65.3 million:** If devolution takes hold two fiscal years from now, as hoped, this is how much the feds will give the GNWT to deliver the programs and services it will inherit from AANDC – everything from issuing prospecting permits to dealing with squatters. This amount, to be increased each year, will come in addition to the hefty federal transfer payment (\$1.1 billion this fiscal year) that accounts for so much of the GNWT’s revenue. Our transfer payments aren’t going anywhere.

**\$28 million:** Besides creating a pile of new work for the GNWT, devolution will also generate \$28 million in annual spin-off business opportunities. Got a business that creates or prints government fact sheets and letterheads? Then this is the time to dust off your design templates.

**\$26.5 million:** The amount the GNWT is receiving to help it make the post-devolution transition. The cash is essentially earmarked until the signing of the final agreement, which is expected to occur this fall. This is the federal government’s way of saying, “Here’s some money to help with the move, son.”

**\$65 million:** With devolution in place, this is what the GNWT estimates it would have kept in royalties from the 2011-2012 fiscal year. To put it in perspective, the figure is about on par with this year’s operating budget for the territory’s Department of Environment and Natural Resources. The GNWT predicts this amount will increase to \$100 million by 2020. See Chapter 3 for more on resource revenues.



Read it for yourself

Terms that will come up often

<b>AIP:</b> The devolution agreement-in-principle, inked in early 2011.	Development Canada – the department the GNWT will inherit its new powers from. Formerly known as INAC (Indian and Northern Affairs Canada) and, before that, DIAND (Department of Indian Affairs and Northern Development).	<b>Gross expenditure base:</b> An estimate of the GNWT’s annual spending requirements. It plays a big role in determining the GNWT’s net fiscal benefit. (See Chapter 3 for more info on both.)
<b>D-Day:</b> Devolution Day: April 1, 2014. That’s the day the territorial government expects the final devolution agreement will take hold.		<b>Feds:</b> Federal government. This is not meant as a slur; I just didn’t want to have to repeat the words “federal government” every time, the better to cram this piece with as much info as possible.
<b>AANDC</b> (pronounced “and-see”): The federal department of Aboriginal Affairs and Northern	<b>Net fiscal benefit:</b> Stripped to its essence, this simply refers the direct financial benefit the GNWT will see from devolution every year.	

The big picture

Before I tackle specific topics, there are a few overarching things you should keep in mind about devolution.

**This ain’t the first time.** The GNWT has been through devolution several times since 1967, when Yellowknife became the capital. Sometimes this has happened through formal agreements with the feds, sometimes not. Between 1987 and 1995, six agreements transferred authority over hospitals, highways and forestry to the GNWT.

So why is this latest round such a big deal? “It’s the last big jurisdiction,” says Martin Goldney, the GNWT’s chief negotiator for devolution. In addition to managing its own land, the GNWT will finally get a share of resource revenues, most notably, royalties. With \$3 billion in infrastructure needed in the next five years, the territory needs every penny it can get. “Every community I go to has a big shopping list of (needs). Everybody wants more programs, more infrastructure,” says Premier Bob McLeod. People want money for early childhood development. Schools want to be able to offer phys-ed classes, or shop. Balancing those needs with the needs of industry – which wants infrastructure to help exploit the territory’s resources – is something the GNWT will have to be strategic about, McLeod says. “There’s only so much that you can expect a government of 43,000 people to pay for,” he says.

In the nearer-term, devolution will bring relief on the regulatory front. When it comes to issuing land and water permits, or the approval of environmental assessments, the final authority will rest with the GNWT, not some delay-prone federal minister buried in the enclave of Ottawa. The way it works now, “If AANDC has a process that requires ministerial approval ... it has to go up the AANDC-NWT food chain and the AANDC-Ottawa food chain. Then finally it gets to the minister’s office,” says Shaleen Woodward, who heads the implementation branch of the Yellowknife-based devolution office. “[After devolution], there’s just going to be one food chain.”

Government responsiveness will be quicker, she adds. “You can talk to an MLA in the grocery store on Saturday and it can become an issue in the legislative assembly on Tuesday.” And because the GNWT will have a direct financial stake in seeing development happen, it will have every reason to make sure the process runs smoothly. “...[We] feel very strongly a one-month delay will put huge pressure on the minister here and staff here,” Woodward says. “A one-month delay probably does not exert a great deal of pressure on a federal minister.”

**The NWT is not about to become a province. Not yet, anyway.** The NWT has its powers delegated to it by the Parliament of Canada, through the NWT Act. The provinces, on the other hand, have their own constitutional authority. That’s what makes them provinces. But it will be a while – McLeod figures another 15 to 20 years – until the NWT makes it to the big kids’ table. Adds Goldney: “Provincehood is a long-term objective, but we have to recognize that there are differences. There’s a vast geography and a small population base, which limits the territory’s ability to raise revenue in the same way that the provinces can.”

