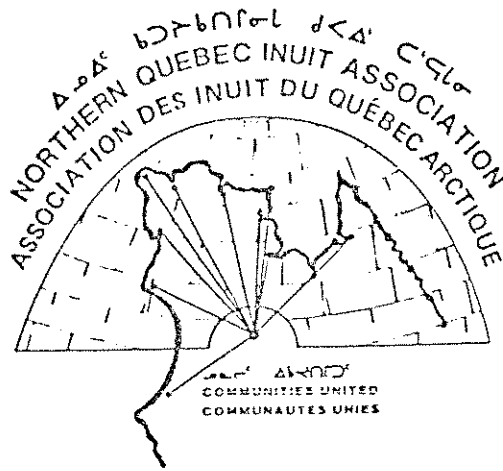


B R I E F  
T O  
THE PARLIAMENTARY COMMISSION  
ON THE  
PRESIDENCY OF THE COUNCIL,  
THE CONSTITUTION AND  
INTER-GOVERNMENTAL AFFAIRS



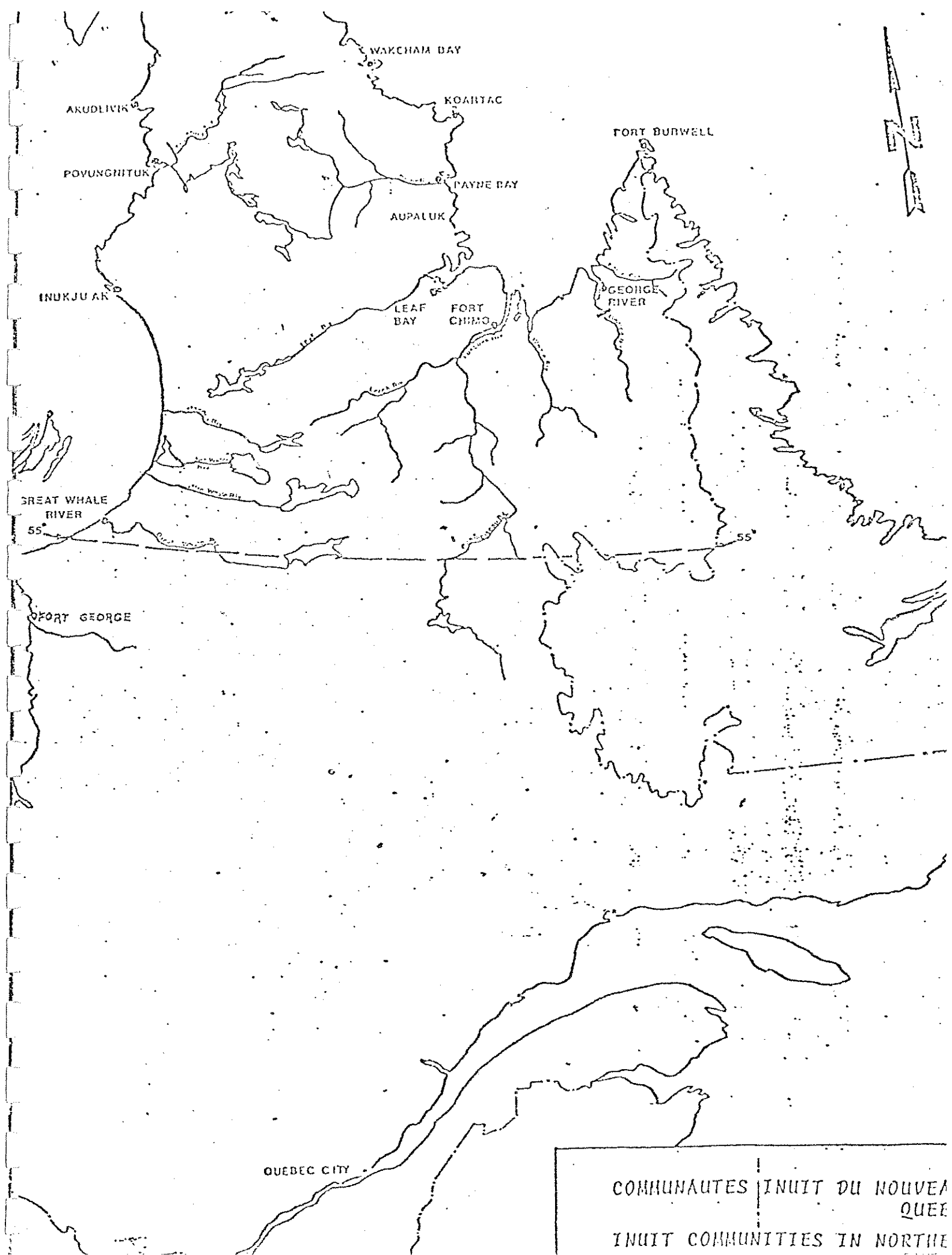
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Submitted by: NORTHERN QUEBEC INUIT ASSOCIATION representing  
THE INUIT OF QUEBEC

