Consultation with the Inuit of Northern Québec on the Matter of Constitutional Reform :

A Brief Summary of the Constitutional Issues of Concern to Inuit and Affecting Inuit Interest

RESEARCH DEPARTMENT

CONSULTATION WITH THE INUIT OF NORTHERN QUEBEC ON THE MATTER OF CONSTITUTIONAL REFORM:

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MAKIVIK CORPORATION

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interests. Therefore, Inuit from N.W.T., Labrador and Québec will have to meet together on a fairly regular basis in order to determine the common goals and strategies. In many cases, our potential successes in negotiating constitutional reform can be made even greater by developing a common position, not only among Inuit, but also with other Native peoples in Canada, namely Indians (including Métis).

As soon as the White Paper and Bill C-60 were made available, they were carefully examined by Makivik Corporation. The unanimous conclusion was that the federal government's amendments did not take into account Inuit concerns or interests, but dealt for the most part with existing problems between the French-speaking and English-speaking peoples of Canada.

Notwithstanding our status as original inhabitants, the Native peoples of Canada have never participated in or been consulted in the shaping of Canada's constitution or of its provisions that have particular application to us. The Inuit of Québec, for example, were never consulted or even advised as to the passage of the 1912 Québec Boundaries Extension Acts which had the effect of annexing our homeland to the Province of Québec without settling our Native rights and titles to that land. This failure to consult cannot be explained as mere oversight on the part of the government of the day. One result of the lack of Inuit participation in this process was that until fairly recently we were largely unaware of the significance of the constitutional division of powers between Canada and Québec. We have found that the present arbitrary division of those powers in regard to the Inuit of Québec has not met our needs. In fact, our experience with the two senior levels of government has

traditionally seen us used as pawns in a continuous tug-of-war between the federal and provincial administrations in northern Québec.

The absence of control over our own affairs or participation in the decisions which affect us had made it difficult for us to identify as either Canadians or Québécois. Despite all of the characteristics which set us apart as a distinct people in a defined region, namely, our language, culture, history, values and priorities, we have never exercised any acceptable level of self-determination.

This past history, therefore, has amply demonstrated to the Inuit of Québec that we must not only be consulted but have a meaningful role in decisions concerning any constitutional reform which affect us. In view of the special status conferred upon Native people in the British North America Act and other legislation, a suitable mechanism must be found to ensure the direct and meaningful participation of the Native peoples of Canada in any constitutional review and reform process.

The Native peoples residing in the northern regions of Canada constitute a majority of the population in an area making up one-third of Canada. Without the assurance at this time of a guaranteed role in the process of constitutional reform, we cannot conceive how the issue of Canadian unity can be satisfactorily resolved. Unless the fundamental problems that the Native peoples have with the present Constitution are settled, a major segment of Canada, namely, its arctic and sub-arctic regions, will continue to be burdened with the problems which presently exist.

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After several months of intense work in the fall of 1978 by Makivik Corporation, a preliminary draft of possible amendments to Bill C-60 was prepared. These amendments specifically take into account the interests of Native people, particularly the Inuit. The issues discussed in the following sections describe in general terms the types of reforms Makivik is considering.

II. POSSIBLE AREAS FOR CONSTITUTIONAL REFORM

1. Aboriginal Rights

It is increasingly clear that a main mechanism for establishing the social, economic and political institutions affecting Native peoples, particularly on a regional basis, is through settlements of aboriginal claims. For example, the Inuit of northern Québec established their regional and local governments, health, education, and other institutions by means of the James Bay and Northern Québec Agreement. Furthermore, the Inuit of the N.W.T. (Eastern Arctic) have indicated that there will be no settlement of aboriginal claims in their area if it does not include political institutions.

The British North America Act (B.N.A. Act), 1867, which is part of Canada's Constitution, established certain main institutions of Canada, both at the provincial and federal level. For example, the Act provided for the court system, indicated the distribution of federal and provincial law-making powers, and set up some structures within which federal and provincial governments must operate.

Just as Canada has established some of its main social, economic, and political institutions through its Constitution, so are the Native peoples of Canada in the process of establishing their institutions through settlements of aboriginal claims. Such settlements are of fundamental importance to Native peoples. These agreements and the legislation enacted to give effect to such agreements may well shape to a large extent the present and future directions of Inuit for years to come. Therefore, Makivik suggests that the principles for negotiating settlements of aboriginal claims should be established in Canada's Constitution. In this way, both the federal and provincial governments would be bound to respect certain principles which Native peoples determine to be fundamental in negotiating settlements of aboriginal claims.

