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The Art of the Possible: *The Interpersonal Dimension of Policy-Making in the Case of the Northern Development Accord*

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It has often been observed that negotiation is “the art of the possible”. Behind this truism lies an important observation about how public policy is actually developed, at least when it is an outcome of intergovernmental negotiation. Intergovernmental negotiations do not generate public policy through the application of the rationalist, scientific method that is so much a part of the study of public administration. Rather, intergovernmental negotiations operate through the interaction of human beings. The outcomes of negotiations are at least as attributable to how well these human beings, the negotiators, interact with others, both at the negotiating table and within their own organizations, as with the quality of the public policy proposal they are advocating.

To be effective advocates for their parties in the negotiation of intergovernmental agreements, negotiators need to understand other parties’ objectives in entering into negotiations as much as their own, distinguish between what are merely desirable objectives and what each party views as the essential conditions for an agreement, develop creative ways to secure all of their party’s essential conditions while still

meeting the other parties’ essential conditions, and build support among the parties for their proposed solution. As this will inevitably result in a solution that is sub-optimal, when viewed from any one party’s perspective, negotiators must also be skilled at advocating within their own organizations for the solution they have arrived at.

The history of the intergovernmental negotiations that led to the signing of the Northern Development Accord in October 2002 is a case study of the impact the individual negotiators’ ability to manage these tasks in highly challenging circumstances has on the substantive policy outcomes of intergovernmental relations. It is also a case study of the importance of trust in successful intergovernmental negotiations. The trust that existed among the negotiators, built upon the credibility that each negotiator had with his counterparts and a mutual commitment to the public policy objectives that the Accord represents, made it possible for the negotiators to keep the potentially destructive effects of unilateralism and intergovernmental competition from undermining the negotiations.

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Launching the Northern Strategy

The genesis of what became the Northern Development Accord¹ actually goes back over ten years, to a joint federal-provincial environmental assessment panel on the proposed McArthur River, Cigar Lake, and Midwest uranium mines in northern Saskatchewan. The joint environmental assessment panel held extensive public hearings, in which they repeatedly heard from northerners as to their desire to participate more fully in the economic benefits of northern resource development. In response, the panel made several comments and recommendations about revenue-sharing, beginning with the February, 1997 report on the McArthur River project. The panel stated that:

It is evident from their words and actions that northern leaders wish to have the issue of revenue sharing resolved in a political forum rather than as part of the environmental review process.²

It is recommended that the federal and provincial governments enter into a multipartite discussion with northern leaders to design and implement a comprehensive program of revenue sharing for northern Saskatchewan.³

Likely the strongest recommendation, however, came in the panel's report on the Midwest project:

It is also recommended that the federal and provincial governments, in conjunction with representatives of the northern people, develop an economic strategy for the north to ensure that the people of northern Saskatchewan, and of the Athabasca Basin in particular, are major beneficiaries of this project. Agreement on the strategy should be in place before the resource is further depleted.⁴

These recommendations created significant potential for conflict between the uranium mining companies, which are significant contributors to the provincial economy, and governments, which depend on taxes and resource revenues from the uranium sector, on the one side, and Aboriginal peoples, who argued that they had never relinquished ownership of the resources and were owed a portion of the revenues from resource development, on the other. As well, the provincial government recognized that northern Saskatchewan is an economically depressed region, whose residents suffer from economic and social dislocation and limited employment prospects, and that government had a responsibility to attempt to alter the circumstances in which northern people lived. Thus, crafting a response to the revenue-sharing issue that had a reasonable chance of fairly addressing the competing interests that existed within and among governments, industry, and northerners became one of the key tasks for the provincial government in developing a response to the joint panel.

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The provincial government's response was three-fold. The first step was to establish the Office of Northern Affairs in 1996,⁵ as both an advocate for northerners' views within the provincial government and manager of the government's agenda with northerners. Secondly, Saskatchewan Northern Affairs and Saskatchewan Executive Council initiated an interdepartmental process that would engage the whole of the provincial government in responding to the agenda of northerners.