Position of THE INUIT OF QUEBEC  
with respect to the WHITE PAPER  
entitled "CONSULTING THE PEOPLE  
OF QUEBEC"



COMMUNAUTES INUIT DU NOUVEAU  
QUEBEC  
INUIT COMMUNITIES IN NORTHERN  
QUEBEC

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## INTRODUCTION

We, the Inuit of Northern Quebec, are pleased to appear before this Parliamentary Commission, which is studying the White Paper entitled "Consulting the People of Quebec", and welcome the opportunity to express to you our views in this regard. Our association, the Northern Quebec Inuit Association, was formed to promote and protect the rights of the Inuit of Quebec. It was, furthermore, the organization specifically mandated to negotiate Inuit land claims in Northern Quebec (the "1912 Territory") and to enter into the James Bay and Northern Quebec Agreement on our behalf.

### 1. PRELIMINARY REMARKS

The Inuit view the principle of consultation of the public by the Government by way of referendum as a positive step in the evolution of democratic institutions within Quebec. The use of the referendum is intended, in theory, to give another forum to the populace to express their will, to permit the electorate to become, in the language of the White Paper, "full partners in directing the course of State Affairs." Referendums, however, may, depending upon the rules governing their operation, be manipulated so that they become merely another political instrument of the government initiating them. They may be used to justify a pre-ordained political option of a government and, at the same time, may represent a denial of minority rights and opinions deserving of greater recognition and expression.

The creation, moreover, of the institutionalized or generalized form of referendum process proposed in the White Paper will not be flexible enough to meet every situation where consultation with the public on a particular question may be

required.

We feel obliged, furthermore, to note at the outset that, in our view, the Government should have chosen a wider forum than this Parliamentary Commission to allow individuals and groups to express their views directly to it. An impartial, independent body of inquiry mandated to hear and assess, within a reasonable period of time, the views of individuals and groups in the various regions of Quebec would have been more appropriate. Such a body would at least have been free from the procedural restrictions governing the duration and location of sittings of this Commission.

To date, the Government has indicated that it intends to consult the people of Quebec by way of referendum in relation to two issues, namely, the question of the independence of Quebec and the question as to whether Quebec should embark on a nuclear energy program. Any referendum held with respect to these issues will have serious repercussions for the Inuit and the territory we inhabit. It is with this in mind that we have reviewed the referendum framework proposed in the White Paper.

2. ADOPTION OF GENERALIZED REFERENDUM MECHANISM NOT RECOMMENDED

Save for limited use in the case of municipalities, there is a notable absence in Quebec of any political tradition in the use of referendums as a means of consultation by the Government. Despite this lack of experience, the White Paper proposes a generalized set of rules ostensibly intended to apply to any question submitted to the electorate. In theory, the same rules applying to a referendum on the question of independence would apply, for example, to a referendum on whether all Quebecers should share the burden of the Olympic

debt. In our view, the latter question, while important, obviously pales in significance when compared with the issue of independence. This is not the appropriate time to formulate legislation providing for an institutionalized form of initiative or referendum. The Government should, in its initial experiment in this area, pass referendal legislation dealing with a specific issue, namely, that of the independence of Quebec.