Becoming a province at this stage would be bad, really. The NWT would go from getting transfer payments, which account for as much as 80 per cent of its revenue, to getting what the other provinces get, equalization payments, which account for as little as nine per cent of revenue in Alberta to 33 per cent in PEI and New Brunswick. It would be much, much less than what the NWT gets now. Devolution, then, is “the best of both worlds,” as Petra White, the GNWT’s senior communications officer for devolution,

puts it. “[You] remain a territory and keep getting the transfer payments, but then also have the province-like powers, which is the situation the Yukon is in.”

**Will the federal government be done supporting the NWT financially, once devolution happens?** Not by a long shot. If the Northwest Territories was becoming a province, then, yeah, maybe. Once a region fights for provincial status, it’s essentially admitting it can take care of itself financially, and the feds can, in good political conscience, withdraw fiscal support. But the NWT is only getting province-like powers. Even with provincehood, the complete pulling of the purse strings is unlikely to happen anyway. If the feds believe the country as a whole can benefit from a project, they’ll decide to chip in, as they did recently, to the tune of \$1 billion, for a new bridge linking Ontario to its neighbour to the south, Detroit, Michigan.

Still, for added security, the GNWT made sure the agreement in principle included a chapter committing Canada to holding ongoing discussions with the GNWT in the post-devolution age about areas of strategic investment (hint, the Mackenzie Gas Project).

“We recognized ... that we’re not going to have the same deep pockets that Canada would have,” Goldney says. “We didn’t want to be in a situation where we’re unable to pursue some economic objectives as a result of devolution.” The feds have already displayed their willingness to chip in, their \$150-million pledge towards the Tuktoyaktuk-to-Inuvik highway being the latest example.

The Negotiator

Or as he calls himself, the NWT’s “devolution geek”

Martin Goldney looks a lot younger than you’d expect the GNWT’s chief negotiator of devolution to be. But Goldney, 41, knows his stuff – more than anyone would ever want to know about devolution, actually. And he’s got the work hours and an instantaneous recall of every section of the AIP to prove it. “This is nowhere near a 40-hour job,” he chuckles. “We don’t like to think about all the hours. But it’s a labour of love. This kind of work doesn’t come along often in one’s career. This is nation building.”

A lifelong Northerner whose mother also worked for the GNWT and whose father operated heavy equipment at Giant Mine, Goldney has been on the devolution file since 2002, when the latest series of talks formally began. For more than a year now, however, he’s the guy who’s headed the GNWT’s main table negotiations with the federal government, and debriefed the premier.

The GNWT has made a lot of progress in the last 10 years, he says, especially when it comes to how much it will receive in resource

royalties. At one point, a figure of no less than \$30 million was floated – “which didn’t hold a lot of appeal to us as negotiators, or provide a lot of comfort,” Goldney says, “because you set a floor and it soon becomes a ceiling.” By contrast, the current arrangement would have put \$65 million

in the GNWT’s pocket last fiscal year. A similar victory was won when the GNWT convinced the feds that it needs at least \$65 million (as a base) to deliver AANDC’s programming ever year – considerably more than the \$42 million it costs Canada to do the same. “It was difficult negotiations,” Goldney says.

The NWT has also benefitted from the Yukon being the first territory to go through devolution. The Yukon didn’t leave much time for contemplating how devolution would actually be implemented. But the GNWT has built in an 18-month implementation period to get itself ready for D-Day. It’s realized the benefit of “starting early rather than waiting until you’re finished negotiations and then turning your mind to it,” Goldney says. Not that the Yukon hasn’t done well for itself, he hastens to add. “I don’t think anybody could suggest things haven’t gone well for the Yukon if you look at the state of their resource economy and the confidence industry has in them to deliver its services.” **gq**



PHOTO: MICHAEL ERICSSON



“You may have noticed some changes around here...”

For the average NWT resident, the most noticeable difference post-devolution will be the increased size of the NWT government.

**Same territory, new boss.** Come April 2014, the GNWT is going to have a lot more workers on its payroll. Exactly how many, in total? It’s tough for the GNWT to know at this stage. But here’s what the GNWT can say: There will be up to 175 new GNWT jobs specifically reserved for former AANDC workers who were already based in the NWT prior to D-Day. This infusion alone will increase the territorial government’s workforce by about 3.5 per cent – and that’s not taking into account a further crop of new jobs that devolution will create within the GNWT. I’ll get to that.