¹ For the first several years after it was proposed, the Northern Development Accord was known as the Northern Development Agreement. For the sake of consistency, and to distinguish it from the Northern Development Agreement that was signed in 2002, we nonetheless refer to the document as the Northern Development Accord throughout this paper.

² McArthur River Uranium Mine Project: Report of the Joint Federal-Provincial Panel on Uranium Mining Developments in Northern Saskatchewan, February, 1997, section 13.3

³ *Ibid*, section 13.7.

⁴ Midwest Uranium Mine Project: Report of the Joint Federal-Provincial Panel on Uranium Mining Developments in Northern Saskatchewan, November 1997, section 5.4.

⁵ Government of Saskatchewan. Minister of Northern Affairs. *Northern Affairs>Northern Strategy>Development of the Northern Strategy*. Retrieved July 28, 2003 from www.northern.gov.sk.ca.

The third aspect of the provincial government's response was the most innovative, and set in motion a dynamic that would ultimately dictate the content of the Northern Development Accord. In May, 1997, then Saskatchewan Premier Roy Romanow initiated the "Premier's Dialogue with Northern Leaders".⁶ This process brought together northern First Nations, Métis and municipal leaders in a discussion led by the Premier to develop a strategy to increase economic and employment opportunities in northern Saskatchewan. This led the joint uranium mine panel to state, in November 1997, that:

As a panel, we believe that our responsibility for drawing this issue to the attention of governments has been discharged now that discussions with northern leaders have been initiated. In many respects, the issue is primarily political and only peripherally related to environmental assessment. We are, therefore, satisfied that resolution in a political forum has begun. We can do little more to assist northerners in their efforts to benefit from the removal of riches from an area that they have for generations regarded as their homeland.⁷

What was most remarkable about the provincial government's approach to the Dialogue process was that it saw value in the process itself, and was willing to engage in it without first developing a detailed provincial agenda. Because of the open nature of the consultation, and the long period of time spent engaging in research, analysis and discussion over the two years of the Dialogue, northerners had a significant role in creating the Northern Strategy agenda. While much of the debate during the Dialogue process focussed on the need for a significant equity fund, northerners also identified the need for a strategic framework to guide a long-term plan for public investment in northern development, which became the Northern Development Accord, and for

the establishment of a multi-party decision-making body to provide northern leaders with an enhanced role in government decision-making for northern Saskatchewan, which became the Northern Development Board.

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The federal government was also invited to participate in the Dialogue and subsequently assigned one of the authors as an observer. The relationship between the authors did not begin with our involvement in the Northern Dialogue process, however; we had worked together successfully on other negotiations, and had built up a trust in one another that would later allow us to explore problems that arose in the negotiation of the Northern Development Accord openly, and seek solutions that would accommodate the interests of all. The federal observer had also worked with a number of the representatives of northerners in the past, had built up similarly effective working relationships with them, and throughout the Dialogue process and subsequent negotiations, demonstrated a genuine engagement in addressing the challenges of northern development, further securing a positive working relationship with northerners. Lastly, we both had a relationship, built up in previous negotiations, with a key official in the Privy Council Office. Our relationship with him would later prove essential to having the Northern Development Accord accepted within the federal government.

By 1998, the Dialogue with Northern Leaders had arrived at some recommendations to government on key "enabling mechanisms" to improve northern development. Provincial officials had also developed

⁶ *Ibid.*

⁷ Cumulative Observations: Report of the Joint Federal-Provincial Panel on Uranium Mining Developments in Northern Saskatchewan, November 1997, section 5.6.

and received approval from the provincial Cabinet for a policy framework, the Northern Strategy, and a series of next steps to implement the Strategy and the recommendations of the Dialogue. The provincial government then turned its attention to negotiating a Northern Strategy Memorandum of Understanding with the northern leaders.