An example of a principle which Makivik considers fundamental refers to how agreements of aboriginal claims are viewed by governments. It is important that agreements, such as the James Bay-Northern Québec Agreement and a possible future agreement on the offshore area around northern Québec, not remain perpetually fixed and unchangeable while the rest of the world changes around us. If the governments in Canada wish to improve relations with the Native people of Canada, then our relationship with them must be permitted to evolve or grow with changing circumstances. For example, government policy could change in future settlements of aboriginal claims in Québec so as to expressly provide for Native ownership, control or participation in the development of natural resources. The Constitution should provide that, in such a case, upon request of the interested Native party, the James Bay and Northern Québec Agreement should be amended to reflect

this positive change in policy. Government policies are always subject to change - and so should agreements of aboriginal claims under certain specified circumstances.

Presently, there is a strong tendency for the federal and provincial governments to view agreements on aboriginal claims as permanently fixed regardless of new or changing circumstances. However, agreements of aboriginal claims are intended to apply to not only present but also future generations. Such agreements must remain relevant to future generations of Inuit even when faced with changing social, economic and political circumstances. Therefore, it must be an accepted principle in the Constitution that such agreements will be upgraded from time to time so as not to become obsolete in certain areas to future generations.

Finally, it is the position of Makivik that aboriginal rights, as unique cultural rights inseparable from the Native peoples of Canada constitute fundamental human rights.

Generally, on the international level, cultural rights have already gained recognition as fundamental human rights. Through Bill C-60, the government of Canada is intending to include a Canadian Charter of Rights and Freedoms in the Constitution. Therefore, the aboriginal rights of the Native peoples of Canada must be included in such Charter in the Constitution.

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2. Alternatives to Surrender and Extinguishment of Aboriginal Rights

It is the current practice in Canada that when aboriginal claims are settled, federal and provincial governments demand that the Native beneficiaries of such settlements surrender their aboriginal rights. Moreover, it is usually intended that Parliament then proceed to extinguish such rights so as to eliminate their legal existence and validity.

This loss of aboriginal rights continues to be of serious concern to the Native peoples of Canada. Native peoples possess these cultural rights, often called aboriginal rights, due to their status as the original inhabitants of Canada and due to their use and occupation of the land from time immemorial.

Such rights which are unique to persons of Native origin should not be surrendered or extinguished. If a better relationship is to be developed between Native and non-Native peoples, the rights of each society and culture must be respected.

Historically, governments have sought the surrender of aboriginal rights through Indian treaties because they desired certain regions of Canada to be settled and developed by incoming settlers. Friendly or peace agreements (treaties) with Indians were entered into so as to proceed with such orderly settlement and development of lands in Canada. In many cases, the Indians did not discover until many years later that these "peace" agreements also took away their aboriginal rights.

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Presently, in the case of settlements of aboriginal claims, it is the position of Makivik that orderly settlement and development of the lands can take place without the surrender or extinguishment of aboriginal rights. For example, some of the rules for development by non-Natives in the territory above the 55th parallel in Québec are provided in the James Bay and Northern Québec Agreement. Where development projects may have undesirable effects on Inuit, their communities or their traditional economies, such developments must first be assessed for their environmental and social impact so as to avoid or minimize any negative effect. If these and other controls are properly formulated, development can occur without any need for surrender or extinguishment of aboriginal rights.

Due to the present uncertainties with regard to the future existence of aboriginal rights, such rights require specific recognition and protection in the Constitution. In doing this, certain aspects of aboriginal rights which relate to lands may have to be redefined to some extent. For example, if Inuit rights of ownership, hunting, fishing and trapping, and other rights attached to such lands have been negotiated and specified in settlements of aboriginal claims, the definition of aboriginal rights in the Constitution may have to reflect the rights in such settlements.

Makivik is presently working on a formula which will protect the aboriginal rights of the Inuit of northern Québec in the offshore area. A legal formula is also being worked out to restore Inuit aboriginal rights in

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Québec, which rights were surrendered under the James Bay-Northern Québec Agreement and extinguished under federal legislation (The James Bay and Northern Québec Native Claims Settlement Act).

3. Cultural Protections (including Language Rights)

In addition to constitutional protections for aboriginal rights, individuals of Native origin must have the right to use, enjoy and develop their own language or culture.

For example, the experience of the Inuit of Québec with the enactment of Québec's Charter of the French Language (Bill 101) confirmed the need for greater cultural protections to be entrenched in the Constitution.

