SUBMISSIONS TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES OF MAKIVIK AND INUIT TAPIRISAT OF CANADA ON BEHALF OF THE INUIT RELOCATED TO THE HIGH ARCTIC (GRISE FIORD AND RESOLUTE BAY) IN THE 1950's BY THE FEDERAL GOVERNMENT

June 28, 1993

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Makivik and Inuit Tapirisat of Canada seek, in this presentation, to describe to the Commission the manner in which the planning and execution of the Relocation of Inuit from Inukjuak and Pond Inlet ("the Relocation") was in breach of legal obligations and duties owed by the government of Canada to the Exiles. As the Testimony before this Commission has revealed, these breaches resulted in extreme hardship, pain and suffering for the Exiles.

A) INTRODUCTION -- RELATIONSHIP BETWEEN THE PARTIES

1. As Defined By Legislation and the Courts

In its 1939 judgment in Re Eskimo the Supreme Court of Canada concluded that Inuit were included under the provisions of subsection 91(24) of the Constitution Act, 1867 and were thus under the protection of the Crown.[1] A fiduciary relationship clearly exists between the Inuit and the federal government.

In R. v. Agawa the Court of Appeal for Ontario noted that it was the government's responsibility to protect the rights of Indians and that this responsibility arose from the special trust relationship created by history, treaties and legislation.[2]

In R. v. Sparrow the Supreme Court of Canada set guidelines for the interpretation of subsection 35(1) of the Constitution Act, 1982. In so doing, the Court referred to

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[1] [1939] S.C.R. 104.

[2] (1988) 65 O.R. (2d) 505.

the "historic relationship" between the government and Aboriginal peoples:

> [T]he Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship. [3]

This historic relationship, with the incumbent obligations on the part of the government, defines the relationship between the Inuit relocatees and the government of Canada.

This special trust relationship was also noted by the Court in 1939 in Re Eskimo. There the Court quoted from a Senate Resolution of 1867 which provided that:

> Resolved that upon the transference of the Territories in question [the Provinces of Nova Scotia, New Brunswick and Canada] to the Canadian Government, it will be the duty of the Government to make adequate provisions for the protection of the Indian Tribes, whose interest and well being are involved in the transfer.

Recognition of the existence of this fiduciary duty is also contained in the Quebec Boundaries Extension Act, 1912[4] which extended the boundaries of Quebec to include the territory of the Inuit while stipulating that the fiduciary duty or trusteeship of the Indians in the territory would remain in the Government of Canada:

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[3] [1990] 1 S.C.R. 1075 at 1108.

[4] 2 Geo. V, c. 45 (Canada) par. 2(e); see also Quebec Boundaries Extension Act, 1912 2 Geo V, c. 7 (Quebec) par. 2(e).

> That the trusteeship of the Indians in the said territory and the management of any lands now or hereafter reserved for their use, shall remain in the Government of Canada subject to the control of Parliament.

This fiduciary duty was reaffirmed by Canada in the James Bay and Northern Quebec Native Claims Settlement Act[5]. That legislation, in its preamble, made specific reference to the obligations under the 1912 Quebec Boundaries Extension Acts and further specifically confirmed the special responsibility of the government of Canada for the James Bay Inuit.[6]

2. As Defined By Their Cultural Setting

The cultural setting in which the events unfolded intensifies this fiduciary relationship. It is clear from the statements and testimony of the Inuit that at the time of the relocation they regarded the white people with fear and awe. Inuit responded to the white man's desires and requests as if they were commands (see, for example, Testimony before the Commission on April 5, 1993, pp. 30-32, 40, 386).[7]

In Guerin v. The Queen the Supreme Court of Canada described the fiduciary relationship as follows:

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[5] S.C. 1976-77, c. 32.

[6] A clause in the preamble states: "AND WHEREAS Parliament and the Government of Canada recognize and affirm a special responsibility for the said Crees and Inuit".

[7] All page references to the Testimony before the Royal Commission on Aboriginal Peoples on April 5-8 1993 are to the interim transcripts from those hearings.

> [Where there is a fiduciary obligation] there is a relationship in which the principal's interests can be affected by, and are therefore dependent on, the manner in which the fiduciary uses the discretion which has been delegated to him. The fiduciary obligation is the law's blunt tool for the control of this discretion.[8]

A few years later, in Lac Minerals v. International Corona Resources Ltd. the Court adopted the following statement from an American judgment:

> There is, however, the notion underlying all cases of fiduciary obligation that inherent in the nature of the relationship itself is a position of disadvantage or vulnerability on the part of one of the parties which causes him to place reliance upon the other and requires the protection of equity acting upon the conscience of that other... .[9]

At the very least, when dealing with the beneficiary, the fiduciary is required to use his or her powers and influence in the best interests of that beneficiary. It is a fiduciary principle that:

> A fiduciary relationship exists whenever any person acquires a power of any type on condition that he also receive with it a duty to utilize that power in the best interests of another, and the recipient of the power uses that power. (Shepherd, The Law of Fiduciaries, p. 35

Thus, it is important that the actions of the federal government in planning and executing the Relocation be examined in light of the fiduciary duty which characterizes the relationship between the federal government and the Inuit and in light of the government's obligation to put the best interests of the Inuit relocatees first in all its

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[8] [1984] 2 S.C.R. 335 at 384 per Dickson J.

[9] [1989] 2 S.C.R. 574 at 599, per Sopinka J.

decisions and actions relating to the Relocation. We shall also examine the effects on the Inuit relocatees of the failure to meet this duty.

3. As Defined by International Standards

The transfer of populations was a subject which concerned the international community when approximately two million people were relocated between 1913 and 1942. Whether it was the transfer of a group of people from one state to another or the relocation of people within the territory of the state, the relocation was perceived as a potential threat to human rights.

In the 1950's Canada had, as it still does today, a duty to ensure that everyone it claims to be under its jurisdiction enjoyed the rights stated in the Universal Declaration of Human Rights. The government of Canada's treatment of the Inuit, in the planning stages of the relocation as well as in its implementation shows a complete lack of respect for human dignity[10]. Inherent to all of mankind, dignity is the founding principle of the Universal Declaration of Human Rights and every other international human rights instrument adopted since.