To be clear, no AANDC workers from Ottawa or elsewhere in the south will be initially offered jobs. Meanwhile, permanent AANDC–NWT workers affected by devolution will be offered jobs by the territorial government no later than six months before D-Day. If they accept, they – along with those who decide not to switch over to the GNWT – will be laid off by the feds on D-Day, freeing them up for the territorial government. If anyone who’s not from the NWT ultimately lands one of those jobs, it will be because a Northern federal employee already declined it. Long story short: NWT residents will get first pick. “We don’t want to make the AANDC folks antsy,” Woodward says. “They’re reading the tea leaves and saying, ‘Well, are they going to take me or not?’ The answer is: Every single affected employee in the AANDC–NWT office that they identify will be given a job offer by us.”

**But will they take it?** The GNWT is confident most AANDC employees will, as it’s required to offer ex-federal employees a job that is “reasonably comparable,” salary-wise, with their former posts, Goldney says. These people will also stay where they are, whether it’s in Inuvik (six positions), Hay River (four), Norman Wells (three), Fort Smith (two), Fort Simpson (three) or Yellowknife, so anyone who doesn’t want to budge from the community they currently call home can rest easy. And proponents of decentralization who fear devolution will take these jobs away from smaller communities need not fear, either.

Besides not having to put their houses up for sale, prospective GNWT

employees will enjoy other perks, Woodward says. “In our system, you get more time off,” she says. Non-management GNWT employees who’ve worked for eight to 15 years and are part of the Union of Northern Workers receive 25 days of vacation. Federal employees who’ve worked the same period, generally speaking, get 20 days. Says Woodward, “We have those lovely winter bonus days where, for every five days of annual leave you take in the winter, you get a day off.”

**Spreading the love.** Beyond inheriting approximately 175 AANDC positions, the GNWT will be creating *another* set of jobs. How many is hard to say. The GNWT is currently knee-deep in the process of figuring out how many new people (in addition to the 175 already mentioned) it will ultimately need. As Woodward explains, “Part of our challenge is going to be identifying where [AANDC] gets outside support from other federal departments (like legal advice from the federal Department of Justice, for example), and then understanding how we’re going to replicate that support.”

As to whether *those* jobs will be decentralized, McLeod says, “We’re looking for opportunities to decentralize not only through devolution but also by reviewing existing GNWT programs.” As it stands now, three quarters of the territorial government’s workforce works outside Yellowknife. To attract new residents to come North in general, McLeod says the GNWT will push for continued increases to the Northern residency tax deduction.

**Let’s keep the Xerox flowing, people.** AANDC’s operations in the NWT generate a lot of contract work: IT services, the supply of everything from paper to water coolers, etc... Will the GNWT inherit all applicable contracts from the feds? That’s currently being assessed, says Woodward, but the primary goal is to ensure “a smooth transition.” While some national IT contracts may not be transferrable to the GNWT, the majority of AANDC–NWT’s contracts are already serviced locally.

PHOTO Sean Kilpatrick/CP Images

There are a number of other projects being developed as future mines. Which of these do you expect will be in production over the course of the next 10 years? It’s difficult to predict with any certainty. Mining is based on a commodities market, which influences whether development companies wish to pursue their projects. As well, all projects have to be scrutinized under the regulatory process.

**How closely are you watching the NWT devolution negotiation process?** Very closely. We’re encouraged that they’re making progress and there are many lessons to be learned from the experiences of both the Yukon and NWT. One of those lessons is that a devolution agreement must strengthen and improve the current regulatory regime, to create more certainty for all stakeholders – from community members to resource companies.

**Some have raised doubts about Nunavut’s readiness to take on the management of land,**

water and resources. AANDC minister John Duncan, just over a year ago, said the territory wasn’t ready. There was the 2007 report commissioned by the federal government, which said the territory didn’t have the staff or the skills needed to do the work. What, in your view, has changed between 2007 and 2012 to make Nunavut ready? Nunavut was ready in 2007 to begin negotiations and we are still ready today. Devolution is not a “winner takes all” style of negotiation. It’s about building a better regulatory system and repatriating our decision-making authority.

Do you think Nunavut’s having one land claim will make its negotiation process easier compared to the NWT? The fact that there is one land claim agreement with Nunavut Tunngavik Inc. (NTI) will certainly facilitate negotiations. We’re very fortunate to have such a strong and supportive party to the negotiations. That being said, Nunavut is distinct and we’ll have our own unique challenges. We have a historic infrastructure deficit that will require creative solutions as we work towards transferring responsibility for land management from the federal government to the territory.

**What will you use the money you get from royalties for?** The needs of tomorrow are difficult to anticipate, but today our most pressing need is to invest in housing and infrastructure... We’re seeking the right to make the decisions and collect the royalties on Crown land. Once we get these rights, we can talk about what we’ll do with them.