Furthermore, the independence issue is of such undeniably fundamental importance as to warrant its own particular set of rules if it is to be the subject of a referendum. We note that the Great Britain model, referred to constantly in the White Paper and allegedly followed faithfully in some areas, has, significantly, been departed from on this important point. The Referendum Act of 1975 in Great Britain dealt with the single issue of membership in the Common Market.

3. SPECIAL STATUS OF INUIT AND 1912 TERRITORY

The Inuit of Quebec are in a position unique among the peoples of Quebec. Although we are a minority within the larger framework of Quebec, we are also the original inhabitants of Quebec and, as such, have been accorded special statutory and political recognition. We feel we have a special responsibility to bring to the attention of this Commission the particular dangers to all minorities inherent in any form of referendum and the protections required as a consequence thereof.

While it may not be generally known, for over 4,000 years we have occupied a vast area constituting more than one third of the present size of the Province. This Territory,

located north of the 55th parallel, was only added to the Province of Quebec in 1912 upon the passage of joint federal and provincial legislation known as the Quebec Boundaries Extension Acts. It was not until 1964, furthermore, that the Government of Quebec "discovered" the significance of the 1912 Territory with its wealth of wildlife, mineral and water resources. The special character of this Territory and of its native inhabitants has been recognized by both the federal and provincial governments in the James Bay and Northern Quebec Agreement.

We, alone, among all of the minorities in Quebec, 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. No stronger case can be made by a minority for recognition of the principle of their right to self-determination, a principle strongly advocated by the Government of Quebec. We feel that adequate recognition of this principle must be assured in the matter of referendums as in all other spheres of Quebec political and social life.

4. ADEQUATE INFORMATION AND RESEARCH REQUIRED

As stated above, we are of the opinion that any legislation arising out of this White Paper should relate specifically to the holding of a referendum on the independence of Quebec. In that connection, we feel it is essential that groups and individuals representing all views on the subject be consulted prior to such legislation. We submit, furthermore, that adequate information and the results of in-depth research should be made available to the public prior to the passage of referendal legislation. It is only in this fashion that a thorough examination of the impact of independence may be



appreciated by the electorate. It is elementary justice, in our view, to provide the electorate with full information as to the consequences of both sides of any question put to a referendum. The consequences of Quebec's remaining within Confederation are fairly easily assessed. The same cannot, however, be said with respect to those which would result from an affirmative vote for independence.

In other words, if the people of Quebec are to exercise a meaningful choice, they must know what the consequences of that choice would be. Moreover, in the case of the Inuit the effect of independence upon the obligations of both the federal and provincial governments found in the James Bay and Northern Quebec Agreement would have to be known with certainty before we could be asked to vote on such a fundamental issue.

In light of the foregoing remarks, we wish to make a number of observations and recommendations with respect to the process described in the White Paper.

5. GOVERNMENT SHOULD BIND ITSELF TO RESULTS OF REFERENDUM

The White Paper suggests that, under the Canadian constitution, a referendum can have no direct legislative authority. Legal precedents have been cited in support of the Government's conclusions that the referendum process proposed for Quebec must be a consultative one and that, therefore, one need not foresee special provisions requiring a certain majority vote or rate of participation. We do not agree with these conclusions.

It is generally accepted that valid legislation establishing a referendum process may be enacted. Moreover, if

the powers of the Office of Lieutenant-Governor are preserved in the referendum process (by requiring, for example, its assent to any draft legislation approved by referendum), the results of such referendum can have legislative effect. In such a process, no constitutional amendments would be required for the government to bind itself to the results of a referendum.