B) PLANNING AND INITIATION OF THE RELOCATION

A number of different reasons have been suggested for the federal government's decision to relocate Inuit from

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[10] See, *inter alia*, testimony given on March 19, 1990, at p. 22:12.

Inukjuak to Ellesmere and Cornwallis Islands. We shall deal with each of these reasons separately.

1. Relocation to Establish Canadian Sovereignty

a) The evidence

There is mounting evidence that a desire to establish Canadian sovereignty in the far north was an impetus for the Relocation.

In 1983 John Munro, then Minister of Indian and Northern Affairs, presented a government (Department of the Environment) discussion paper to the third General Assembly of the Inuit Circumpolar Conference. This paper addressed the evolution of resource-use policy in Canada's north and provided the following:

> ...Both the Native people and the environment were used as important elements in formulating strategies to advance Canada's jurisdictional claims in the Arctic
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> ...
>
> To further entrench the sovereignty claim, the government relocated Inuit people from northern Quebec to the Arctic Islands in the mid-1950's. (p. 59)

A similar type of admission was made in December 1985 in D.I.A.N.D.'s Living Treaties, Lasting Agreements Report of the Task Force to Review Comprehensive Claims Policy:

> Thirty years ago, the federal government strengthened Canadian sovereignty by moving several hundred Inuit from northern Quebec to Ellesmere and Cornwallis islands in the High Arctic, where they established the communities of Grise Fiord and Resolute.(p. 60)

Bill McKnight, then Minister of Indian Affairs, confirmed, in two letters sent to Makivik in 1987 and 1988, that the Relocation of the Inuit had contributed to Canadian sovereignty.

One of those who testified before the Standing Committee was Bob Pilot, who from 1952 to 1965 served in the RCMP in northern detachments and served in Craig Harbour and Grise Fiord for a number of years beginning in 1955. According to Mr. Pilot the secondary motive for the Relocation was sovereignty purposes.[11]

Daniel Soberman, in his Report, concluded that "sovereignty concerns may well have played a role in the timing and location of the new settlements... ."

The fact that the government of Canada claims sovereignty over the Arctic through the Inuit is evidenced by a statement made by Joe Clark, then Secretary of State for External Affairs, in 1985:

> Canada's sovereignty in the Arctic is indivisible. It embraces land, sea and ice. It extends without interruption to the seaward-facing coasts of the Arctic islands. These islands are bridged for most of the year by ice. From time immemorial Canada's Inuit people have used and occupied the land. The policy of the Government of Canada is to maintain the natural unity of the Canadian Arctic archipelago and to preserve Canada's sovereignty over land, sea and ice undiminished and undivided.[12]

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[11] Testimony before the Standing Committee on Aboriginal Affairs, June 18 1990 p. 40:45.

[12] House of Commons Debates, Vol. V (September 10, 1985).

b) Breach of fiduciary duty

Whether sovereignty concerns were a primary or secondary motive for the relocation, the simple fact that they were a concern at all is a breach of the government's fiduciary obligation. In Canadian Aero Service Ltd. v. O'Malley the Supreme Court of Canada stated that "[t]he freedom of the fiduciary is diminished by the nature of the obligation he or she has undertaken -- an obligation which 'betokens loyalty, good faith and avoidance of a conflict of duty and self-interest'".

By using the Inuit from Inukjuak to establish Canadian sovereignty over the High Arctic, through Inuit use and occupation, the government breached this obligation and put its own interests before that of the Inuit.

c) International standards

At the time of the relocation, international tribunals had already established that the sovereignty of a state over a given territory had to be effective in order to successfully counteract a similar claim by another state[13]. This effectiveness can be measured by the occupation of the territory in question as well as the acts posed by the government[14]. However, while under international law[15] it

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[13] Status of Eastern Greenland, P.C.I.J. Series A/B, no 53, at 46 (1933).

[14] Isle of Palmas Case, R.I.A.A. vol. II, p. 854 (1928); Affaire de Ile de Clipperton, R.I.A.A. vol. II, p. 1108 (1931).

[15] It remains a breach of the government's fiduciary obligation in domestic law which requires that the government's powers be exercised in avoidance of self-interest and conflict of duty.

may be legitimate on the part of a state to take measures in order to inhabit all of its territory, there is a fundamental condition to the legality of any relocation of a population: **it is imperative that the people concerned freely give their informed consent to the move**[16]. As stated by the rapporteur to the International Law Institute on the issue of population transfers in 1952, "[o]ne must never forget that people are involved and that great sacrifices are asked of them, such as leaving the territory where they were born and where they have lived. The only admissible approach is to obtain their free consent by offering them other advantages which, in <u>their</u> opinion, are sufficient to compensate for the sacrifice they make."[17]

Without the consent of the people to be relocated, international law considers the relocation as compulsory. Whether it is in fact compulsory or it is perceived as such by the people concerned because pressures were exerted on them or because of the nature of their relationship with the government and its agents[18], non-consensual relocation contravenes the rights to freedom of movement and freedom of residence.

This was already the state of international law in the 1950's, when several Inuit families were moved from Inukjuak to Grise Fiord and Resolute Bay, as evidenced by the terms of Article 13 of the Universal Declaration of Human Rights,

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[16] Report presented by Balladore Pallieri to the Institute of International Law, "Les transferts internationaux de populations", Annuaire 44/2, 138 (1952).

[17] Translation. See Report of G. Balladore Pallieri to the Institute in *Annuaire de l'Institut de droit international, 1952, vol. 44-2, at p.150.*

[18] See our description of this relationship at pp. 3-4 and see, <u>infra</u> at footnote 19.

which states that everyone has the right to freedom of movement and residence within the borders of each state, and Article 9 which prohibits exile.

The government must fully disclose to the potential relocatees its motives for the relocation, including the assertion of sovereignty if it is one of its objectives, otherwise the consent of the relocatees cannot be informed. In this case the sovereignty issue was not discussed with the Inuit relocatees.

2. The Relocation as an Experiment

a) Breach of obligation to act in the best interests of the Inuit relocatees

One of the governmental meetings to discuss the Relocation took place on August 10, 1953. At this meeting of the Department of Resources and Development (which has since evolved to become the Department of Indian and Northern Affairs) the reason given for the operation was that "the Administration is carrying out an experiment in which it will transplant a small number of Eskimo families from the eastern shore of Hudson Bay to certain settlements in the High North to see if they can find a better living there" (Minutes p. 1).