– responses edited by GQ

\$6 billion: That’s the estimated value of the basic infrastructure needed in Nunavut over the next 20 years

Show us the money

Now we get to the sexy stuff: resource revenues. But the process won’t be as simple as saying, “Gimme that cheque!”

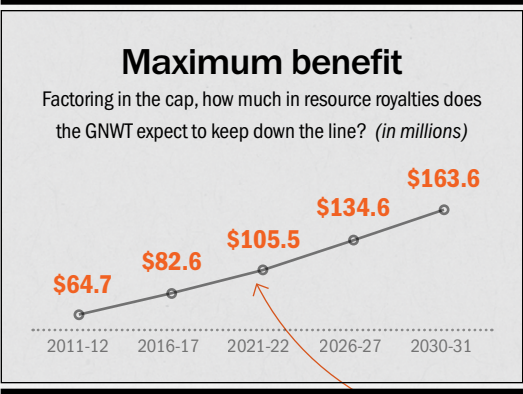
**The net fiscal benefit.** You may have heard this phrase. Basically, it refers to what, in the post-devolution age, will be the GNWT’s financial takeaway from resource revenues (the royalties collected from companies producing oil, gas or mineral resources on NWT public land being the chief example). I say “takeaway” because it’s not like the GNWT is going to suddenly inherit a giant treasure chest and be able to hog it. It’s going to have to play nice.

Here’s how it will work: The duty to collect all resource revenues will fall to the GNWT, but it will only keep 50 per cent, as it will have to give the other half to the feds. If the GNWT’s share goes over a negotiated cap – which is five per cent of the territorial government’s annual spending requirements, or what’s known as the gross expenditure base (GEB) – then the amount it earns over the cap will be subtracted from its transfer payment. The GNWT will keep its

50-per-cent-share, but not, ultimately, what it made over and above the cap. It’s only if the value of the GNWT’s share of resource revenues is less than the cap that its transfer payment will go untouched.

Confused? Think of it this way: If you’re on welfare (transfer payments) but you have a part-time job (resource revenues), your take-home pay from that job will be limited, because you’re already getting financial support courtesy of welfare. You can’t get too greedy, is the idea.

As far as royalties are concerned, the GNWT’s share would have exceeded that cap only three times since 1999. (See **TABLE A**, on the next page.) But will the cap be breached in the post-devolution age? The GNWT doesn’t think so. Not often, anyway. The GEB will be increased by four per cent a year. So as the GEB grows, so will the cap. In 2020, it’s expected the cap will reach \$100 million.



What about Nunavut?

Canada’s youngest territory is in a hurry to evolve, too

In May, Nunavut’s own bid for province-like powers got a kickstart when it announced the appointment of a chief GN negotiator – its very own deputy minister of environment, David Akeeagok. With negotiations with the Crown set to begin, Nunavut premier Eva Aariak recently shared with me what the territory hopes to get out of devolution – and why industry should care.

**How will devolution benefit the business community of Nunavut?** It will create more certainty. Much as our land claim agreement clarified title over Inuit Owned Land, devolution will clarify, once

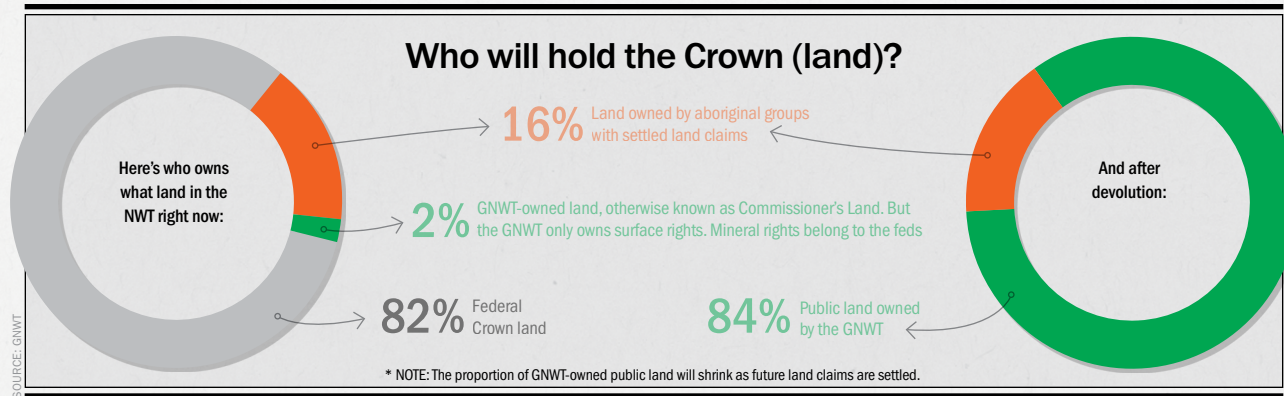
and for all, who has control and administration of the Crown Lands, which make up 80 per cent of our land. It will ... eliminate a layer of government project approval. A closer connection between resource companies and the territory will result in the needs of communities being better reflected in the development of projects. The spinoff benefit from a more vibrant business sector is that private businesses in Nunavut can build secondary industries in support of resource development

