

B R I E F
TO
THE STANDING COMMITTEE
ON INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

House of Commons - Chambre des communes

Submitted by:

MAKIVIK CORPORATION,
on behalf of THE INUIT OF QUEBEC

Position of the INUIT OF QUEBEC with respect to
the FEDERAL REVIEW OF IMPLEMENTATION of the
JAMES BAY AND NORTHERN QUEBEC AGREEMENT

May 19, 1982
Kuujuak, Québec

I. INTRODUCTION

We would first express our appreciation to the Standing Committee on Indian Affairs and Northern Development for extending this invitation to appear again as witnesses.

We understand that we appear in the context of your study of the Main Estimates, 1982-83, for the Department of Indian Affairs and Northern Development and, in particular, your study of certain money votes in respect of aboriginal claims. In this connection, it should be immediately noted that despite all of the efforts of the past year by the Inuit of Québec and the James Bay Crees, those Estimates still do not reflect in any significant or concrete way the actions and measures which Canada must take if it is to properly fulfill its obligations under the James Bay and Northern Québec Agreement. We shall comment in detail on this later in this Brief.

The members of the Committee are aware that our appearance today is not as timely as it might have been. We had hoped to be in a position to give you our reaction to proposed federal measures to improve implementation of the Agreement and to review with you the findings of a tabled Report on the Review of Implementation of the Agreement carried out by federal officials. We understand, however, that insofar as this Committee must report back to the House of Commons on the Main Estimates before the end of May, our appearance could not be further forestalled. While we believe we have an understanding with the Chairman, the Hon. Keith Penner, on the following point, we would ask the Committee to take formal note of our request to appear again following any decision the federal Cabinet finally makes with respect to the measures presently under study.

The Committee is aware that Makivik Corporation is the Inuit association whose membership comprises all of the approximately 5,500 Inuit beneficiaries of the Agreement. It is also the entity primarily responsible for representing the interests of the Inuit of Northern Québec in ensuring the full implementation of the Agreement.

We are joined for purposes of this appearance by representatives of the principal institutions established under the Agreement for the territory north of the 55th parallel. These institutions deal on a day-to-day basis with the problems Inuit have had with implementation of the Agreement. We refer to elected representatives of the Kativik Regional Government, the Kativik School Board and to the mayors of some of the Northern Village Corporations. They have come not only to express their views but also to allow you to assess firsthand the situation which generally prevails in the 14 Inuit coastal communities in Northern Québec.

II. ROLE OF THE STANDING COMMITTEE

When we last appeared before the Standing Committee on March 26, 1981, we described in detail the specific problems related to implementation of the Agreement. We also gave you an overview of the types of measures which would be required to ensure full implementation of the Agreement as well as its continued relevance for present and future generations of Inuit.

In particular, we described the intolerable condition of existing essential services in Inuit communities, the absence of adequate implementation and enforcement procedures and budgets, the negligent role of Canada and Québec during the pre- and post-Agreement periods and, finally, the negative effect which the impending failure and collapse of the Agreement would have on the negotiation of similar comprehensive claims settlements for other native groups.

In response to the facts put before you by the Inuit and the James Bay Crees and to our representations that your intervention would yield positive results, the Standing Committee, in an unprecedented step, issued a unanimous Statement on March 31, 1981, generally endorsing the claims of the Inuit and the Crees and calling upon Canada and Québec to fulfil their respective obligations under the Agreement. The Statement also levelled a number of specific criticisms. In view of the appalling health conditions in native communities, it urged that the transfer of responsibilities from federal to provincial jurisdiction

not take place. The absence of basic community services as a result of the federal government's failure to provide "catch-up" funding, Inuit and Cree entitlement to funding for special programs in this regard, were underlined.

The Committee also objected to the fact that the Inuit and Crees have been obliged to use their compensation payments under the Agreement to fund obligations which are normally, and were intended in this case, to be the responsibility of Canada and Québec.

Finally, the Committee urged the development of an effective implementation process which would include the establishment of an ongoing structure to assist in the resolution of disputes and, more importantly, the voting of annual budgets by Parliament to sustain such a structure and to provide the essential funding for the federal government's obligations.