This use of the Inuit in an experiment is a breach of the fiduciary duty. It is evident that the government was not acting in the best interests of the relocatees since the object was to determine whether "it would be possible" for them "to adapt themselves to the conditions of the High North and secure a living from the land" (Minutes p. 2)

Moreover, the Minutes of this meeting are rife with evidence that the interests of the Inuit relocatees were not foremost in the minds of the planners of the Relocation.

When one of those attending the meeting remarked that he was afraid that there was not sufficient wildlife in the Resolute area to provide for the proposed Inuit population a representative of the Department of Resources and Development responded that **while he had reason to believe that this was not the case no one could say with certainty that this was the case and "consequently the experiment was being staged"** (Minutes, p. 2).

Further evidence that the welfare of the relocatees was not the government's primary concern is demonstrated in the fact that the planners took great pains to ensure that the planning of the experiment would be such that the Inuit families involved would not become a liability to the R.C.A.F. A representative of the Department of Resources and Development assured those present at the meeting that **"every effort will be made to see that the R.C.A.F. is not inconvenienced [by the experiment]"** (Minutes, p. 3).

Clearly, the Crown put its own interests ahead of the best interests of the Inuit in breach of its fiduciary duty.

b) Breach of duty to provide full information

The Inuit, for their part, were never informed that the Relocation was in the nature of an experiment. To the contrary, they were assured that they were being taken to a place where game was abundant. They were not warned that they would have to adjust to a radically different climate and diet. At the very least the government was under a duty to fully inform potential Inuit relocatees that the

Relocation project was being undertaken as an experiment. They should have been fully informed that they would be facing a different climate and different wildlife.

The Inuit were being persuaded to leave their homeland and community in order to found a community in a completely alien environment; it was incumbent on the government to ensure that any decision to take part in the Relocation was a fully informed one and that the Inuit relocatees knew that the Relocation was in the nature of an experiment.

The Inuit were vulnerable to the influence and the power of the government representatives who discussed the Relocation with them. Their ability to give free consent to the Relocation was diminished by the nature of their relationship with the non-Inuit government officials. During their testimony before the Royal Commission, the Inuit relocatees discussed their relationship with government officials at the time that the Relocation was proposed. The power and authority of the white man in Inuit territory at that time gave rise to the feeling of "Ilira" which meant that whatever the white man suggested or wanted was likely to be done. The Inuit did not feel that they could say no to requests put to them by government officials.[19]

Their ability to give free and informed consent was further diminished because they were not informed of all of the relevant factors. In the words of one Inuit relocatee: "we got to a place where there was absolutely nothing, no housing, no medical services, and since I'm disabled I was

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[19] See Testimony before the Royal Commission at pp. 30-32. See also Soberman at pp. 35-38; he finds that the Inuit perceived of the Relocation proposals as an order which had to be followed.

wondering how I was going to survive because when I was two years old, my youngest sister died. But the information I did not get before we were relocated is, 'You are going to a place where there's no medical services.' They should have informed us that." (Testimony before the Royal Commission, April 5-8, p. 66).

Moreover, it is clear that government officials misrepresented certain key aspects of the Relocation. Most important of these was the availability of wildlife in the area to which they were to be relocated.

The Minutes of the 1953 meeting indicate that the government did not know for certain that the new locations would be able to sustain the food requirements of the Inuit relocatees. Soberman, in his report, states that the government's evidence as to whether Ellesmere and Cornwallis Islands had sufficient game for the Inuit's needs was "impressionistic". According to Soberman's findings "there were no systematic counts made nor was the Wildlife Service asked to provide advice". (p. 17)[20]

Yet the Inuit were told that game would be plentiful in the places chosen for the relocation (see Testimony pp. 50, 93). The government publicly stated that they were being moved to an area that was rich in game. Indeed, Mr. Swain's written response to the Standing Committee in 1990 invokes this motive.[21]

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[20] See also the Submission of Makivik and Inuit Tapirisat of Canada to the Standing Committee on Aboriginal Affairs, March 1990 at pp. 6 and 10; the 'Hammond Report' commissioned by the Department of Indian Affairs and Northern Development in 1984.

[21] Letter from Deputy Minister Harry Swain to the Standing Committee on Aboriginal Affairs on May 15, 1990.

In fact, the Inuit initially were not able to hunt enough food to sustain themselves. Musk-ox was indeed plentiful in on Cornwallis and Ellesmere Islands, but the Inuit relocatees were forbidden to hunt them (see Testimony, pp. 50, 237). They were only allowed to kill one caribou per year for each family; furthermore, the police and the special constables were the only ones authorized to kill the caribou since it was felt that the Inuit would not be able to distinguish between male and female caribou (Testimony, pp. 50, 162). Since the caribou herds were much smaller it was very difficult to find the herds in what was an alien environment. Moreover, the caribou themselves are much smaller in size than those in Inukjuak.

c) The Duty of disclosure -- analogies

The principles of full disclosure in medical cases can be applied by analogy to this case.[22] As in the case of medical procedures, the Inuit relocatees were required to decide whether to take part in a procedure which would fundamentally affect their physical and emotional well-being.

In Reibl v. Hughes the Supreme Court of Canada ruled that a doctor had breached his duty of disclosure to a patient because he had failed to inform the patient of all of the risks involved in a proposed surgical procedure. The Court held that the physician could not obtain informed consent from his patient without making an effective attempt to explain all foreseeable risks to him. Moreover, the Court held that "it must have been obvious to the defendant that the plaintiff had some difficulty with the English

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[22] Soberman has already used this analogy in his Report, p. 49.

language and that he should, therefore, have made certain that he was understood".[23]

In the case of the Inuit relocatees it is clear that they were not informed of all of the risks; they were not informed of the tremendous changes in climate and diet that would occur in the move, or that there would be no medical station or stores in the new environment. Moreover, given the substantial language barrier between the Inuit and the government representatives, the latter did not take necessary steps to ensure that the Inuit really understood what was being proposed.[24]

It is also clear that any Inuit "consent" to the Relocation was premised on the fact that they were promised that they could return in two years if they were not happy in the new location. It is now admitted by all parties that this promise was made to them.[25] When the government broke this promise by not helping them to return, this consent was vitiated. We shall deal with this issue in more depth in a later section.