**Nunavut Tunngavik Inc. (NTI) – the Inuit organization that makes sure the land claim is**

**adhered to – has received its first royalty from the owner of the Meadowbank gold mine near Baker Lake – \$2.2 million. How much of the land that Meadowbank sits on is Inuit-owned?** It’s 100% Inuit-owned. NTI owns all subsurface rights, and Kivalliq Inuit Association owns all surface rights.

Devolution will not affect any negotiations between Inuit organizations and resource companies and, in particular, it will not diminish any existing rights under the Nunavut Land Claims Agreement, including those rights regarding resource royalty arrangements.





**Somebody thinks the GNWT is getting a raw deal.** Last year, the Gwich'in Tribal Council, which represents about 2,500 aboriginal residents in Inuvik, Fort McPherson, Tsiigehtchic and Aklavik, released a report criticizing the financial terms of the AIP. The Gwich'in, it should be mentioned, have not signed the AIP; as of press time, the council was suing the GNWT for allegedly failing to consult it prior to the signing of the AIP. The report – co-authored by Lew Voytilla, the one-time head of the GNWT's Financial Management Board – states that the five-per-cent GEB cap is too low. According to one of the report's resource revenue

forecasts – a “high case” scenario that doesn't include offshore development but does include the Mackenzie Gas Project – the GNWT could see as much as 72 per cent of its resources revenues clawed back by the federal government. The report also says the NWT's share of resource revenues should not be limited to 50 per cent, the same condition imposed upon provinces under the equalization payment scheme. That condition, the report says, “is simply a pragmatic resolution to the issue of sharing between provinces when Alberta has much larger energy resources than any other province.”

**TABLE A**

**What would have happened if devolution was in place?**

After D-Day, the GNWT will keep 50 per cent of the royalties it collects in the NWT – subject to a cap. As this table shows, the territorial government would have only breached that cap three times between the fiscal years 1999-2000 and 2010-2011.

Fiscal year	Total royalties (which went to the feds)	What the GNWT's share would have been	The cap as it would have been set then	Would the cap have been hit?	The GNWT's resulting share of royalties
1999-2000	\$23.7 million	\$11.85 million	\$36.1 million	No	\$11.85 million
2000-2001	\$27.3 million	\$13.65 million	\$37.1 million	No	\$13.65 million
2001-2002	\$33.8 million	\$16.9 million	\$38.6 million	No	\$16.9 million
2002-2003	\$39.9 million	\$19.95 million	\$40.6 million	No	\$19.95 million
2003-2004	\$74.7 million	\$37.35 million	\$42.9 million	No	\$37.35 million
2004-2005	\$159.8 million	\$79.9 million	\$45.3 million	Yes	\$45.3 million
2005-2006	\$92.5 million	\$46.25 million	\$48.1 million	No	\$46.25 million
2006-2007	\$34.3 million	\$17.15 million	\$50.5 million	No	\$17.15 million
2007-2008	\$87.9 million	\$43.95 million	\$53.3 million	No	\$43.95 million
2008-2009	\$140.4 million	\$70.2 million	\$55.9 million	Yes	\$55.9 million
2009-2010	\$112.7 million	\$56.35 million	\$58.7 million	No	\$56.35 million
2010-2011	\$124.2 million	\$62.1 million	\$61.7 million	Yes	\$61.7 million

\* Does not include royalties paid out to aboriginal groups with settled land claims, nor does it cover the federal government's one-third interest in the Norman Wells production field.  
\*\* Keep in mind, the GNWT will be giving part of its share to aboriginal groups.

SOURCE: GNWT

Over the cap by \$34.6 million

Over the cap by \$14.3 million

Over the cap by \$400,000

The total lost due to the cap: \$49.3 million

**TABLE B**

**How the pie could be shared**

The GNWT will keep half of all resource revenues it collects in the NWT. Of that, it will give up to 25 per cent to the territory's aboriginal groups. But that's only if all seven groups sign the final agreement, as per the current resource revenue sharing AIP. That agreement may change between now and D-Day, but using the current terms, this is how things could, potentially, play out.