Also, certain additional steps must be taken to maintain Inuit identity in the territory above the 55th parallel. Although English and French are the only official languages of Canada, it is still possible to establish Inuktitut as a working language in a defined region above the 55th parallel.

Other language rights should be included in the Constitution so as to ensure the following:

(1) that Inuit have the right to use Inuktitut in any special proceedings of the Parliament of Canada or the legislature of a province when the matters being discussed relate primarily to Inuit and their interests;

(2) that by-laws, ordinances and regulations of regional and local governments should be available in Inuktitut, as well as in French and English;

(3) that the British North America Act as Canada's most important legislation of constitutional significance should be made available in Inuktitut and other Native languages;

(4) that laws giving effect to a settlement of aboriginal claims, such as the James Bay-Northern Québec Agreement, should be made available by the federal and provincial governments in Inuktitut;

(5) that Inuit have the right to use Inuktitut in communicating with federal and provincial government departments as well as offices of judicial or administrative bodies located in the territory above the 55th parallel; and

(6) that Inuit children have the right to receive their schooling in whole or in part in Inuktitut.

4. Inuit Interests on the International Level

It is generally recognized that wildlife management and environmental protection will be increasingly regulated on the international level, as well as on federal, provincial or regional levels. For example, Canada has already signed international agreements or conventions respecting polar bears, seals, migratory birds, whales and fisheries.

Presently, Canada can bind itself in international agreements so as to adversely affect Inuit interests, even if such interests were secured in a settlement of aboriginal claims. Therefore, it must be established as a principle

in the Constitution that Inuit should have a direct and adequate role in international matters which relate to their culture or affect their specific interests, such as wildlife and protection of the marine and land environment. Direct Inuit participation may, for example, be achieved through:

(1) representation in federal administrative committees or other bodies whose function it is to determine Canada's policy and position in international matters where such matters affect certain Inuit interests; and

(2) representation as members of Canadian delegations involved in discussions or negotiations of matters affecting Inuit interests on the international level.

A further area of interest presently being examined by Makivik relates to the cultural and economic relations Inuit of Canada may have with Inuit in other circumpolar regions. For example, increased relations will likely be established between Greenland and Canadian Inuit, particularly with the greater social, economic and political independence to be experienced by Greenland Inuit through Greenland Home Rule. In this regard, a present matter for discussion with the Greenland Inuit concerns our common interests respecting commercial fisheries.

5. Political Representation in Parliament and the Provincial Legislatures

Although regional and local governments have been established in the territory north of the 55th parallel, many of the major decisions affecting the whole country

and often the Inuit are made, and will continue to be made, in the federal Parliament and the provincial legislatures.

Up to the present time in Canada's history, Native people have had few or no members of Native origin to represent them in Parliament or the provincial legislatures. One of the main reasons is that Native populations are very small when compared to the non-Native populations existing in Canada or any province. For example, Canada may have approximately 23,000 Inuit and 1 million Indians and Métis as compared to Canada's total population of 23 million. Therefore, Native people have little or no chance of being elected under the existing electoral system.

Perhaps the only exception is in the N.W.T. where the Inuit and Dene are the majority populations. Presently, N.W.T. elects only two members to the House of Commons (Parliament) since its overall population is small as compared with the ten provinces of Canada. No consideration is given to the fact that N.W.T. plays an increasingly important role in Canada with respect to resource development and that this northern region is physically almost one-third the size of Canada.

Makivik is exploring the possibility of adding a certain number of minimum seats in Parliament which would be exclusively reserved for election of Native peoples from the different regions of Canada. For example, in addition to the 282 seats presently existing in the House of Commons, 15 or more seats could perhaps be added which would be filled solely by Native peoples across Canada. Persons

of Native origin could still run for election to Parliament under the existing 282 seats, but would also be able to elect representatives under the minimum number of seats specially reserved for the Native peoples of Canada.

A precedent for establishing parliamentary seats reserved exclusively for Native people exists in New Zealand. The Native people (Maoris) in New Zealand have 4 Maori seats reserved in Parliament out of a total of 96 seats.

With respect to the provincial legislatures, such as Québec's National Assembly, a similar system as that being suggested for Parliament may be possible.

If in the future the circumstances change so that Indians and Inuit are being elected in greater numbers to Parliament or the provincial legislatures under the ordinary electoral systems, perhaps the special system of reserved seats would no longer be necessary and could be eliminated.