Pursuant to our ongoing representations and, we acknowledge, in particular to the Standing Committee's joint Statement, the Hon. John Munro, Minister of Indian Affairs and Northern Development, and the Hon. Jean Chrétien,

Minister of Justice and Minister of State for Social Development, undertook a joint Review of Implementation, carried out under the direction of officials from Indian Affairs, in consultation with officials from other interested federal departments and with representatives of both native groups.

We noted earlier the question as to whether our appearance before the Standing Committee was timely. The Review has been largely completed since last January. At his appearance before the Standing Committee on February 23, 1982, the Minister of Indian Affairs advised the Committee that a document proposing various federal measures was then before Cabinet and would be dealt with in the very near future.

In view of the continued delay by Canada in deciding upon the measures recommended in that document, we consider it essential that this Committee and the general public be made aware that:

- (a) The measures which Canada continues to debate are of a most urgent nature, particularly those concerning the delivery of essential services in Inuit communities;

- (b) Continuing delay will result in further deterioration of existing conditions and will ultimately involve both greater expenditures to effect the necessary remedies and further serious consequences for the health and welfare of Inuit in Northern Québec; and
- (c) If a positive decision is not made within a matter of days, the physical implementation of any measures finally approved will be effectively delayed for yet another year.

Our purpose, therefore, in addressing you today is to:

- (a) Advise the Committee, from an Inuit perspective, as to the Review of Implementation process;
- (b) Provide the Committee with an indication of Inuit positions concerning the measures we feel must be taken at this time on behalf of Inuit and our communities; and

- (c) Relate to the Committee the frustration and growing anger which is felt in the communities over the lack of any real improvement in their social, economic and cultural conditions almost seven (7) years after the signing of the Agreement.

The Committee has been told by the Minister of Indian Affairs, and individual members of the Committee have been advised by Inuit and Cree representatives, that progress is being made to redress the claims and grievances made by the Inuit and Cree and supported by the Committee. To date, however, despite the Review, the federal government has not acted upon the principal conclusions and recommendations of the Committee's Statement. In the face of continued government indecision, we call upon the Committee to issue a further Statement without delay urging Cabinet to adopt as soon as possible not only the Committee's recommendations of more than a year ago but also those arising out of the Review of Implementation carried out by its own officials.

We realize that the prospect of an imminent decision by the federal Cabinet in this matter leaves the Inuit, Crees and the Standing Committee in somewhat of a vacuum. The decision, however, has been imminent for several months. Whatever reluctance the Committee might have in acting at this time, however, is far outweighed by the urgent nature of the measures required and their importance for the future viability of the James Bay and Northern Québec Agreement. In our view, a follow-up Statement by the Standing Committee is not only necessary but will assist in the adoption of the proposed federal measures.

III. THE REPORT ON REVIEW OF IMPLEMENTATION OF THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT

We understand that the Minister of Indian Affairs has not yet provided the Committee with the final version of the Report on the Review of Implementation of the Agreement on the grounds that its release would be premature prior to Cabinet's decision on the recommendations made pursuant to it.

On the occasion of his February 23rd appearance before the Committee, however, the Minister instructed his officials to provide the Inuit and the Crees with the then-current draft of the Report. We believe that the members of the Committee are generally familiar with the findings contained in that version and references to the Report in this Brief are to that version. We are advised by the DIAND official principally responsible for the Review, Mr. John Tait, Assistant Deputy-Minister, that there have been no further material changes.

The general terms of reference for the Review were:

- (a) To determine if Canada has fulfilled, in spirit and letter, the obligations which it assumed pursuant to the Agreement, the James Bay and Northern Québec Native Claims Settlement Act, certain specific federal letters of undertaking and all other relevant statutes, agreements and undertakings;

- (b) To review Canada's performance in implementing its obligations under the Agreement with regard both to the implementation of specific responsibilities and the management and coordination of Canada's overall implementation responsibilities; and

- (c) To make recommendations, as necessary, for actions to remedy any shortcomings in the implementation of specific obligations as well as the overall implementation process.

With respect to item (c), the recommendations are not specifically mentioned in the Report and are dealt with in the memorandum presently before Cabinet. In several instances, however, the findings of the Report indicate by necessary implication the general nature of those recommendations. Furthermore, the Inuit and the Crees have made specific representations with respect to a broad range of federal measures respecting essential community services and native social and economic development which are hopefully reflected in the recommendations in the Cabinet memorandum.