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[23] [1980] 2 S.C.R. 880 at 927; see also Hopp v. Lepp [1980] 2 S.C.R. 192. The principle of informed consent to medical procedures dates from well before these judgments. See, for instance, Kenny v. Lockwood [1932] 1 D.L.R. 507 at 519-520 (Ont. C.A.) and Halushka v. University of Saskatchewan (1965) 53 D.L.R. (2d) 436 at 443 (Sask. C.A.).

[24] We shall deal with these issues in more detail in the next section.

[25] See for example, letter from Tom Siddon, Minister of Indian Affairs, to Senator Charlie Watt, president of Makivik Corporation on November 20, 1992; Gunther report at p. 268.

d) Breach of principles of international law

International law requires that no one be subject to any kind of experiment without having freely given his or her informed consent to the experiment.

Submitting the relocatees to an "experiment" without such free and informed consent constitutes cruel and inhumane treatment under the meaning of Article 5 of the Universal Declaration of Human Rights, especially in the light of the drastic differences in climatic conditions which the relocatees had to face without preparation and without help[26].

The Inuit were not properly warned of the conditions that they would be facing and pressure was exerted on them to agree to the relocation[27]. Although the representatives of the Canadian government may have given them a vague idea of what was being proposed, it is clear that they did not fully understand[28]. Sending people to live in total darkness for several months at a time as part of an experiment and without their prior knowledge of this condition, certainly constitutes cruel and inhuman treatment.

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[26] Testimony given on March 19, 1990, at p. 22:16.

[27] Testimony given on March 19, 1990, at p. 22:13.

[28] Testimony given March 19, 1990, at p. 22:10.

3. Relocation to Move Inuit From Resource Poor to Resource Rich Areas

a) Hunting conditions

The federal government has frequently maintained that the Relocation was undertaken in the best interests of the Inuit. According to the government, game resources in the Inukjuak area were diminishing and "the Resolute-Grise Fiord areas had had no permanent inhabitants for more than three hundred years and were known to have the resources to support a hunting-based economy" (letter from Harry Swain to the Standing Committee on Aboriginal Affairs, May 15 1990).

However, as already noted, those who were responsible for the Relocation could not say for certain that there was sufficient wild-life in the Resolute-Grise Fiord area to support the relocatees. As Soberman notes, no systematic counts were made. Those responsible did not even contact the Wildlife Service for advice on this issue. All that the government had was an impression that hunting would be better. This impression could not constitute a sound basis upon which to conduct the Relocation.

Notwithstanding that they had no certainty of knowledge that hunting conditions would indeed be better in the new locations, government representatives nevertheless, informed the Inuit relocatees that they were going to be taken to a place where hunting conditions were better than in Inukjuak (see Testimony pp. 50, 94, 229, 235, 237). At the very least this action constitutes negligent misrepresentation.

The following factors are required for a finding of negligent misrepresentation: i) there must be an untrue statement; ii) it must have been made negligently; iii)

there must be a special relationship giving rise to a duty of care; and iv) there must be reliance which is foreseeable.[29]

All of these factors are present in this situation. Clearly, in representing to the Inuit relocatees that hunting conditions would be better in the new locations government representatives made untrue statements because they did not in fact know this to be the case. These were made negligently since no effort was made to determine whether it in fact was the case that hunting was better in Grise Fiord and Resolute Bay. The fiduciary relationship which existed and exists between the parties gives rise to a duty of care. And, finally, the Inuit definitely relied on the description of hunting conditions in their decision not to resist the Relocation.

With respect to an issue as fundamental as whether the new locations had sufficient game to support the Inuit the government had a responsibility to ensure beyond a shadow of a doubt that this was the case. The risk that they were wrong would have resulted in the Inuit relocatees starving.[30] The standard of care to which a fiduciary is held in law was utterly breached by the government's actions in relocating the Inuit to the new areas without ensuring that the food supply was adequate and in misrepresenting those conditions to the Inuit before departure. Fiduciaries

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[29] V.K.Mason Const. v. Bank of Nova Scotia (1985) 16 D.L.R. (4th) 598 at 606 per Wilson J. (Supreme Court of Canada); Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd. [1964] A.C. 465 (H.L.).

[30] In fact, there is evidence that the relocatees had serious problems garnering a basic amount of food in the first two years of the Relocation. This will be dealt with below.

cannot rely on impressions when making life and death decisions ostensibly in the best interests of their beneficiaries.

b) Other aspects of living conditions

Furthermore, the government had an obligation to fully inform the Inuit relocatees of the living conditions which could be expected in the new location and the manner in which those new conditions could affect their existence, including their hunting and fishing practices. Soberman has concluded, in his Report, that the Inuit were poorly informed of the conditions in Grise Fiord and Resolute Bay and were unprepared and ill-equipped for living there: (pp. 22-26).

> In fact, it appears that the Inuit had very little idea of what the new living conditions would be like -- they either assumed conditions would not be radically different from northern Quebec, or they trusted the Government -- or both. (p. 23, see in general pp. 22-26)

Quite apart from any misrepresentations with respect to the availability of wild-life, the government breached its obligation to provide the Inuit with full information about the nature of the climate and the isolation of the new areas. They were not aware that they would have to alter the manner in which they hunted. They were not prepared for the severe cold and the fact that the ice never melted even in the summer. They were not prepared for the four months of complete darkness in the winter and the three months of complete daylight in the summer. They did not know that they would have to alter their method of constructing houses since there was no snow until January. They were not prepared for the radical alteration of their diet that was

created by the lack of vegetation and their original inability to fish or find small game birds to eat. None of these fundamental and radical differences in the environment were explained to them (see for example Testimony, pp. 40, 85, 234, 447)

The only precaution that the government took to aid the Inukjuak Inuit to endure the Relocation was to arrange for three families of Inuit from Pond Inlet to accompany them. While their presence was helpful it was not sufficient to alleviate the responsibility of the government in ensuring that the Inukjuak Inuit would not suffer from the effects of the Relocation. Moreover, it appears that at first the two communities, those from Inukjuak and those from Pond Inlet, experienced cultural differences which made relations difficult. The government's lack of planning for the Relocation and prohibition on hunting musk-ox and more than one caribou per family adversely affected the Pond Inlet families as well (Testimony, p. 161).

c) International standards

The relocation of populations usually serves the interests of the State. For the purposes of international law, since the decision to move is rarely made by the individuals themselves, the people concerned must consent. In 1952, the International Law Institute summarized the state of international law on the issue of population transfers by stating that the Universal Declaration of Human Rights prohibits all forms of pressure or threats, direct or indirect, to convince people to leave the territory they inhabit[31].