By the spring of 1998, the government and northern leaders were ready to sign a Memorandum that identified an agreed-upon set of goals and priorities of the Northern Strategy and a set of key “enabling mechanisms”. These included a “Northern Development Agreement” (which became the Northern Development Accord) and a Northern Development Board consisting of representatives of the Meadow Lake Tribal Council, the Prince Albert Grand Council, the northern Métis regions, New North (the association of northern municipalities) and the Athabasca Economic Development and Training Corporation (representing the interests of the largely Dene population of the Athabasca region). This Board was established, on an interim basis until a Northern Development Agreement with the federal government was negotiated, in October 1998.

The federal government was invited to participate in the negotiation of this Memorandum of Understanding and become a signatory, but were not in a position to participate. In retrospect, this was likely a major tactical error on the part of federal officials. The negotiation of the Memorandum provided the provincial government and northerners an opportunity to settle a number of potentially contentious issues between themselves, which led to a strong coalition of provincial officials and northern leaders aligned behind a common agenda when the negotiation of the Northern Development Accord commenced in the fall of 1998. As well, by bringing the Memorandum of Understanding to Cabinet for approval, provincial officials ensured that they had a mandate for the negotiations to come. In contrast, the author who was assigned to the Accord negotiations by the federal government had not had the opportunity to influence the agenda that was

contained in the Memorandum, create a trilateral negotiating dynamic by developing federal-northerner alliances against some provincial interests, or receive a mandate from the federal Cabinet to guide the federal role in negotiating the next steps, even though he had been the federal observer to the Northern Dialogue process. This left him at a serious disadvantage, most importantly by creating an “us against them” dynamic between the provincial-northern alliance and the federal government, but also by leaving him unsure of the extent to which he had flexibility to negotiate an agreement. The consequence of this tactical error can be seen in the Accord itself. If one were to compare the first negotiating draft of the Northern Development Accord and the Accord that was signed in October 2002, one would notice just how little the Accord changed in substance over the four years of negotiations, due largely to the strength of the provincial-northerner coalition.

Accord Negotiations Begin

With the signing of the Memorandum of Understanding on the Northern Strategy, the Northern Development Board began to focus its attention on engaging the federal government in negotiating the Northern Development Accord. At the first meeting of officials in follow-up to the inaugural meeting of the Northern Development Board, officials established a working group, consisting of the two of us and a representative of the northern leaders, to develop an initial draft of an Accord for officials’ consideration. The working group members were motivated to find a consensus and had developed a clear understanding, through some fairly frank discussions, of what the other parties were seeking to achieve through the negotiations, so they were able to draft a working group consensus Accord within a matter of weeks. This consensus document was then brought back to the main negotiating table, with the intention of having the negotiators undertake consultations with officials in other federal and provincial government departments.

Consultations within the provincial government were relatively straightforward. They focussed on the consistency of the Accord's content with the Northern Strategy and the Memorandum of Understanding, both already approved by Cabinet. This was not the case, however, within the federal bureaucracy. Elements of the draft Accord had been designed to constrain unilateral federal government decision-making about how, or whether, it would address northern development issues. Federal officials did not have a mandate to negotiate these constraints and certain key officials were disinterested in seeking a mandate to place such constraints on what was their discretion. Thus, there were few federal officials willing to assist the federal member of the working group in his role as advocate for the Northern Development Accord agenda within the federal bureaucracy and a number of key officials lined up to resist the Accord. This led to a very tense two years during which the Accord negotiations stalled. The federal working group member was put in the difficult situation of simultaneously seeking ways to further the Accord agenda within a federal bureaucracy that was largely disinterested or resistant and fostering the tolerance on the part of his counterparts from the other parties to patiently await the resolution of the federal government's internal conflicts, a situation in which his personal credibility with the other working group members would be put to the test. To help manage this situation, both authors made interventions with their colleague in the Privy Council Office during this period. We hoped that our interventions would lead the Privy Council Office to become involved in correcting certain misinformation about the Northern Development Accord that had developed within the federal bureaucracy and in ensuring that federal Minister Ralph Goodale, in his role as Interlocutor for Métis and Non-status Indians, was accurately briefed on the difficulties the Accord negotiations had encountered.

