

IMPLEMENTATION PROBLEMS
UNDER THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT:
SUMMARY AND RECOMMENDATIONS

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(in consultation with
other organizations
and with institutions
located in the Terri-
tory north of the
55th parallel)

For submission to: The Honourable John Munro,
Minister of Indian Affairs
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I. INTRODUCTION

On November 11, 1975, the James Bay and Northern Québec Agreement (the "Agreement") was signed. On June 23, 1978, Makivik Corporation was created under Québec law (Bill 27) as the Association to succeed the Northern Québec Inuit Association as the Inuit "Native party" under the Agreement. As the party representing Inuit, Makivik has the responsibility to ensure that the Agreement is implemented so that its members, the Inuit beneficiaries of the Agreement, enjoy the cultural, political, social and economic rights and benefits provided by the Agreement.

As Inuit, we have moved through the period required to secure a settlement of our aboriginal claims in respect to the region above the 55th parallel in northern Québec, to a new period involving the implementation of the Agreement.

To date, Québec, Hydro-Québec and James Bay Energy Corporation, as signatories of the Agreement, have derived full benefit from the Agreement. The James Bay Hydroelectric Project has been constructed and put into operation. Moreover, additional hydroelectric projects in northern Québec are planned for the near future.

However, in regard to the native signatories to the Agreement, namely the northern Québec Inuit and James Bay Crees, the same claims of satisfaction with the Agreement cannot be made. As summarized in this brief, significant Inuit rights and benefits under the Agreement have not been realized. This is primarily due to the attitude of the Québec Government and its various departments towards implementation of the Agreement. Now that Inuit aboriginal rights in and to the Territory have been surrendered and extinguished, there appears to be a lack of incentive for Québec to fulfill the letter and spirit of important provisions of the Agreement.

This brief, therefore, is submitted to outline the nature and scope of Inuit problems in regard to implementation, both with respect to Québec and Canada, and to recommend to the Government of Canada various courses of action.

II. SPECIAL STATUS OF INUIT AND 1912 TERRITORY

The Inuit of Québec are in a position unique among the peoples of Québec. Although we are a minority within the larger framework of Québec, we are also its original inhabitants. As indigenous peoples, we have been accorded special statutory and political recognition, both in Section 91(24) of the B.N.A. Act and under the Agreement.

Since time immemorial, we have occupied a vast area constituting more than one-third the present size of the Province of Québec. This Territory located north of the 55th parallel was not originally part of

Québec. It was only added in 1912 upon the passage of joint federal and provincial legislation known as the Québec Boundaries Extension Acts. It was not until 1964 that the Government of Québec began to establish a northern presence in the 1912 Territory with its wealth of wildlife, mineral and water resources. In fact, a large portion of the water resources needed for Québec hydroelectric development is situated here.

We, alone, among all of the minorities in Québec can state that we have inhabited a defined territory from time immemorial and that we have always constituted a significant majority of those living in this Territory which we call our homeland. The Territory is very different from other parts of the Province. It has a distinct geography, climate, ecology, economy, people and history, all of which gives it a special character. It is these very differences which at the same time have created a special community of interests among the inhabitants of the region.

The special character of this Territory and its native inhabitants has begun to be recognized by both the Federal and Provincial Governments in the James Bay and Northern Québec Agreement through the creation of regional and local institutions with appropriate powers.

III. JAMES BAY AND NORTHERN QUEBEC AGREEMENT

3.1 The Agreement as an Evolving Statement of Inuit Rights

The Agreement represents a fundamental document

for Inuit upon which we have based not only our present aspirations, but also our future development as native peoples and participants in Québec society. Although it only represents a first step, the Agreement is in many ways comprehensive in that it provides benefits not only in the private sector, but equally important, in the public sector.

Both present and future generations of Inuit will be directly affected by the policies and operations of public and quasi-public institutions and bodies established as benefits under the Agreement on a regional basis. For us, the Agreement represents the exchange of some of the rights which we have enjoyed historically from time immemorial for more clearly defined rights of a similar nature and for other rights and benefits which are specified in the various sections of the Agreement. A majority of those rights and benefits constitute obligations on the part of Québec.

While legislation has been passed to enable Inuit to enjoy certain benefits, to date many of these benefits are not being permitted to flow due to the uncooperative actions of various Québec departments at the administrative level.

As the Inuit Native party to the Agreement, Makivik views Québec's perspective of the Agreement as follows:

- i) that the primary purpose of the Agreement was to provide Québec a clear title to the Territory and only secondarily to settle the legitimate

claims of the Inuit of northern Québec;*

ii) that the Agreement represents a fixed and static document to be interpreted legally in strict and limitative fashion with respect to Inuit rights and benefits, with little or no regard given to the spirit and intention forming the basis of the Agreement.