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[31] See the Report to the International Law Institute (1952), at p. 146.

Contemporary international law still prohibits compulsory relocation of people. The issue of "relocation" of aboriginal peoples has been studied by the Inter-American Commission on Human Rights, in the context of the relocation of Indians of Miskito origin in Nicaragua in 1981. The Commission looked at prior cases of population transfers and concluded that:

> "...with the exception of some cases of relocation of Indians, which are subject to criticism, the large majority of population relocations for reasons of economic development have taken place after negotiations with the populace concerned, and with assurances of adequate compensation."[32]

In the case of the Miskito Indians, the Commission concluded that "the plan to relocate them to improve and lend dignity to the living conditions of the Miskitos would have been justifiable only if that move had been voluntary, as was allegedly planned"[33].

The failure to properly inform the Inuit and make sure that they fully understood all the conditions and consequences of the relocation violates several rights and is in contravention of the corresponding obligations of Canada to ensure the respect of those rights. The difficulties faced by the civil servants involved in preparing the Inuit families for the relocation, such as the lack of high quality translation between English and Inuktitut, do not constitute an excuse of the government's

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[32] Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62, doc. 10 rev. 3, 29 November 1983, at p. 120.

[33] Id., at p. 118.

failure to disclose all the pertinent information, especially since it is clear from the record that some crucial information was not available, even in English.

d) Conclusion

In summary, if the Relocation were indeed planned for the benefit of the Inuit, the government failed utterly in its duty to inform and prepare the Inuit for the effects of the Relocation and was negligent in making promises that wild-life would be plentiful. The duty to protect the interests of the Inuit was even more onerous in this situation because, having represented themselves to be acting in the best interests of the Inuit, the government was under a positive, active duty to do what was necessary in order to ensure that the Relocation was planned and executed in conformity with the desired aims. According to Shepherd:

> [O]nce the fiduciary decides to use the powers, he is under a positive duty to use them only in the interests of the beneficiary, or only for a particular purpose, as the case may be. (The Law of Fiduciaries pp. 106-107, our emphasis)

As we will demonstrate in our next section, the government failed to meet this duty in every respect.

C) EXECUTION OF THE RELOCATION-- BREACH OF POSITIVE DUTY AND BREACH OF PROMISE

Having initiated the Relocation project, ostensibly on behalf of the Inuit relocatees, the government's duty of care expanded to include a positive duty to care for the interests of the relocatees and to protect them from any

foreseeable harm. This meant both that the government had to use its powers only in the best interests of the Inuit and the government was obliged to exercise its powers in situations where to do nothing would harm the Inuit relocatees.

We will look at three aspects of the execution of the Relocation: the events on the ship taking the Inuit to the new locations including their separation into groups; the hardships faced by the Inuit relocatees in their first few years at the new locations; and, the government's breach of its promise to return those Inuit who did not want to stay in the new locations.

1. Events on Board the C.D. Howe and Upon Arrival at Cornwallis and Ellesmere Islands

From all accounts the 1,250 mile voyage between Inukjuak and Cornwallis and Ellesmere Islands was onerous. The most traumatic aspect, however, was the separation of the families into two groups when they arrived at Craig Harbour.[34] The Inuit relocatees had no idea that this separation was going to take place. After six weeks of travelling together in a very confined space the bonds which held them together had become very strong.

In the words of one of the Inuit relocatees:

> When they started dividing us on the ship, all of my mother's children, whom she gathered from the different scattered camps, were all designated to go to

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[34] In fact, the government had originally planned to split them into three groups with one group going to Alexandria Fiord. This last destinations was abandoned, however, because of heavy ice. Those destined for Alexandria were sent back to Craig Harbour.

> Alexandria Fiord. ... My mother was told, "Your children are going to be designated to go where we tell them to go". She was not very happy about being told that. Those of us who have children today can just imagine suffering this kind of treatment. Now, if I, myself, was told that my children, my own children, are going to be scattered about in all sorts of different locations, I would not be very happy. I am sure none of you would. I would cry. I would weep if my children were going to be scattered to many different locations. That's what my mother did. She cried when people were separated on the C.D. Howe. Even the dogs were howling, and people were crying, because they were being separated.
>
> This was the first trauma that we suffered. This was the first brutally emotional event that we had to live through, that the government put us through, which had an effect on us and our children, even today. (p. 189-190)

In another instance, one Inuit relocatee's brother, who could not look after himself, was designated to go to a separate location from the rest of his family. His brother had to go by dog team to bring him from Resolute to Craig Harbour (Testimony, pp. 56-57, see also pp. 250-251).

Another Inuit relocatee testified that:

> When we got near [Craig Harbour] the RCMP came to us and they told us: half of you have to get off here. And we just went into a panic because they had promised us that they would not separate us... I remember we were all on the deck of the ship, the C.D. Howe, and all the women started to cry. And when women start to cry, the dogs join in. It was eerie. We were dumped on the beach -- and I mean literally dumped on the beach. (Testimony before the Standing Committee on March 19 1990 p. 22:14)

Soberman concluded that there was no evidence that "the Inuit families were offered a choice of locations or were

asked whom they would prefer as neighbours. ... They were told where to disembark." (p. 39)[35]

It is evident that by forcing the Inuit relocatees, without any prior warning, to separate into two different groups to be sent to different locations with approximately 300 miles between them, the government treated the Inuit callously and without regard. Given the nature of the relationship between the parties this behaviour fell far short of the standard of behaviour required of fiduciaries towards their beneficiaries.

The effects of this separation was traumatic. It also created smaller communities with even less possibilities for Inuit to find spouses to whom they were not related. Since the Inuit relocatees were never informed in advance of this separation, they clearly did not consent to it. It is clear that this forced separation was not made in the best interests of the Inuit relocatees; to the contrary, it caused them severe emotional damage.