6. Regional Disparities

Regional disparities, as used in Bill C-60, generally refer to the large regional differences that exist throughout Canada with respect to:

(1) essential services and facilities; and

(2) social and economic opportunities.

There are many examples of services and facilities which exist in Canada's cities which do not exist or are sorely inadequate in the north. Health facilities, schools, communications, and airstrips are all examples of facilities which are often taken for granted in the southern parts of Canada, but which may often be inadequate in the north.

Similarly, economic and social opportunities are far less available in Canada's north than in the south. While the potential is there, suitable government programs and financial resources have not been provided in working towards a flourishing northern economy.

Makivik agrees in principle with the federal government that a commitment towards reducing regional disparities in the different regions should be included in the Constitution. However, it would appear necessary to be more specific and to expressly deal with certain problems common to the northern regions of Canada. For example, future programs and services in northern regions to reduce regional disparities should be compatible with the aims and objectives of individuals and societies inhabiting such regions. Their cultural values and priorities must be taken into account.

In addition, there must be improved communications of

all types, which at the same time provide for adequate participation by individuals or groups in the region and take into account their cultural values and priorities.

Finally, the benefits from development of natural resources, such as hydro-electric and mining projects, should not continue to be enjoyed for the most part outside the region. Such benefits should be shared with the institutions in the region in accordance with revenue-sharing arrangements to be worked out.

7. Inuit Rights with respect to Archaeological Research and Property

Archaeological property is often considered both a national and provincial resource of great educational and historic value for all Canadians.

In the case of the Inuit of northern Québec, the experience with respect to how archaeologists have conducted past explorations in the territory has often not been satisfactory. In some cases, Inuit communities were not consulted before archaeological activities were begun. In other cases, the consultations with the affected communities were inadequate or misleading. There were also incidents reported that certain burial grounds were not respected and the property of the dead were removed.

A further problem relates to what is done with Inuit archaeological property once it is removed by archaeologists from its original site. A very small percentage of the property removed from the territory above the 55th parallel eventually ends up in museums in southern Canada. These are usually the rarer items of interest. A large

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portion of the remaining archaeological property is filed away in Ottawa or some other location and is not viewed by the public.

Little or no Inuit artifacts are ever returned to the Inuit or sent back for use in the territory above the 55th parallel. A serious problem which is resulting is that non-Natives in the southern part of Canada are becoming more knowledgeable of Inuit history and culture than the Inuit themselves.

Inuit must have a preferential right to use and enjoy archaeological property which relates to their culture, heritage and ancestry. Special measures are being suggested by Makivik for insertion in the Constitution. These measures would ensure that Inuit could not be deprived of this primary source of the origin of their culture and society without their consent.

Inuit rights with respect to archaeological property are property rights of a cultural nature. The Canadian Charter of Rights and Freedoms in Bill C-60 includes a general provision that every individual has the right to use and enjoy his or her property and not be deprived of such use and enjoyment, except by law. Makivik is suggesting that archaeological property be specifically included in the Charter as a fundamental property right of great importance to Native people, for educational use and enjoyment by present and future generations. It is also our opinion that the right to use archaeological property includes the priority of Inuit to conduct their own archaeological investigations.

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Furthermore, archaeological research and exploration should not take place on certain lands without the consent of the Native peoples affected. In the case of the Inuit, such lands could include lands owned by the Inuit of northern Québec, as well as lands where known Inuit burial sites are situated, regardless of what category of land such sites are found.

8. Alteration of Provincial and Territorial Limits and the Creation of New Provinces

In 1912, Canada and Québec both passed legislation entitled the Québec Boundaries Extension Act which made the homeland of the northern Québec Inuit a part of Québec. The Inuit who had lived there for 4000 years were never consulted and only discovered what had been done by the two governments many years later.

In the future, no provincial boundary should be extended or otherwise altered without adequate prior consultation with the Native peoples affected by the proposed alteration. For example, there have been recommendations from time to time that the boundaries of the province of Québec be extended to the offshore area around Québec for a specified radius (perhaps 3 miles). As you are aware, Inuit claims in the offshore area have not yet been settled. Therefore, we would want to first analyze any proposal to extend Québec's boundaries in such area and to be adequately consulted before agreeing to any such alteration of Québec's jurisdiction. At the present time, there is no indication by the federal government that provincial boundaries will in fact be extended to include parts of the offshore area.

The same principles of consultation would apply if a new province were created. For example, in the North-west Territories, there have often been suggestions that the Territories should be conferred provincial status. In this case, the Inuit of N.W.T. should be properly consulted.