However, from the Inuit perspective, the Agreement must necessarily be viewed as a first major step, both in the evolution of Inuit-Québec relations and in acquiring an adequate degree of self-determination on a regional basis within both Québec and Canada. Where necessary therefore, the Agreement must be built upon. It must be seen as a "living" document, capable of adapting to new government policies and to changing political, economic and social circumstances. For such purposes, the Agreement must not be seen as closed, static or final.

Evidence of Québec's static approach to the Agreement appears from the fact that new land use**

* See An Act approving the Agreement concerning James Bay and Northern Québec, S.Q., 1976, c. 46, which makes no mention of the objective of settling aboriginal claims in the Territory. See also page 55 of the Québec White Paper on sovereignty-association.

** See An Act respecting land use planning and development, S.Q., 1979, c. 51. Section 255 of this Act provides:

"This act does not apply in the territories situated north of the 55th parallel nor in the Territory described in the schedule to the James Bay Region Development Act (R.S.Q., c. D-8), after excluding the municipalites contemplated in section 40 of the said act."

and taxation powers* conferred upon municipalities in other parts of Québec have not been extended to the Territory above the 55th parallel. While those powers would have to be adapted to suit a northern context, it is inconceivable that Québec would have specifically excluded their application from the region where the municipalities which would benefit from them most are located.

The principle in this regard is stated in subsection 2.11 of the Agreement:

"Nothing contained in this Agreement shall prejudice the rights of the Native people as Canadian Citizens of Québec, and they shall continue to be entitled to all of the rights and benefits of all other citizens as well as those resulting from any other legislation applicable to them from time to time".

It follows that additional benefits contained in new legislation of general application in the Province must automatically apply with appropriate adaptations to our northern Territory.

3.2 Implementation of Agreement and Lack of Adequate Budgets

Implementation of the Agreement has been characterized by a narrow interpretation by Québec of

* See An Act respecting municipal taxation and providing amendments to certain legislation, S.Q., 1979, c. 72. Section 1 of this act excludes northern village corporations in the territory from the definition of "municipal corporation" under this act.

its obligations, by a failure to respect the obvious spirit and intent of the Agreement in certain cases and by the ignoring of obligations in other cases.

Historically, relations between the Québec Government and its indigenous peoples have often been somewhat strained. The Agreement, if implemented with the proper spirit, might yet represent an important positive step in the evolution of Québec-Inuit relations. But in our view, the present situation in respect of implementation represents the most serious threat to date to relations between the Québec Government and Inuit.

While laws representing rights and benefits under the Agreement are in many instances already in force, many of the powers conferred upon regional and local bodies in the Territory are unable to be exercised in the manner intended because of a lack of adequate budgets from Québec.

The creation of social, economic and governmental institutions in favour of Inuit beneficiaries serves no useful purpose if these institutions are not adequately funded. Substantial benefits for Inuit are most often tied to the annual budgets of the various Québec departments responsible for implementing different sections of the Agreement. To date, the negotiation of these budgets has often been fruitless and, in some cases, non-existent. In this connection, the Kativik Environmental Advisory Committee (Section 23), the Inuit Hunter Support Program (Section 29), the Kativik Environmental Quality Commission (Section 23), and the Kativik Regional Government (Section 13) serve as examples.

The autonomy of these regional entities in their spheres of jurisdiction is illusory if they do not have access to adequate financial resources to meet their responsibilities.

A partial solution to these budgetary problems, to date rejected by Québec, would be the establishment of a formal process for fixing adequate budgets for the many bodies established under the Agreement and for implementing all other matters related to the Agreement.

IV. SUMMARY OF INUIT GRIEVANCES RELATING TO NON-FULFILMENT OF GOVERNMENTAL OBLIGATIONS UNDER THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT

Section of
the Agreement

C O M M E N T S

Section 2
(Principal
Provisions)

This Section sets forth the general principles governing the Agreement and the principal obligations of the Governments of Canada and Québec with respect to the Inuit and the Crees, namely, that:

- (a) the native people shall have the rights, privileges and benefits of the Agreement;
- (b) suitable legislation protecting, safeguarding and maintaining those rights would be adopted; and
- (c) transitional measures providing for the implementation of various sections

of the Agreement would be carried out by Canada and Québec pending the coming into force of the Agreement.

The substance of these principal provisions has been more fully set forth in the document submitted by the Cree Regional Authority on behalf of the Crees.