2. The First Years in Craig Harbour/Grise Fiord and Resolute Bay

The government's efforts with respect to the Relocation ended as soon as they had transported the Inuit relocatees to the new destinations and split them into two communities. In the words of one of the Exiles:

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[35] Gunther also recognizes that this aspect of the Relocation was a failure. He states that "At best it involved unacceptable confusion, at worst it was insensitive and high handed" (p. 186).

> When we landed we thought about the government, but it seemed that the government had disappeared altogether after they landed us. We never heard from them again. Our local police officer was the boss and he conducted himself in such a manner that he had served as an officer in the Nutsellinmut (ph) region and he had been briefed or heard that the people who were being relocated were habitual stealers, thieves, and he had heard that we were all thieves. (Testimony, pp. 141-142)

a) Food and shelter

There was absolutely no provision made for the survival and well-being of the Inuit once they had landed in Craig Harbour and Resolute Bay. Even the most basic of needs, such as food and shelter were not met. The Inuit relocatees had brought their tents with them. However, the climate in the new locations made the construction of sod huts or snow houses next to impossible. There was not enough snow for the construction of snow houses before January. There was little soil or lichen and no wood available for the construction of sod huts (Testimony, p. 159). For the first winter the Inuit relocatees were required to live in their tents. They suffered greatly:

> Part of the summer we were on the ship and when we landed there we had to wipe our behinds with snow. We were very poor. We were very poorly off when we landed, no wood, willows for a bit of fuel. We had a stove in the style of the Inukjuak area. We did not have a stone lamp, called a hudlaq (ph), but the weather was not conducive to having a wood stove and we had to have a quadlaq (ph), a stone lamp, whereas we had been used to a wood stove and we were forced to live in the tent all year, depending on ice for drinking water. The pails did not have any water in them all night because if we had any water in them, they would freeze and burst the containers and we had tea only from water melted from ice all the time we first spent time there. Any liquid would freeze and damage the containers.

> We spent our time in bed fully clothed when we went to bed, in sweaters, with pants on and long underwear. That's how we bedded down for the night when we first started settling there. (Testimony, pp. 141-142)

Nor did the relocatees have any supply of food with them when they landed. They were obliged, from the very beginning, to hunt for food in an unfamiliar land and climate. They found hunting very difficult in the first few years and could not find the food that they were used to. In Inukjuak their diet had included small game birds, fish, eggs, berries; they had had access to trade goods such as tea, flour and sugar which had become part of their staple diet. They were not able to make do on the diet of polar bear and seal meat, the only foods available to them in the first few years in the new locations.[36]

Many Inuit recount how they were forced to forage in the garbage dump at Resolute for food and packing crates with which to build shelters:

> In our first year in the High Arctic, that was very difficult. I almost starved to death in my first winter in the High Arctic and I almost starved my baby.
>
> I was not aware of anything wrong myself and I was not aware that I was doing anything wrong, but I was not able to eat anything for about a month. I lost my appetite.
>
> ...
>
> What brought my appetite back was my uncle, Allie Putsell (ph) who is no longer living, went to the garbage dump and scrounged some cans of food, sardines. He picked up a few of those items from the dump and I started eating again and my baby, I was told to stop breast-feeding my baby because he was going to starve

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[36] When the Inuit relocatees finally learnt where to find fish in the new locations it was the Greenland Inuit who taught them (Testimony 209).

> if he kept breast-feeding from me... . (Testimony, pp. 120-121; see also pp. 285,)

Another Inuit remembers "being very excited when any military airplanes arrived in Resolute, because we knew that the people on those planes had box lunches, food. We used to rush to the dump five miles away in the middle of winter to go to the dump and get those boxes of half-finished sandwiches." (Testimony before the Standing Committee on March 19, 1990, p. 22:15)

At the very least this behaviour should have warned government officials that the Inuit relocatees were in very poor physical condition. However, the response of RCMP officers and DNANR officials was to issue strict instructions to the Inuit that they were not to carry away any articles found in the dump (Testimony, pp. 285)

McLachlin J. of the Supreme Court of Canada has defined the fiduciary responsibility as follows:

> The essence of trust and all fiduciary relationships is that the trustee, the person in power, assumes responsibility for the welfare of the cestui qui trust for matters falling within the scope of the trust relationship. Having assumed that responsibility, the fiduciary cannot rely on the other party's weakness or infirmity as a defence to an action grounded on his failure to discharge his fiduciary duty properly.[37]

The government's neglect for the basic physical and emotional needs of the Inuit relocatees during the early years was a blatant breach of their fiduciary duty.

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[37] Norberg v. Wynrib, [1992] 2 S.C.R. 226 at 288-289, L'Heureux-Dubé concurring. None of the other members of the Court dealt with the fiduciary obligation in this case, preferring to deal with the issues on the basis of tort.

b) Other services

There were no permanent medical facilities available during the 1950's except for a R.C.A.F. nurse in Resolute Bay who did not even have the authority to send Inuit south for treatment.[38] Inuit relocatees often had to spend extended periods in southern hospitals away from their families in order to be treated for illness (Testimony, pp. 198, 317, 458-459). There were no schools in Grise Fiord and Resolute Bay until 1962.[39] In the early years there were also no church and no stores at which Inuit could purchase fuel and food stuffs which had become part of their staple diet such as flour, sugar and tea. All these services had been available in Inukjuak and had become institutions upon which the Inuit relied.

As Soberman notes, the positive duty incumbent on the government was magnified by the fact that a previous Inuit relocation, to Dundas Harbour in 1934, had resulted in the Inuit suffering hardships and asking repeatedly to be sent back. With the benefit of this hindsight the government was certainly aware, or ought to have been aware, of the potential suffering which could be caused by such relocations. Nevertheless, government officials took no positive action to alleviate the very obvious suffering of the Inuit relocatees and in fact attempted to forbid them

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[38] Brief to Standing Committee on Aboriginal Affairs, March 1990 at p. 26.

[39] Brief to Standing Committee on Aboriginal Affairs, March 1990 at p. 26.

access to the garbage dump where they had managed to acquire some meagre supplies (Testimony, p. 285).