	GNWT	Aboriginal groups (collective share)	The respective shares for the fiscal year 2011-2012
If three aboriginal groups sign on	89.29%	10.71%	\$58/\$7
If four aboriginal groups sign on	85.72%	14.28%	\$56/\$9
If five aboriginal groups sign on	82.15%	17.85%	\$53/\$12
If six aboriginal groups sign on	78.58%	21.42%	\$51/\$14
If all seven groups sign on	75.01%	24.99%	\$49/\$16

**Aboriginal co-signers to the devolution AIP**  
(as of July 23, 2012)

**Signed on**

- The Northwest Territory Metis Nation
- The Inuvialuit Regional Corporation
- The Sahtu Secretariat Inc.

**Not currently signed on**

- The Tlicho Government
- The Gwich'in Tribal Council
- The Dehcho First Nation
- The Aklavik Territory Government

**What does the report commissioned by the Gwich'in Tribal Council propose, then?**

That the net fiscal benefit should include 100 per cent of NWT resource revenues – including royalties from the feds' one-third interest in Imperial Oil's Norman Wells production field. (More on that in Chapter 5.) Plus, they say, the cap should be raised to 15 per cent. If those parameters were in place and plugged into the same “high case” scenario previously mentioned, the GNWT would see an average potential surplus of \$11.6 million between 2011 and 2040. Under the terms of the current AIP, it says, the surplus would only amount to \$4.6 million. To view the Gwich'in's complete assessment of the agreement in principle, scan this QR code.



**Don't some aboriginal groups already get royalties?** Few realize this, but yes. Since 2001, the federal government has shared \$35 million in Crown royalties with three aboriginal groups with settled land claims: \$10.8 million has gone to the Sahtu Secretariat Inc., \$11 million to the Gwich'in Tribal Council and \$12.8 million to the Tlicho Government. That figure covers mining in the Mackenzie Valley, plus a share of the Crown royalty from the Norman Wells production field. “There's a

bit of devolution going on already,” says Tom Hoefer, executive director of the NWT & Nunavut Chamber of Mines. The Sahtu, Gwich'in and Tlicho will continue to collect these royalties from the federal government even after they start getting their share of the GNWT's royalties.

**What is the proposed sharing arrangement?** Aboriginal groups that sign on to the final devolution agreement could collectively receive up to 25 per cent of the GNWT's share of resource revenues. For the fiscal year 2011-12, that would have amounted to \$16.3 million. But that “up to 25 per cent” share is predicated on all seven aboriginal groups signing on to devolution. If not all seven NWT aboriginal groups are on board, “then that pie gets a little smaller,” Goldney says.

There are currently only three aboriginal co-signers to the AIP. If they prove the only aboriginal groups signed on to the final agreement, they will collectively receive only 10.71 per cent of the GNWT's share, not 25 per cent. (See **Table B**, at the top of this page.) As for how that collective share gets divvied up between the groups: That's currently under negotiation, though the GNWT has suggested some models. For example, it could be a base amount with adjustments made for the number of communities and the cost of living. But, Goldney adds, “No formula is perfect.”

**Here a mine, there a mine, everywhere a mine**

Royalties don't really mean much if you don't have a lot of mines in production. Even then, the royalties will heavily depend on the financial strength of each mine, which will depend on the price of commodities, and so on. Which begs a question: What new mines will the NWT have in its arsenal starting in 2014? I checked in with the owners of six promising projects currently sitting on Crown land and asked them when they believe they'll start commercial production.

<b>2014</b> Canadian Zinc's Prairie Creek base metals project / Mine life: 20 years	<b>2015</b> Tyhee Gold Corp.'s Yellowknife gold project / Mine life: 10 years minimum	<b>2016</b> De Beers Canada's Gahcho Kue diamond project / Mine life: 11 years
<b>2014</b> Fortune Minerals' NICO base metals project / Mine life: 18 years	<b>2016</b> Avalon Rare Metals' Nechalacho rare earths project / Mine life: 20 years minimum	<b>2018</b> BHP Billiton's Ekati diamond mine could potentially cease production
<b>2014</b> Tamerlane Ventures' Pine Point base metals project / Mine life: 15 years		<b>2024</b> Rio Tinto's Diavik diamond mine could potentially cease production



Oil and water

Where do oil and gas fit into the resource revenue equation? It depends what area of the NWT you're talking about.

**I drink your milkshake! Or, the Norman Wells situation.** Since devolution talks began 20 years ago, few topics have generated as much heated discussion as Canada’s ownership stake in Imperial Oil’s Norman Wells production field. Indeed, it’s this very topic that resulted in a “logjam” during negotiations of the AIP until the matter was set aside for later discussion, McLeod says, because the feds are standing firm to the belief that their interest should not be transferred to the GNWT. So whether the territorial government will receive any resource revenues from that interest remains unclear at this point.