In any event, the legal precedents relied upon by the government in the White Paper did not consider the type of referendal legislation proposed by this Government. The White Paper proposes a type of referendum whereby one or more options in the form of a question, not in the form of a legislative enactment, are put to the electorate for their opinion. This is quite different from that which gave rise to the legal precedents cited by the Government in the White Paper. The subject matter of the referendal legislation dealt with in those cases was draft legislation which, if approved by the referendum vote, would become law. It is clear from the process described in the White Paper that the government does not intend to put subject matter in the form of draft legislation to a referendum vote by the people of Quebec. The results of a referendum on the question of independence, for example, not being in the form of legislation, could not have legislative authority, whatever the results of the referendum vote would be. While it is possible, therefore, to create a referendum mechanism which could have legislative authority, the mechanism proposed in the White Paper will not have the force of law.

As mentioned previously, we feel the White Paper should not attempt to institutionalize a referendum process at this time. Rather, the government should design a referendum for the specific issue of independence. For this vital issue, the government can, and we submit, should agree to commit

itself politically to the results of such referendum - particularly when the government strongly supports one of the options to be voted upon.

Within the present political context of Quebec, it is politically dishonest to propose the legislation of a referendum mechanism in a vacuum. In stating that such legislation should deal squarely with the independence issue, we have concluded that, effectively, the Government, while it might not be bound legally (if a question, not draft legislation, is submitted for referendum vote), must be politically committed to following the results of such referendum. If the Government were itself divided as to which course to follow respecting Quebec's future status, it could legitimately choose to state in advance that it would not necessarily consider itself bound by the results of a referendum. Such, however, is not the present case.

A failure on the part of the Government to commit itself to the results of the referendum would mislead the electorate as to the importance of the referendum itself. In the absence of a political commitment, the Government is free to manipulate the results. In the event of a negative majority vote the Government can ignore the results, indicating that it had never agreed to be bound; if an affirmative majority vote results, the Government can claim a strong mandate to achieve Quebec independence since it is the "will of the people".

To reflect a commitment by the Government, the legislation itself should provide that another referendum on the same issue could not be held by the Government for a specified period spanning, for example, two electoral terms of office. In addition, political commitment to the results of a

referendum should entail the Government's consent to structure future policies to conform with the referendum results.

6. LARGER ROLE NEEDED FOR PUBLIC IN INITIAL STAGES OF REFERENDUM PROCESS

The Government has chosen what it describes as a "middle-course" in proposing that the Executive and the National Assembly act in concert in originating a referendum. In following this course, however, the Government has excluded the populace from a direct role in originating the subject matter of a referendum. It has, furthermore, reserved to itself the first step in formulating the all-important question to be put to a referendum vote. In our view, a role should be defined for the populace at this important initial stage.

Any referendal legislation, therefore, should, in the manner described below, provide for mandatory consultation of interested groups and individuals by the Government before a proposal is submitted to the National Assembly.

7. SIGNIFICANCE OF PROPER PHRASING OF THE QUESTION

To what is probably the most vital aspect of the referendum, the White Paper devotes but a few brief paragraphs. The Government proposes that once it has formulated and submitted its version of the question, the National Assembly be responsible for final drafting of the text of the question to be put to the public during the referendum. We urge that the phrasing of the question respecting Quebec's independence be subject to public consultation. It is a widely held view that the choice of words and phrases forming the question can determine, to a large extent, the outcome of the referendum. In a referendum, how a question is phrased can be as significant

as the issue itself. For example the different psychological reactions to such words as "independence", "sovereignty" and "separation" are already acknowledged.

It is important, therefore, that the Government's recommended text of the question be made known to the public as early as possible. It is only in this manner that the public can be afforded the opportunity of meaningful input in shaping the question in its final form. At the same time, the public would be afforded an opportunity to become more familiarized with the fuller range of issues involved in such a referendum.

Insofar as sociological and psychological tests may be used to help determine the final phrasing of the question on a given issue, the legislation must provide that such testing is carried out by an independent body whose findings would be made public before the Government proposes its initial version of the question. It is our view that the question must be clear, simple and unequivocal. The proposal should take the form of a single question which may be answered "yes" or "no" by the electorate. We do not agree, for example, that the question should be phrased as "sovereignty with economic association" when that idea means so many different things to different people. The people of Quebec should share the same concept as to what the question means.

In this connection, tests should be carried out to determine the validity and reliability of various questions which may be put in a referendum dealing with the independence issue.