Notwithstanding the general principle that transitional measures would put into effect as much of the Agreement as possible from the date of its execution, this period, which extended from November 11, 1975 to October 31, 1977, was marked by foot-dragging by the government parties and, most particularly, by Québec insofar as powers or functions concerning the Kativik Regional Government were concerned. It should be added that this situation prevailed for a further lengthy period after the coming into force of the Agreement during which the Native parties were obliged in many cases to, in effect, renegotiate the Agreement with Quebec in order to reach agreement over individual pieces of legislation implementing the various Sections thereof.

Section 12

Sched. 2

Par. 137

Land-Use Plan and Regional Development
Plan

Section 13

Sched. 2

Par. 14

(Local and
Regional
Government
north of
the 55th
parallel)

The Kativik Regional Government is empowered to formulate and adopt a land-use plan for the Territory north of the 55th parallel. Québec has refused to provide funding for the plan on the grounds that the need for such a plan is "premature" - this, notwithstanding Québec's intention to proceed with several major hydroelectric and other developments in the Territory. A new budget proposal in this regard has been recently submitted to Québec by the Kativik Regional Government.

More generally, the Kativik Regional Government, the principal regional administration in the Territory, has been excluded from directly participating in regional development planning and has been only superficially consulted with respect thereto after such planning has been initiated in the south. In this connection, without consulting or involving Kativik Regional Government, the Université de Québec à Chicoutimi has been funded by Quebec to compile information (Pronobec Project) to be integrated in an eventual regional plan.

Section 12
(Local
Government
north of
the 55th
parallel)

Local Governments - Community Infra-
structures

There have been no significant improvements in existing infrastructures in the Inuit communities since prior to the signing of the Agreement in 1975. Despite the recommendations of the Jolicoeur Report, Québec is presently blocking most of the required funds for the alleged reason that the transfer agreement between Canada and Québec respecting certain municipal services has not been signed.

Furthermore, the latest correspondence from Québec, through S.A.G.M.A.I., to the Kativik Regional Government indicates not only that Québec is not prepared to guarantee to the Inuit that the recommendations of the Jolicoeur Report would be integrally carried out, but also that the proposed funds will be insufficient to up-grade municipal and other services in Inuit Communities in Northern Québec.

To cite but one example, the Jolicoeur Report recommended and, in turn, the Kativik Regional Government was promised, an immediate budget of \$7 million for the purchase of essential heavy machinery and equipment for the Inuit Communities. The budget finally approved in this respect was \$1.2 million, a wholly inadequate sum.

Moreover, Québec has refused to participate in an Implementation Committee which would examine on an ongoing basis all questions relating to the implementation of the Agreement and, in particular, questions relating to the explicit or implicit funding obligations of the Agreement with respect to various public bodies and institutions contemplated thereby.

Section 2
Par. 2.3

Inuit of Port Burwell - Health and
Social Services

Section 15
Sched. 1
Par. 4
(Inuit
Health &
Social
Services)

Canada neglected to improve health and social services for Inuit of Port Burwell, which was the primary factor leading to the evacuation of the Inuit of that community by the Government of the Northwest Territories against their will and to their dispersal, without compensation or assistance, among Inuit communities in northern Québec.

A direct consequence of the evacuation of Inuit from Port Burwell is that they are unable to enjoy many of the individual and collective benefits specifically provided to them under the Agreement.

Moreover, as has been more fully set forth in correspondence with DIAND, there has been no provision by either Canada or Québec for an increase in health and social services budgets or in housing to take into account the influx of Port Burwell Inuit into Inuit Communities on the Quebec mainland. In this regard, the situation of the Port Burwell Inuit is similar to that of the Inuit of Fort George for whom there has been a similar lack of provision and who have found themselves the victims of an administrative vacuum between federal and provincial jurisdiction.

Section 17
Par. 17.0.1
(Education
Inuit)

Kativik School Board

The Agreement provides that there shall be one school board in the Inuit Territory north of the 55th parallel. This provision has been enacted into law by amendments to the Québec Education Act. Notwithstanding this provision, and despite the availability of other solutions, Québec has, without the consent of the Kativik School Board, agreed to establish separate schools in the dissident Inuit Communities of Povungnituk and Ivujivik. In so doing, Québec has apparently ignored as a

solution the Kativik School Board's offer to delegate authority to those two communities to run their own schools in favour of a solution which forseees the continued existence of the Commission Scolaire du Nouveau Québec (CSNQ) in Inuit territory - a clear breach of the Agreement and of Quebec's own amendments to the Education Act.