Unfortunately, the federal bureaucracy was not yet prepared to engage seriously in the negotiations. In response, the provincial government elevated the issue by briefing Premier Romanow on the situation.

Romanow ensured that, in his several meetings with Minister Goodale over the course of 1999 and 2000, the Northern Development Accord was always on the agenda. Romanow made it clear to Goodale that the Accord was a provincial priority, corrected the misinformation about the Accord that had built up inside the federal bureaucracy, and sought a commitment from Goodale that the federal government would seriously enter into negotiations. Goodale agreed that the Accord held out the prospect of a more strategic approach to northern economic development and improved intergovernmental coordination, so he, in his role as Federal Interlocutor for Métis and non-status Indians, sought a Cabinet mandate to negotiate an Accord.

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Minister Goodale received his mandate in June, 2001 and instructed his officials in the Office of the Interlocutor for Métis and non-status Indians (a division of the Privy Council Office) to re-initiate negotiations for the federal government. Negotiations were to be based on the last (1999) draft Accord and a clear federal mandate that Interlocutor's Office officials believed could form the basis for a successful negotiation. Giving the Interlocutor's Office staff the mandate to take over negotiations proved to be another important milestone on the path to a Northern Development Accord. As noted earlier, the authors already had a relationship with an official in the Interlocutor's Office from previous federal-provincial negotiations; this official was not prepared to jeopardize that relationship and his ability to negotiate an Accord on Minister Goodale's behalf. Thus, from this point forward, officials from both governments were motivated to find a mutually satisfactory resolution to any issue standing in the way of the Northern Development Accord.

Final Negotiations

The final stage of negotiations was, nonetheless, not without its difficulties. There remained some significant issues to be resolved in the language of the Accord, on such matters as the term of the Accord, the duty of governments to undertake consultations in advance of policy changes that would affect the other party, and the relationship between the Northern Development Board and other consultative bodies in northern Saskatchewan. The bargaining on these issues was sometimes intense, but each government's negotiators had a strong enough interest in accommodating the other's mandate and in finding creative ways to resolve conflicts, so they could fulfil what were now complementary mandates. As well, having the federal Privy Council Office and Saskatchewan Executive Council largely conduct negotiations, and having Premier Lorne Calvert and Minister Goodale clearly interested in seeing a successful conclusion, meant that the negotiators had the capacity to ensure that whatever accommodations were made could not successfully be challenged from within the federal and provincial bureaucracies.

The real difficulty in the final stage of the negotiations was a federal proposal, late in the Accord negotiations, for a federal-provincial Northern Development Agreement, a \$20 million, five-year cost-shared agreement to fund economic infrastructure. The addition of this item to the negotiating agenda took provincial officials by surprise. A number of provincial officials, in fact, believed at the time that the offer of the Northern Development Agreement was a ploy designed to make the Accord negotiations fail and place blame for this failure on the provincial government. As well, because the Accord reflected the provincial government's key interests while the Agreement reflected those of the federal government, it quickly became clear that negotiations on both agreements would succeed or fail together. An unresolvable impasse thus became a very real possibility.

Once the offer to negotiate a Northern Development Agreement was made, provincial officials had to determine quickly if they had any room to respond positively, recognizing that the entire Northern Strategy now rested

on the provincial government's ability to sign the Agreement. The timing of the offer of a cost-shared agreement was particularly unfortunate, as the provincial government was just entering a new period of fiscal restraint after several years of program expansion. It was, therefore, not clear that the provincial government could afford to commit \$10 million, even over five years, to a Northern Development Agreement. Having been successful in securing the provincial government's agenda in the draft Accord and in developing a strong alliance with northern leaders, the provincial negotiators now faced the most challenging test of their ability to fulfil their task of advocating for the Northern Strategy agenda within the provincial bureaucracy.