The government was required to exercise diligence and care in ensuring that any foreseeable harm to the Inuit relocatees were avoided. Once they had decided to act and carry out the Relocation they were under a duty to keep apprised of the state of the Inuit relocatees' lives in the new settlements and to do everything possible to better them. This they did not do.

c) Other fundamental rights -- international law

Under international law, Canada has a duty to ensure the full enjoyment of the right to liberty and security of the person to all persons under its jurisdiction. In 1952, this right was guaranteed under Article 3 of the Universal Declaration of Human Rights. Consequently, once the relocation plans were implemented, the government was under obligation to ensure that the rights of the Inuit relocatees were fully protected, starting with their right to life, liberty and security of the person.

"The concept of life, liberty and security of the person would appear to relate to one's physical or mental integrity and one's control over it..."[40]. Control over one's physical and mental integrity can only be achieved if one is aware of the conditions he or she will live in. As stated by Judge Wilson of the Supreme Court of Canada: "Liberty...grants the individual a degree of autonomy in making decisions of fundamental importance"[41].

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[40] R. v. Videoflicks, (1984) 14 D.L.R. (4th) 10, at 48.

[41] R. v. Morgentaler, [1988] 1 R.C.S. 30, at 166.

The harsh conditions that the Inuit families had to face contravened several of Canada's obligations.

The right to life goes far beyond the right not to be arbitrarily deprived of one's life. It encompasses the right to adequate living conditions, access to the necessities of life, access to health care, employment possibilities[42]. As stated in the Universal Declaration of Human Rights, "everyone has a right to a standard of living adequate for the health and welfare of himself and his family, including, food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."[43]

The major changes in the diet because of a very different food base, the new hunting techniques and conditions to be learned and their effects of the availability of food for the community which were a direct result of the Relocation constitute a violation of the right to one's means of sustenance[44].

The absence of government services which had been or were becoming available in Inukjuak also violated Canada's international obligations.

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[42] Nwachukwuike S.S. Ive, The History and Contents of Human Rights, New York: Peter Lang Publishing Inc., 1986, at p. 199.

[43] Article 25 of the Universal Declaration of Human Rights.

[44] Testimony given on March 19, 1990, at p. 22:15.

The Canadian government also failed to protect the Inuit relocatees against interference with their family and their right to marry and found a family. By relocating relatively small groups of Inuit to areas which were completely isolated from other Inuit, the government created a situation where the Inuit relocatees could not find persons of genetic stock that was not their own with whom they could have a family. The government's decision to send relatively small groups of Inuit to extremely isolated northern areas effectively denied the Inuit relocatees their fundamental rights to marry and found a family.

This constitutes an infringement upon the right to marry, guaranteed under International law, and which has also been recognized as a fundamental right in Canada[45].

There is evidence that the Inuit were asked to work without pay[46], contrary to the Universal Declaration of Human Rights and to the fundamental principle of the ILO Conventions to which Canada was already party in the 1950's.[47]

The people in authority induced the Inuit to live in conditions absolutely contrary to every obligation of the

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[45] E. v. Eve, [1986] 2 R.C.S. 388.

[46] Testimony given on March 19, 1990, at p. 22:8, 22:15.

[47] Allegations of sexual harassment and abuse have also been made by the Inuit relocatees. These allegations are beyond the scope of this Submission.

government of Canada toward the persons it claims are under its jurisdiction[48].

3. Breach of Promise to Return the Inuit Relocatees Who Wished to Go Home

There is no doubt that government officials promised the Inuit participants in the Relocation that they would be able to go home in two years if they were not satisfied with the new locations. This has been admitted by the government of Canada. In November 1992 the then Minister of Indian Affairs, Tom Siddon, wrote a letter to Senator Charlie Watt, president of Makivik Corporation, in which he stated that: "Finally, and perhaps most seriously, the federal government of the time did not act expeditiously on the promise to return to Inukjuak anyone who was not happy in their High Arctic home after a few years".[49]

Any Inuit consent to participation in the Relocation was premised on the undertaking that they would be returned home if they desired. This undertaking was a condition precedent to their consent.

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[48] See, *inter alia*, Barcelona Traction Company Case, (Second phase), I.C.J. Reports (1970), p. 6 at 32:

> Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person... .

[49] The Gunther report confirms this fact. He states, at p. 268, that: "Documents cited earlier now make it absolutely clear that the government promised the relocatees that they would be returned (within one, two or three years) if they did not find Grise Fiord and Resolute acceptable".

Yet, when such requests were made, government officials either ignored them or were willfully blind to their existence (see, for example Testimony, pp. 185-186, 400-401, 405, 467-469).

In his aforementioned letter to Charlie Watt, Minister Siddon stated that: "We continue to recognize and acknowledge that there was and remains an obligation to honour the original promise [to help the Inuit relocatees return], the more so since the difficulties encountered by those wishing to return may have contributed to their emotional distress". Thus, the government has admitted that those wishing to return encountered difficulties.

Soberman, in his report, found as follows:

a) In the first three years after the move, a number of heads of families expressed to local officials, principally to local RCMP officers, their unhappiness with the new locations and their wish to return, although they may have couched their request in very mild terms.

b) The officials tended to minimize the significance of the requests and responded by explaining how difficult it would be, in terms of both travel arrangements and money, to return to Inukjuak.

c) The Inuit understandably and accurately interpreted these statements as a refusal in any practical sense to facilitate their return. Soberman concluded that for apparently cultural reasons the Inuit relocatees did not persist in their face-to-face requests although they retained a strong desire to return to their former homes.

d) The evidence of this desire is found in their continued writing of letters to the Government asking to be returned, and indeed, in ultimately returning to Inukjuak when the opportunities presented themselves, as late as 1988 (see Soberman, pp. 44-45).[50]

The government's refusal to return the Inuit relocatees, despite their consistent requests to be sent home, constituted non-fulfilment of the condition precedent to any consent to take part in the Relocation. Whatever, the situation may have been before this breach, thenceforth the relocatees became *bona fide* Exiles. They were forced to live, against their will, in a land 1250 miles north of their homeland. In the early years, they were forced to live there without any of the goods required for their basic needs, without medical help or schools.