Section 23

Par. 23.3 ff

Environment
and Future
Development
north of
the 55th
parallel)

Kativik Environmental Quality Commission

Québec has neglected to provide the funding necessary to permit the principal body in the Territory responsible for environmental impact assessment and review to properly carry out its function.

This situation is particularly crucial in light of the proposed Great Whale Hydroelectric Project which, by law, must be evaluated by the Commission.

Section 23
Par. 23.5 ff

Kativik Environmental Advisory Committee

Québec has refused to adequately fund the Kativik Environmental Advisory Committee, the principal body in the Territory north of the 55th parallel responsible for overseeing the application of the environmental regime.

Section 24
Pars 24.9.3
and 24.9.6
(Hunting,
Fishing &
Trapping)

Outfitting Camps: Right of First Refusal

The Inuit and Crees have the right of first refusal to establish outfitting camps in Category III lands. Québec has adopted rules which will unilaterally withdraw certain non-native applications for outfitting licenses from the application of that right. This breaches the Agreement and deprives the native people of economic opportunities in respect of an activity specifically recognized and singled out as a vital element in their economic development.

Section 29
Pars 29.0.5
to 29.0.22
(Inuit
Economic
and Social
Development)

Inuit Hunter Support Program

Québec has refused to fund the Inuit Hunter Support Program in the amount of approximately \$750,000 in 1979 despite an agreement between Inuit and Québec as to the operation of the program and cabinet authority providing for its implementation on an interim basis

pending the adoption of appropriate legislation.

Section 29

Pars 29.0.40

and 29.0.4

Municipal Services

Upon agreement as to a unified system, the Kativik Regional Government and local municipalities are to assume responsibility for existing federal programs respecting housing, electricity, water, sanitation and related municipal services in Inuit communities. Québec and, until recently, Canada blocked participation by the Kativik Regional Government in the elaboration of a program for the delivery of the above-mentioned services and in the proposed transfer agreement between Canada and Québec.

Inadequate funding by Ministère des affaires municipales has meant that the Kativik Regional Government has been unable to carry out its responsibilities in areas of municipal and social services and programs.

Québec has, furthermore, created parallel structures consisting of northern sections of various Québec departments, including the Ministère des travaux publics et approvisionnement.

The problems related to the proposed transfer agreement reflect the sorry state of municipal services in Northern Quebec Inuit Communities dating back to the early 1960's. In brief, municipal services of every description have lagged far behind those available in other northern communities because of jurisdictional squabbles between the senior governments, the general uncertainty during the period of litigation over the James Bay Hydro-electric project and the protracted manoeuvring of Québec and Canada over the implementation of the Agreement. The situation has deteriorated to the point where the Quebec Ministère des Affaires Municipales will candidly admit to the Inuit that it has deliberately blocked funds from going to Inuit Communities on the sole political ground that the Federal Government is still involved in the provision of certain services to those communities. Until the resolution of this situation, many Inuit communities are being funded on a month-to-month ad hoc basis by the Federal Government out of budgets which, save for minimal increases to meet normal escalation in costs or the occasional emergency situation, have been maintained at artificially low levels and have not foreseen any significant capital expenditures.

Section 29

Job training programs and facilities

Par. 29.0.25,
29.0.26 and
29.0.27

Notwithstanding the obligations of Québec and Canada to provide Inuit individuals and groups with a full range of training programs and facilities, no measures in this area have been adopted. In particular, the Kativik School Board has made continuous efforts with various Québec departments to obtain funding for such programs and facilities and, to date, has been met with various objections and excuses relating mainly to an alleged lack of legislative authority.

Section 29

Employment and Contract Opportunities

Par. 29.0.31

Québec has failed to establish Inuit priority in respect to employment and contracts created by projects in the Territory north of the 55th parallel, in particular, insofar as Inuit construction and airline enterprises are concerned.

Section 29

Airstrips

Par. 29.0.36

Canada and Québec have acknowledged the essential need for airstrips in all

Inuit communities. In particular, Canada recognized this in the letter of Federal Government undertakings executed on November 15, 1974 by then Minister, the Honourable Judd Buchanan. Nevertheless, Canada and Québec have failed to formulate or implement any airstrip or airport construction program for Inuit communities which depend heavily upon air transportation services.

Section 2
Par. 2.11

Agreement - An Evolving Statement of
Inuit Rights

Subsection 2.11 of the Agreement provides that native people shall continue to be entitled to all of the rights and benefits of all other citizens as well as those resulting from any other legislation applicable to them from time to time.