8. 25-HOUR DEBATE IN NATIONAL ASSEMBLY INADEQUATE

As previously noted, under the format proposed in the White Paper the public would not have any input into the formulation of the question. Furthermore, a fixed period of twenty-five hours for debate of the Government's proposal by the National Assembly is envisaged. We have no hesitation in concluding that in the case of a referendum held on the question of independence a debate limited to twenty-five hours would be insufficient, particularly when the Government's proposal originates without the benefit of any extensive prior public consultation or of the recommendations of any independent body.

If the Government insists on passing legislation setting out a generalized referendum procedure, we would recommend that such legislation provide no fixed time period for debate by the National Assembly. It is obvious that certain questions proposed by the Government to be put to a referendum require longer debate by the National Assembly than others.

We would also observe that the democratic character of the process is illusory when the public's participation is excluded from what might be the most vital aspect of the referendum operation, the phrasing of the question; when, furthermore, the Government has clearly chosen sides on an issue; when that Government then proceeds to originate the phrasing of the question to be put to a referendum; and finally, when that Government is able to exercise its comfortable majority in the National Assembly to influence the final phrasing of the question.

9. VOTING FORMULA SHOULD RECOGNIZE REGIONAL DIFFERENCES

The White Paper expresses the Government's intention to conduct non-binding referendums in accordance with

general election procedures. Accordingly, no special provisions are contemplated respecting the size of the majority vote required to approve the issue submitted to a referendum. Nor would the proposed legislation deal with the rate of participation of the electorate in such voting.

We have maintained that the legislation proposed in the White Paper should deal specifically with a referendum on the independence question and that the Government should be bound by the referendum results. Consistent with this view, before such legislation is passed, there must be full debate as to the majorities needed to approve such a referendum ("concurrent" and "super" majorities) and as to the numbers who must participate before it can be considered official ("absolute majorities").

We have argued that full and complete information with respect to the consequences involved with either side of the independence question must be made available to the electorate before they are asked to give their opinion on the question. The irrevocable nature of an affirmative vote in a referendum on independence dictates that further protections must be built into the voting process. Quebec's independence is one of the most serious questions ever faced by Quebecers. The step towards independence, once taken, is irrevocable - not only for present Quebecers, but also for future generations. In such a context, a simple majority vote cannot be sufficient to justify binding all Quebecers.

With respect to the actual voting, the White Paper proposes that it might be useful to follow the example of Great Britain and tabulate votes on a regional level rather than on a Quebec-wide basis or by electoral districts. The Inuit agree with a regional approach to the holding of a refer-

endum. We recommend, however, that the regional approach be accorded much wider application than to be used merely for the purpose of tabulating votes.

While there exist other regions of special character in the Province, the Inuit of Quebec submit that the region we occupy, namely, that part of the 1912 Territory north of the 55th parallel, constitutes a distinct region within the Province of Quebec. On the basis of all relevant criteria, namely, historical, cultural, political, and economic, the Territory in question has formed a distinct part of Quebec. As previously stated, the fairly recent addition of the Territory to Quebec in 1912, its occupation by the Inuit from time immemorial, the continuing Inuit majority among the populations in the Territory and our cultural dominance in the Territory, all serve to demonstrate the regional differences of this Territory from the rest of Quebec which has only begun to establish itself in the Territory since 1964 through the presence of Government officials in very small numbers.

It is our view that an argument may be made for the recognition of other distinct regions in the Province based on geographical differences, population size and other relevant criteria. We recommend that the voting formula take into account such regional differences.

#### 9.1 Concurrent Majorities Requirement

There is a precedent in other jurisdictions for requiring concurrent majorities in the referendum process. Under such a requirement, the passage of a referendum would depend not only upon a certain majority vote among individual voters, but also upon the approval of a majority of the regions into which the State holding the vote has been divided. The



passage of a referendum on the question of independence, for example, might, quite apart from any over-all majority stipulated, require the approval of two-thirds of the regions into which Quebec would be divided.