Under international law, the breach of the promise to relocate those who decided to return home contradicts the government's claim that the move was voluntary. To impede, directly or indirectly, the return of the Inuit families who wished to go back to Inukjuak also violates the right to freedom of movement and residence set forth in the Universal Declaration of Human Rights[51].

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[50] Some have interpreted the Inuit relocatees requests to have their relatives sent up to join them as an evidence that they did not demonstrate their desire to return home and were satisfied by the new locations. However, these requests were only made after requests to return home were refused by government officials. It is notable that the Inuit relocatees did not abandon their requests to return home even after they were joined by relatives (see Soberman at note 36).

[51] Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, at p. 119.

Even if the relocation had been considered as voluntary by the Canadian government during its planning stage and at the beginning of its implementation, the refusal of the government to take the necessary measures to return those who wished to leave made the Relocation permanent and compulsory, which amounts to exile and which is prohibited under the terms of Article 9 of the Universal Declaration of Human Rights.

Compulsory relocation also amounts to an arbitrary interference with one's family, contrary to Article 12 of the Universal Declaration of Human Rights. These violations continue, since the refusal continues to have effects today on those who have not returned, as well as on the families who are now separated by 1250 miles.

D) RIGHTS UNDER THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT

The Inuit relocatees have also been deprived of enjoyment of their rights under the James Bay and Northern Quebec Agreement. The government of Quebec has recognized that the Inuit relocatees are beneficiaries under the Agreement which is a treaty protected under section 35 of the Constitution Act, 1982. However, it does not appear that they were ever considered in the overall compensation monies provided to the northern Quebec Inuit under the Agreement. Moreover, living in Grise Fiord and Resolute bay, they have been prevented from using their traditional hunting and fishing areas and from taking part in various

governmental and other entities provided for in the Agreement.[52]

E) CANADA'S DUTY TO COMPENSATE

A wide variety of remedies are available to the victim of a breach of fiduciary obligation; this includes an award of monetary compensation for injuries sustained as a result of equitable wrong-doing.[53]

According to the Supreme Court of Canada:

> For breach of these [fiduciary] duties, now that common law and equity are mingled the Court has available the full range of remedies, including damages or compensation and restitutionary remedies such as an account of profits. What is appropriate to the particular facts may be granted.[54]

Although the events in question took place before the entry into force of the International Covenants on human rights, the Human Rights Committee has held admissible communications pertaining to measures taken before the entry into force of the International Covenant on Civil and

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[52] See, Submission of Makivik and ITC to the Standing Committee on Aboriginal Affairs, March 1990 at p. 28.

[53] See, generally, John McCamus, "Remedies for Breach of Fiduciary Duty" in Special Lectures of the Law Society of Upper Canada 1990: Fiduciary Duties (1991).

[54] M.(K.) v. M.(H.) [1992] 3 S.C.R. 3 at 60, citing, with approval, from the New Zealand Court of Appeal (our emphasis).

Political Rights if such measures continued to have effects which violated the Covenant after its entry into force[55].

The Relocation continues to have serious negative impacts on the Inuit families affected by it. For example, families are now split as a result of the move. When the Inuit were finally able to return to Inukjuak their children, raised in the High Arctic, did not all agree to follow their parents. Consequently, even today the Relocation continues to constitute an arbitrary interference with the Inuit family under the meaning of Article 17 of the International Covenant on Civil and Political Rights. Therefore, the Canadian government, which is responsible for the Relocation and its effects on the Inuit families, has a duty to take the necessary measures to ensure that the family members can maintain their relationships.

Furthermore, Canada now has the obligation to ensure that Aboriginal peoples not be denied the right, in community with the other members of their nation, to enjoy their own culture[56].

Since the 1950's other international instruments now bind Canada, including the American Declaration of the Rights and Duties of Man[57]. The Relocation continued to affect the Inuit families after Canada became a member of the OAS and as such, came under the jurisdiction of the

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[55] Lovelace Case, Report of the Human Rights Committee, 36 U.N. GAOR Supp. (40) p. 166, U.N. doc A/36/40 (1981) at par. 7.3.

[56] Article 27, International Covenant on Civil and Political Rights.

[57] O.A.S. Off. Rec., OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1949).

Inter-American Commission on Human Rights in application of the Charter of the OAS and the American Declaration of the Rights and Duties of Man. Therefore, Canada's obligations under the terms of the Universal Declaration of Human Rights, which some consider as merely declaratory, are confirmed in the American Declaration which is binding upon Canada.

F) CONCLUSION

The government of Canada's planning and execution of the Relocation was characterized by a lack of concern for the welfare of the Inuit relocatees and a lack of consideration and anticipation of the effects of its actions.

The government did not take necessary steps to explain to the Inuit the drastic differences in conditions which could be expected in the new locations. The government negligently misrepresented to the Inuit that hunting conditions would be greatly improved in the new areas. The government promised them that if they took part in the Relocations and wanted to return home, they would be returned after two years. When such indications were made, the government ignored them. The government gave the Inuit relocatees little or no support once they had landed in the new locations even with respect to such basic needs as food and shelter.

In short, the government flagrantly violated the duty of care which it owed to the Inuit relocatees arising both from the fiduciary relationship between the parties and from Canada's international obligations.

The government assumed super-added fiduciary responsibilities for the welfare of the Inuit relocatees in suggesting and implementing the Relocation. These responsibilities were and are far-reaching. They extend to a responsibility to look after and defend the general welfare of the Inuit relocatees, including not only their economic and legal interests but also their fundamental human and personal interests.[58] The government clearly did not meet its responsibilities in any of these regards.

These violations have created tremendous pain and suffering on the part of the Inuit Exiles. Canada, for its part, has benefited from the presence of Inuit communities in Grise Fiord and Resolute Bay as is evidenced from the letter of Bill McKnight (then Minister of Indian and Northern Affairs) in 1987 to Makivik.

The government of Canada thus has a duty to compensate the Inuit for the suffering that they have experienced as the result of its actions and inactions.

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[58] See, the judgment of McLachlin J. (L'Heureux-Dubé J. concurring) in Norberg v. Wynrib, [1992] 2 S.C.R. 226 at 288-289 on the subject of fiduciary obligations. None of the other members of the Court dealt with the fiduciary obligation in this case, preferring to deal with the issues on the basis of tort.