The federal government’s one-third ownership dates back to a pact it signed with Imperial Oil in 1943 called the Norman Wells Proven Area Agreement. The feds also collect a five-per-cent gross royalty on the remaining two-thirds owned by Imperial Oil, even though they don’t have anything to do with how the field is run and they haven’t made any investments in it. Basically, they just get a cheque from Calgary every year.

And what a cheque. The field is by far the most lucrative source of NWT resource revenues. During the 2010-2011 fiscal year, the field generated \$102 million in revenues for the feds – or “profits,” as they’re referred to in the Public Accounts of Canada. (See **Table C.**) Small wonder the feds appear to want to hold on to it for dear life.

**What did the AIP ultimately say about Norman Wells?** It was left very open-ended so that work on the AIP could wrap up and the push toward a final agreement could begin. On the one hand, the AIP says the feds’ one-third interest will not be transferred to the GNWT under the final agreement. Bummer, right? But then it also commits the parties to further discussing – during negotiations of the final agreement that are taking place right now – whether the GNWT will see any resource revenue from that interest. When asked about the Norman Wells ownership stake in June, Goldney said the GNWT would be sticking to its guns. “... [W]e would suggest that it’s a resource revenue no matter what you call it. It’s not unlike any other resource revenue that government derives from public lands and resources of the NWT, and should be included in the total amount of resource revenue discussions.”

Even if the GNWT doesn’t get a taste of that revenue, it will definitely inherit the federal government’s five-per-cent gross royalty on Imperial Oil’s share. That hasn’t been a sticking point during negotiations, says Goldney. For the 2010-2011 fiscal year, that would have amounted to five per cent of \$102 million, which is \$5.1 million. Not quite \$51 million – one half of the feds’ “profit” in 2010-2011 – but it’s better than nothing.

**Wax on, wax off.** Since 2007, energy companies like BP and Imperial Oil have bid a collective \$1.9 billion for the rights to explore on parcels in the Beaufort Sea; another six parcels were up for bids this summer – the results should be out soon. One company, Chevron, has said it could start drilling in 2017 at the earliest.

The agreement in principle doesn’t prevent the GNWT from collecting resource royalties from the offshore. All it says is that the feds and the GNWT, in partnership with the Inuvialuit Regional Corporation (IRC), will negotiate that framework after D-Day. “It’s a matter of negotiating a joint management arrangement similar to what they’re doing in

Nova Scotia and Newfoundland,” McLeod says.

The onshore is a much simpler matter. “As of effective date, the GNWT will collect royalties for those onshore portions,” Goldney says. The dividing line between offshore and onshore, which will be contained in the final agreement, still needs to be hammered out, but it is likely to be the low water mark, according to Goldney. Since the low water mark is farther offshore, the process of determining the final onshore/offshore boundary will be of especial interest to the Yukon government, as it expects a role in, and revenues from, the offshore, too.

TABLE C		
The wells that keep on giving		
Production levels at the Norman Wells oil field may be in decline, as the from numbers AANDC indicate, but no matter: The high price of oil has ensured the federal government keeps making a tidy “profit” – or whatever you want to call it – from the field. According to the Public Accounts of Canada, the feds’ profit rose by 10 per cent during the previous decade, and averaged \$107 million between the fiscal years 2001-2002 and 2010-2011. Here’s a complete breakdown.		
Year	Production volume (in 1000s of cubic metres)	The federal government’s “profit” (the GNWT says it’s a royalty)*
2001	1,432.2	\$93 million
2002	1,375.4	\$90 million
2003	1,254.6	\$99 million
2004	1,186.7	\$115 million
2005	1,042.6	\$132 million
2006	1,012.4	\$123 million
2007	964.3	\$116 million
2008	893.6	\$125 million
2009	869.0	\$74 million
2010	840.7	\$102 million
2011	588.2	Not available
* This figure does not include the five-per-cent gross royalty the Crown collects on Imperial Oil’s two-thirds interest. ** In the case of the profit column, the years are fiscal years, so for instance 2010 represents the feds’ 2010-2011 fiscal year.		

How the regulatory revamp fits in

One big question raised by devolution is what it means for the federal government’s initiative to streamline the NWT’s heavily criticized regulatory system. AANDC is currently drafting several proposed changes to the Mackenzie Valley Resource Management Act (MVRMA), the federal act that effectively put in place the NWT’s regional land and water panels. One of AANDC’s proposed changes to the system – the consolidation of those panels into one all-encompassing board – has generated a lot of heat among NWT aboriginal groups. The regional panels, they say, are enshrined in land claims. They like them just the way they are. The federal government, meanwhile, says the current system results in too many cooks in the kitchen. (Check out this sidebar to see what, exactly, AANDC is proposing to change.)