Québec, however, takes a static approach to the Agreement as appears from the fact that new land use and taxation powers conferred upon municipalities in other parts of Québec have not been extended to the Territory north of the 55th parallel.

Under Section 10 of the James Bay and Northern Québec Native Claims Settlement Act (Bill C-9), the Minister of Indian Affairs and Northern Development is obliged to submit to the House of Commons an annual report on the implementations of the Agreement. To our knowledge, this has not been done.

V. RECOMMENDATIONS

The James Bay and Northern Québec Agreement constitutes the first modern native settlement of aboriginal claims in Canada. As a result, many of the problems concerning implementation were not foreseeable. However, under Section 2.5 of the Agreement, both Canada and Québec have a responsibility to recommend suitable legislation protecting, safeguarding and maintaining the rights and benefits of Inuit and Crees under the Agreement. Moreover, in conformance with Section 91(24) of the B.N.A. Act, 1867, Canada has a special responsibility for Inuit and Crees which was affirmed in the preamble to Bill C-9.

In order to resolve some of the major problems concerning implementation, the following "Principles and Recommendations Respecting the Implementation of the James Bay and Northern Québec Agreement" are proposed:

5.1 Principles and Recommendations respecting Implementation of the James Bay and Northern Agreement

1. The James Bay and Northern Agreement and Complementary Agreements thereto, together with federal and provincial legislation enacted pursuant thereto, are the basis for the evolving relationship of the James Bay Crees and the Inuit of Québec with the Governments of Québec and Canada.
2. The rights, benefits and privileges granted to the Inuit and Cree beneficiaries under the Agreement must remain relevant within the context of changing social, political and economic conditions in Québec and Canadian society.
3. The public and quasi-public institutions and bodies established on a local and regional basis as benefits for the Inuit and Crees must be guaranteed initial and continuing viability through adequate funding.
4. An Implementation Committee composed of members appointed by the Inuit, the Crees, Québec and Canada, in equal numbers, shall be established to carry out certain duties and functions relating to implementation of the Agreement.

5. The Implementation Committee shall have a secretariat which may retain expertise and which shall be funded jointly by Québec and Canada.
6. Makivik Corporation and the Cree Regional Authority shall respectively appoint the Inuit and Cree members of the Implementation Committee.
7. The purpose of the Implementation Committee shall be, where necessary, to supervise the implementation of the Agreement and in that connection to deal with, either of its own initiative or by virtue of referral from any body created under the Agreement, any matter or dispute relating to the implementation thereof.
8. While the Implementation Committee would fulfill an advisory and recommendatory function, its decisions would, in certain circumstances and subject to certain approvals, be binding upon the parties affected.
9. In particular, the Implementation Committee shall have special responsibility, in consultation with the interested parties, for the coordination, review and finalization of all budgets for programs and bodies created or contemplated by the Agreement.
10. The principles governing the Implementation Committee in the performance of its functions

the Agreement and that, where amendments to the Agreement are required to achieve the foregoing result, same are effected.

14. Rules shall be established respecting the enforcement of the individual and collective rights of the Inuit and Cree beneficiaries under the Agreement.
15. In the event of ambiguity, inconsistency or doubt, the provisions of the Agreement and legislation enacted pursuant thereto shall be interpreted in favour of the Inuit and the Crees.
16. The costs of implementation of the Agreement shall be borne by Québec and Canada in accordance with rules to be established.
17. In the event that Québec fails to honour its budgetary obligations under the Agreement, Canada shall directly transfer funds ordinarily paid to Québec to the appropriate regional institutions or organizations.
18. In the event that Québec fails to provide adequate services as contemplated by the Agreement, Canada shall assume responsibility for the distribution of such services to Inuit and Crees, utilizing wherever possible the entities created for such purposes under the Agreement.

19. Canada shall forthwith recommend legislation to Parliament to amend Bill C-9 so as to clarify that the extinguishment of Inuit and Cree aboriginal rights in and to the Territory is conditional upon the fulfillment by Québec and Canada of their fundamental obligations to the Inuit and Crees under the James Bay and Northern Québec Agreement.
20. Subject to the approval of the Native parties, suitable constitutional protections for the rights and benefits to Inuit and Crees under the Agreement shall be recommended by Canada to Parliament.
21. As an essential step in the fulfilment of Canada's obligations under the Agreement and in recognition of its special responsibility for Native peoples, Canada shall immediately take the necessary steps to obtain the appropriations required to up-grade, to a level to be established with the Inuit, essential services in all Quebec Inuit Communities, such services to include, but not be limited to, housing, airstrips and airports, heavy equipment, health and social services and municipal and school infrastructures.
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