In addition, if Inuit land claims have not been settled in N.W.T., no province should be created without Inuit consent. The reason for this is that in creating a province one must establish the necessary political institutions to administer and pass laws for such province. The Inuit of N.W.T., however, intend to include their own concepts of political institutions as part of their land claims. Therefore, the political institutions established at the time of creation of a province should not be permitted unless they conform to what the Inuit, as the dominant population in the Territories, choose for their future.

The above principles should be clarified and expressly provided for in the Constitution.

9. Reorganization of Government Departments Responsible for Native Affairs

The federal department which has the most dealings with Native people is the department of Indian Affairs and Northern Development (DIAND). It is DIAND which establishes programs and services for Inuit and Indians and formulates policies directly affecting them. Therefore, the nature and quality of the relationship of Inuit with the federal government in general is determined to a large extent by our experiences with DIAND.

Although DIAND has a large role in shaping programs and policies affecting Inuit, DIAND engages in little or no consultation when formulating such programs and policies. The result has been that DIAND's programs and policies have often hindered rather than promoted Inuit interests or Inuit self-reliance.

Makivik is suggesting that the principles governing DIAND's role be clearly provided for in the Constitution. The principles which are being suggested with respect to DIAND could include the following:

(a) reorganize DIAND so that the Department will promote the self-reliance of Native peoples and be supportive of their priorities, needs and aspirations;

(b) employ Native peoples in senior positions in DIAND so as to guarantee that Native peoples will be directly involved in the formulation and implementation of government policies and programs affecting them;

(c) make any jurisdictional changes in administrative arrangements between federal and provincial governments only in collaboration with the Native peoples affected;

(d) establish a procedure for the consultation of Native peoples across Canada when the federal cabinet appoints a Minister of Indian Affairs.

The same principles can have application at the provincial level. For example, in Québec the "Secrétariat des Activités Gouvernementales en Milieu Amérindien et Inuit"

(S.A.G.M.A.I.) is the department established by the Québec government to deal with Native affairs for matters within provincial jurisdiction. Although SAGMAI is a recently-created department, similar problems as have been experienced with DIAND are already developing.

10. Economic Development

As discussed earlier in this paper, under the section on "Regional Disparities", Bill C-60 touches on economic policy. The Bill provides for some commitment to reduce or minimize regional disparities in disadvantaged regions by increasing economic opportunities. However, it is Makivik's opinion that much more will be required in order to deal with the many issues associated with economic development in the north.

First, as mentioned earlier in this paper, major resource development (e.g. hydro-electric and mining projects) by persons from outside the territory usually means little or no benefits for the territory above the 55th parallel. Major rivers in the territory are intended by Hydro-Québec to be used for hydro-electric development, yet little is done to satisfy the relatively small power needs in Inuit communities.

Second, the revenues derived from such projects are presently not shared with the regional government and other institutions in the territory despite the fact that it is the inhabitants of the territory who may suffer adverse impacts from such projects.

Third, Native peoples have had virtually no meaningful participation in large-scale economic development in their territory. Generally, when large-scale developments are discussed, governments assume that Native peoples have no special role. Some change was achieved in the James Bay-Northern Québec Agreement since Inuit will participate as members on the Kativik Environmental Quality Commission to evaluate the environmental and social impact of developments in the territory, including hydro-electric and mining projects.

At the same time, however, Inuit still do not participate as potential developers of such resources, nor do they exercise sufficient control when developments are proposed. Makivik is still engaged in preliminary research in the area of economic development as it may relate to the Constitution. The areas which Makivik intends to examine include:

(a) the principles for a comprehensive economic development policy for the northern region;

(b) participation by Inuit and their institutions in resource management and development so as to create a healthy economy for the north;

(c) principle of revenue-sharing on a regional basis; and

(d) greater control of the development of resources in the region.

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11. Re-alignment of Electoral Boundaries

Under the present electoral system, there is little opportunity for Inuit to be elected to the federal Parliament or to Québec's National Assembly.

The electoral or voting districts in the northern area of Québec are established so as to include some of the larger non-Native municipalities below the 55th parallel. These other municipalities are included in order to meet certain minimum population requirements established for electoral districts. The result is that municipalities, such as Sept-Iles, with which Inuit communities have little in common, are included in the same electoral district. Therefore, Inuit votes are a small minority of the total votes in such electoral districts.