## 9.2 Super-Majority Requirement

As noted above, the approval by regions is but one element of the process and is separate from the over-all majority which might be required of the electorate voting in a referendum on independence. For example, the approval of a region could be established by a simple majority of the voters within that region; the approval of the electorate voting as a whole might, however, be based on another form of majority. In a referendum on the issue of independence, we believe that a majority higher than a simple majority should be obtained.

It may be unrealistic to establish a requirement that the referendum be approved by an absolute majority, that is, by more than half, not simply of those voting, but of those eligible to vote. It is our view, however, that the vote of the electorate as a whole should be based on some super-majority, such as two-thirds of the votes cast on the question.

## 10. REFERENDUM CAMPAIGN AND DATE FOR REFERENDUM

### 10.1 Issuance of Writ of Referendum

The White Paper indicates that once the wording of the question has been finalized by the National Assembly, the Government would establish the date for the holding of the referendum. The White Paper is silent, however, on the question of the delay between the termination of the debate on the phrasing of the question and the actual issuance of the

writ of referendum to the Chief Electoral Officer. On this point, it is our recommendation that the legislation should provide that the National Assembly fix the date for the issuance of the writ and that such date be fixed within a stipulated delay.

#### 10.2 Duration of Referendum Campaign

The White Paper provides that upon the issuance of the writ of referendum, the actual holding of the referendum must take place within a delay of 35-60 days. If, as appears from the White Paper, the referendum campaign is to be carried out within that period, the delay is unrealistic. The period proposed by the Government would hardly be sufficient to permit the internal organization of the "umbrella organizations" whose task it is to bring together what promises to be a large number of groups of diverse backgrounds, concerns and interests. When the other elements of the referendum campaign are considered, namely, the formulation of aims and strategy, the preparation of documentation and other materials, the organization of the campaign, the dissemination of such information to the public, and the period for the public to reflect upon its choices, the inadequacy of the delay proposed by the Government becomes all the more evident. A brief delay between the issuance of the writ and the holding of the referendum does not necessarily favour one option more than another, save in one case - when the Government has placed all of its support behind one option.

### 11. PARTICIPATION IN REFERENDUM CAMPAIGN

#### 11.1 Access to Public Monies and Other Funding

We note that the White Paper follows the example of Great Britain by proposing the formation of government-

funded organizations. The number of official organizations would be determined according to the number of options offered by the referendum. The role of these organizations would be to provide the opportunity for unified expression of the opinions of those supporting each particular option.

It is further stated that these official organizations would be the only ones entitled to receive financial contributions and incur campaign expenses. It is not clear whether only these organizations can receive financial contributions from the Government or the public at large. We agree with the concept of official referendum organizations funded by the Government out of public monies. It is also our view that these official organizations alone should receive funds out of public monies.

Unlike the White Paper, however, the legislation must make clear the right of every individual, group, and organization to participate fully in the referendum campaign and, in that connection, to use their own funds and to solicit contributions from the public. Any limitations on the rights of such individuals, groups or organizations to such participation would be contrary to the Quebec Charter of Human Rights and Freedoms. Sections 3 and 10 of the Charter provide for fundamental rights and freedoms, including the right of every person to freedom of expression and association and to the exercise of those rights without discrimination or exclusion.

With respect to the use of government or public funds, it is our recommendation that the legislation make clear that such funds may only be used by the official organizations and may not be used by the Government to promote one or another of the options in the referendum campaign.

## 11.2 "Equal Opportunity" Objectives Not Achieved

While the goal of equality of opportunity during the referendum campaign through the creation of official organizations is commendable, it is questionable whether that aim can be achieved when the Government is clearly committed to one option and has promoted that option from the outset.

With respect to the functions of such official organizations, it is our view that, as in Great Britain, the funding of such organizations should provide for the free distribution to the electorate of official brochures. Each official organization should state its position as clearly as possible in its official brochure.

In accordance with the principle of equal opportunity for the expression of views supporting the various options, some guidelines should be established so that, regardless of the contributions made to their respective campaigns, each organization will be guaranteed approximately equal time on radio and television.