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In this case, the ultimate success of the negotiations that took place within the bureaucracy can be attributed to the strength of the alliance between Executive Council and the Office of Northern Affairs. The two organizations, working together, were able to explain the overall strategic significance of the Northern Strategy to the provincial government and help officials from other departments understand the critical nature of the Agreement to the overall strategic agenda. They thus ensured that all departments with the potential to contribute to the success of the Agreement negotiations made the necessary commitments to advance the government's agenda. To achieve this, though, Executive Council officials needed to use all the means at their disposal, including involving the Deputy Minister to the Premier in interdepartmental negotiations, and intervening with the Premier to determine and reinforce his level of commitment to the Northern Strategy. As well, the trust that provincial officials had built up with their northern counterparts helped to ensure that the Northern Development Board and their negotiators remained tolerant in the face of a worrying provincial non-response. The provincial government could not afford to have northerners abandon

Accord negotiations at the prospect of signing the proposed Agreement, as this would effectively break the alliance that existed between the northern leaders and the provincial government against the federal government's position. After much effort, provincial officials determined that it would be possible for the government to fund the Northern Development Agreement, and Cabinet authorized the Minister of Northern Affairs to sign both the Northern Development Accord and Agreement.

Conclusion

In retrospect, it is clear that those most intimately involved in negotiating the Northern Development Accord were able to meet the challenge of managing the two tasks that confront negotiators in brokering inter-governmental agreements because of the strength of the interpersonal relationships and the strong bonds of trust among them. Their trust in one another gave them the confidence to openly discuss their government's interests, what issues were causing difficulties for them with those to whom they were reporting, and what compromises they were and were not prepared to agree to. It also motivated all of the negotiators to seek resolutions to the issues that were creating roadblocks to successful negotiations. For example, the relationship between federal Privy Council Office and provincial Executive Council officials allowed these officials to speak frankly to one another when it was discovered that decisions were being made unilaterally by federal officials that could jeopardize the signing of the Accord, even after it had been agreed to, and ensure that these efforts were stopped before they could seriously damage the nascent intergovernmental relationship.

It is equally clear that the quality of the interpersonal relationships and the relative strength of the alliances that were built up among the different parties' negotiators had a very real effect on the substance of the Northern Development Accord and, indeed, whether an Accord would ever be signed. When provincial officials initiated discussions on the Northern Development Accord, several officials predicted that getting an agreement would prove

impossible. Given the complexity of the agendas at play in the negotiations, this prediction is understandable and at various times it was very nearly proven correct. No-one involved would claim that the Northern Development Accord is the kind of ideal response to the policy problem of increasing northern economic development that a strict application of the rational, scientific method of policy formation in which policy professionals are steeped would generate. Nonetheless, the Northern Development Accord reflects the fundamental interests of all of the parties to the negotiation and, as long as all parties demonstrate a good faith commitment to its ongoing operation, it will work to bring northerners and the federal and provincial governments together in a long-term strategic effort to improve the economic prospects of northern Saskatchewan.

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As was the case with the Northern Development Accord, intergovernmental negotiations rely heavily on the quality of the relationships between the negotiators, and between each negotiator and their government. At the core of these relationships lies trust. A negotiator must be trusted, both by the others at the table and those within their government, to act in good faith and understand the importance of meeting all parties' fundamental interests. Failures in negotiations can often be attributed to the failure of a negotiator to fulfil one of these two tasks, with a consequent undermining of the essential trust relationships. As with the Northern Development Accord, though, negotiators who value their interpersonal relationships, and the trust on which good relationships are based, can secure a mutually satisfying agreement against long odds. This is the art of the possible.

The Saskatchewan Northern Development Accord is available online at: www.northern.gov.sk.ca/affairs/AccordFinalVersion.pdf

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