Rather than establish electoral districts only on the basis of population, other relevant factors must be taken into account. In the territory above the 55th parallel, many existing facotrs would suggest that the territory should be established as one electoral district despite its relatively small population:

(a) the physical size of the territory is large, with similar geographic and climatic conditions throughout;

(b) political representation is needed for the specific problems common to such regions;

(c) the municipalities in the territory have mainly Inuit residents, with common interests among them, resulting in a certain cultural identity for the territory.

Makivik is suggesting that such basic factors be included in the Constitution. Federal and provincial governments would then be committed to altering existing electoral boundaries in northern areas so as to take these factors into account.

12. Environmental Protection and Northern Development

Inuit of northern Québec have a special relationship with the territory and its resources above the 55th parallel, including the offshore area. For example, Inuit depend on the land, waters and wildlife resources for hunting, fishing and trapping.

When proposed developments take place which attract large numbers of non-Natives into the north, Inuit must not lose political, social or economic control in their communities or in their region. Adverse social impacts on the communities, cultures and societies must be avoided or minimized when such developments take place.

In addition, Inuit have a right to expect that the rights and interests specified under the James Bay and Northern Québec Agreement in favour of Inuit will not be adversely affected by development. Inuit have always held the opinion that the practice of obtaining food and other subsistence-related activities is a right which takes precedence over other uses. The position of Makivik is not that development should not occur in the territory, but that orderly and balanced development is required based on the following principles:

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(a) the nature, scope and pace of development must take into account the needs and priorities of the institutions and inhabitants, particularly the Inuit, of such regions;

(b) regional plans and policies for development, including scientific research policies, must be formulated in collaboration with such institutions and inhabitants;

(c) the plans and policies relating to development must be based on principles and procedures that include protection of the fragile northern environment and its social milieu, particularly the Inuit, their culture, societies and economies.

In addition, Makivik is suggesting that Inuit lands and other lands in which Inuit have special legal rights (e.g. hunting, fishing and trapping) be provided with greater protection than that presently specified under the James Bay and Northern Québec Agreement. The principle must be established in the Constitution that when developments occur in the territory, such lands should not be subject to expropriation, save in the most exceptional circumstances. Even in such circumstances, special expropriation procedures should be worked out. Also, the approval of either the federal or provincial cabinet, or Parliament or a provincial legislature, should be required.

13. "Equality Before the Law and Equal Protection of the Law" and Special Measures for Native Peoples

Under the Canadian Charter of Rights and Freedoms in Bill C-60, the federal government has included the following fundamental human right:

"the right of the individual to equality before the law and to the equal protection of the law".

In general terms, this provision of the Charter means that everyone has the right to be treated equally, without discrimination due to race, national or ethnic origin, language, color, religion, age or sex. It also means that the law must generally treat people equally and provide them with equal rights and protections.

However, it is also recognized by the federal governments both in the United States and in Canada that not all groups of people have achieved equality in political, social or economic terms. In order that such disadvantaged groups achieve equality through greater opportunities, special programs or arrangements may be necessary. These special programs are often called "affirmative action" programs.

For example, in order to develop professionals, (doctors, lawyers, etc.), among the Inuit, special measures or programs may have to be worked out to provide greater opportunity for Inuit to qualify for professional training in universities. In addition, in order to promote economic development above the 55th parallel and to increase employment opportunities among the Inuit, the James Bay-Northern Québec Agreement specifies that priority in job contracts will be given to Inuit for government projects in the territory.

As evident from above, there exist two important principles: the right to equal protection of the law, on the one hand, and the right to affirmative action programs, on the other. In order to ensure that both these

However, it is often still unclear to what extent the federal Parliament or provincial legislatures can pass laws which affect Native peoples. In many areas, including Native lands, Native cultures, wildlife management and other matters, research must still be done to determine whether it is preferable in the best interest of the Native peoples to be under federal or provincial legislative jurisdiction.

Once the question of jurisdiction is determined, the Constitution should reflect, where reasonably possible, these choices by expressly specifying the extent of federal or provincial jurisdiction with respect to the different subject matters.

A further issue under section 91(24) of the BNA Act, 1867, is the manner in which the federal government should carry out its trust responsibility in the future to protect Native peoples and their interests. Up to the present time, the federal government has often acted counter to Native interests, or has been reluctant to take any action whatsoever. It will likely be necessary to define more clearly in the Constitution what is the nature and extent of the federal trust responsibility with respect to Native peoples.

In general, the research required in redefining all aspects of section 91(24) of the BNA Act, 1867, is quite extensive and complex. Makivik is presently at a very preliminary stage in such research.

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