Let’s put aside the whole issue of whether the federal government can change anything set out in the land claims; that’s a whole other can of worms.

After devolution, the GNWT will largely be in charge of the NWT’s regulatory system. But it has two different operating models to choose from, and which model it chooses could prove important when the GNWT eventually decides how to tackle aboriginal concerns with the MVRMA changes.

Here are the two choices:

- Under one model, the MVRMA would remain an act of Parliament – a federal piece of legislation. The GNWT will operate under the act with authority delegated to it by the feds. Any amendments would have to go through Parliament.
- Under the second model, the MVRMA would become a piece of territorial legislation. The ability to amend the act would rest with the legislative assembly, though the GNWT would still have to consult the feds and aboriginal groups.

Here’s where devolution could dovetail with the regulatory revamp. Let’s say AANDC successfully amends the MVRMA before D-Day, despite lingering concerns on behalf of aboriginal groups: The GNWT will then be inheriting a piece of legislation that is very unpopular among aboriginal groups. “There’s little question that the changes that are being made right now, if a devolution agreement goes forward, [the GNWT] will inherit the system that’s in place at that time,” says John Pollard, the federal government’s negotiator for the proposed board shuffle.

Which raises the question: Will the GNWT – which has stated it does not support any extensive restructuring of the boards\* – tweak the MVRMA to appease aboriginal groups after D-Day?

If that is indeed what the GNWT intends to do, then the second model – wherein the MVRMA becomes territorial law – would probably give the GNWT more leeway to change the act. On the other hand, drafting and implementing new legislation would take time, and industry has already waited long enough for the regulatory regime to be simplified.

McLeod says the GNWT is carefully weighing both models, though he points out that the first model (the MVRMA staying within the domain of Parliament) wouldn’t preclude the act from later being mirrored under territorial legislation (the second model). That’s what the Yukon did, he adds.

\* Check out the GNWT’s response to the McCrank report (specifically, page 2) by scanning this QR code



One board to rule them all:  
The AANDC proposal

Currently, there are four bodies that grant land and water permits to companies seeking to plumb the NWT’s natural resources. They all essentially fall under one board, the Mackenzie Valley Land and Water Board (MVLWB), but – and here’s where it gets a little confusing – this board also gives out permits of its own, too. Here, in a nutshell, is how the much-talked-about system currently works:



The Gwich'in Land and Water Board handles permits in the Gwich'in region.



The Sahtu Land and Water Board handles permits in the Sahtu region.



The Wek'eezhii Land and Water Board handles permits in the Tlicho region.



The Mackenzie Valley Land and Water Board handles permits not only in the unsettled Dehcho and Akaitcho regions, but for projects that straddle more than one jurisdiction.

Each of these bodies is made up of five members: a chair, two people from the region, a GNWT rep and a federal rep. The MVLWB is slightly different; it has a chair, a GNWT rep, a federal rep, and one rep apiece from the Dehcho First Nations and the Akaitcho region – one for each unsettled region.

When the MVLWB gets together to assess permits for areas that straddle more than one jurisdiction, it gathers a cross section of members from each board/panel. Ultimately, about five people meet to assess cross-boundary projects. Then, once a year, every member of every board and panel – 20 people in all – gather to ensure consistency reigns (not to review projects, it should be stressed.)

What AANDC is proposing is one board consisting of 11 members: one member from each region (so five), plus another five members total from the GNWT and the feds – and a chair on top of that. Not all 11 would weigh in on each application, Pollard says. “The chairperson would have the power to say to three people, ‘Go and hear this application in that region.’ That’s the way the National Energy Board does it. That’s the way the MVLWB does it right now (for cross-boundary projects)... That way, you could have a panel hearing (for) at least three applications at the same time because you’ve got the ability to split the board into three.”

The ultimate idea is to reduce the number of cooks in the kitchen. But while well-intentioned, the feds’ proposal prompts a serious concern. As it stands now, the panels sometimes have a hard enough time making quorum with five members. What will happen with three-member bodies?

Pollard says the feds would like to see negotiations with aboriginal groups wrap up by the end of 2012. “There’s little doubt they’re concerned about a potential one-board system,” Pollard says. “Is that changing the way that we’re approaching things? No. We’re still available to them, to consult with them, to sit down with them and say, ‘Look, let’s talk about the details of what we want to do. And if we can accommodate you, we will. If we can’t accommodate you, we’ll tell you why we can’t accommodate you.’ We’re certainly not going to get anywhere just saying ‘No.’”