With respect to the funding of the official organizations other than by the State, it is our view that funding by the electorate should include contributions by artificial persons. Presently, under Bill 2 (an Act to govern the financing of political parties and to amend the Election Act) such contributions would appear to be prohibited. It is worth noting that the Commission des droits de la personne has criticized the provisions of Bill 2 in this respect, while pointing out that the term "person" as used in the Charter on Human Rights and Freedoms includes artificial persons.

Similarly, the proposed restriction on campaign

expenses amounts to undue limitation on the freedom of expression required in a referendum on an issue as important as independence. The effect of these restrictions upon what are universally considered to be fundamental rights and freedoms is to create more inequalities than those which the Government intends to avoid.

12. FUTURE STATUS OF INUIT AND THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT TO BE DETERMINED BEFORE REFERENDUM

We have commented earlier upon the necessity for the people of Quebec as a whole to be fully apprised of the consequences resulting from both sides of a referendum on the independence of Quebec. In our own case, it is imperative, in view of the special trust obligation of the Federal Government towards all native peoples existing under the present constitution, that our status in the event of an independent Quebec be fully determined in advance. It is in the interest of all native peoples of Quebec to have a clear understanding as to how that trusteeship obligation would be assumed by the government of an independent Quebec.

In addition, the James Bay and Northern Quebec Agreement has created a special relationship between the Inuit and the Federal and Provincial Governments which goes beyond the abovementioned trust relationship. Before any referendum on independence takes place, it is imperative that the Inuit receive adequate guarantees as to the assumption of all Federal and provincial obligations provided in favour of the Inuit in the Agreement. More specifically, the Inuit would want to know how the government of an independent Quebec would deal with the regional institutions created by the Agreement and with programs and funding which are presently the obligation of the Federal Government or under their jurisdiction.

RECOMMENDATIONS

1. Legislation on referendums, if passed at this time, should be specific rather than general and should deal with the question of the independence of Quebec.
2. The referendal process on independence should allow for adequate recognition of the special status of minorities and, in particular, of the Inuit of Quebec inhabiting the 1912 Territory.
3. The referendal process should include forums allowing for the presentation of all views and for the carrying out of research relevant to the proposed question prior to the passage of specific referendal legislation.
4. The Government should commit itself politically to be bound by the results of such referendum prior to the passage of referendal legislation which should reflect, to the extent possible, that commitment.
5. Referendal legislation, if in institutionalized form, should provide for mandatory consultation of interested groups and individuals prior to submission of the question to the National Assembly.
6. The phrasing of the question to be put to a referendum vote should be made public as early as possible and, if possible, prior to the passage of specific legislation.
7. In a referendum on independence, the issue should be put to the electorate in the form of a single question requiring a simple "yes" or "no" answer.

8. Referendal legislation providing that the question originates through the Government should not specify a time limit for debating the final phrasing of the question in the National Assembly.
9. Referendal legislation on the issue of independence should recognize regional differences through a voting formula requiring concurrent and super-majorities.
10. Referendal legislation should provide that the National Assembly fix, within a stipulated delay, the date for issuance of the writ of referendum.
11. Referendal legislation should provide for an adequate delay between the issuance of the writ and the holding of the referendum to allow the official organizations to carry out an effective campaign.
12. Every individual, group and organization must be allowed to participate in the referendum and to use their own funds or solicit contributions from the public for such purposes.
13. Public monies should only be made available to the official organizations and should not be used by the Government to favour any option in the referendum campaign.
14. Each official organization should provide an official brochure free of charge to the electorate setting out its position.
15. Regardless of contributions made to their campaigns, the official organizations should be guaranteed

approximately equal time on radio and television.

16. Prior to a referendum vote on independence, the future status of Inuit as native people in an independent Quebec, particularly as beneficiaries of a political trust under Section 91(24) of the British North America Act, 1867, must be clearly established.

17. Prior to a referendum vote on independence, the Inuit must receive adequate guarantees as to the assumption of all federal and provincial obligations provided in their favour in the James Bay and Northern Quebec Agreement in the event of an independent Quebec.