3.1 General Comments

While we do not agree with the particular findings of the Report on many specific issues and dispute the interpretation given to certain provisions and events by federal officials in other cases, we acknowledge that the Report reflects a fair and concerted effort to address the most important issues identified by the Inuit. Although the Report will eventually be made public, it remains in the final analysis the product of an internal departmental review. Given that inherent limitation, its evenhanded presentation of the respective positions of the native parties to the Agreement is on the whole commendable.

The Report cites, for example, the payment according to schedule of compensation funds and the passage of legislation implementing various provisions of the Agreement as evidence of the enjoyment by the Inuit and Crees of the benefits of the Agreement. This certainly overstates the degree of successful implementation.

We take issue, furthermore, with the notion that conflicts concerning implementation stem more from the failed expectations of the native parties following the signing of the Agreement than from actual breaches of its provisions. Disputes have not arisen because the native parties expected too much. We contend that in the context of a land claims settlement where aboriginal rights were extinguished, the expectations were not unreasonable and that the obligations of Canada and Québec must be interpreted this light.

The Report also suggests that the failure or delay to fulfill obligations to the Inuit and the Crees may in certain cases be attributed to federal budgetary restraints occurring during the period following the signing of the Agreement in 1975. This finding ignores the fact that underfunding of federal programs in Northern Québec did not commence in the post-1975 period but was, rather, a pre-existing chronic problem. We maintain that funding in Northern Québec has always been inadequate when compared with other regions administered by DIAND in Canada and, in particular, with the funding of Inuit communities in N.W.T.

3.2 Legal Interpretation of the Agreement

The Report cites the opinion of the Department of Justice officials that Canada "has not committed any legal breaches of the Agreement", while acknowledging that the provisions of the Agreement should be interpreted in accordance with their letter and spirit and with Canada's special responsibilities for Inuit and Crees.

We do not agree with the findings of the Report or the opinion of Department of Justice officials that no legal breaches have occurred. We would reiterate today that our participation in the implementation review process has been and continues to be without prejudice to any legal rights or recourses we might have or wish to pursue. At the same time, however, we have maintained on numerous occasions that the Inuit focus during the process has not been purely legalistic but has been aimed at solving implementation problems by effecting changes in the policies and approaches of the federal government to the Agreement.

Despite arguments as to whether, in certain cases, federal obligations were discretionary or whether, in other cases, the delay in their fulfilment amounts to a legal breach, the Report concurs with Inuit claims that Canada has failed to date to fulfil many of its obligations in accordance with the letter and spirit of the Agreement. Of equal significance, the Report confirms Inuit representations that immediate measures are urgently required in all Inuit communities in Northern Québec to bring essential services and conditions up to even minimally acceptable standards.

We shall now review specific Inuit grievances and current conditions in Inuit communities.

3.3 Inuit Housing and Infrastructure

The Report acknowledges that the majority of Inuit families are living in badly constructed, poorly maintained houses which are grossly energy inefficient, overcrowded, and lacking in essential facilities such as running water and adequate indoor toilets. It fails, however, to capture the real plight of the many Inuit families who sleep seven or eight to a room, get their water for all uses in a

45 gallon container once or twice a week, plug cracks in their walls using paper and tape as makeshift insulation and rely on extra-strength plastic "honey bags" to dispose of their bodily wastes.

It is unacceptable that those abysmal conditions are the norm rather than the exception in Inuit communities in Northern Québec. The Report rationalizes the night-and-day difference between conditions in Northern Québec and in similar Inuit communities in N.W.T. on the basis of differences in the programs provided by the Government of N.W.T. and those provided by the Indian and Inuit Affairs program. However, Canada, which funded both programs, bears ultimate responsibility for the vastly inferior conditions suffered by the Northern Québec Inuit.

The Report confirms those conditions through the on-site visits of DIAND officials and Mr. Ray Chénier, M.P., Parliamentary Secretary to the Minister of Indian Affairs.

It documents, as well, the fact that the majority of the housing stock in Inuit communities, approximately 700 of 800 units constructed under DIAND's Northern Housing Program, were in need of major renovations when they were

transferred to Québec pursuant to the Northern Québec Transfer Agreement entered into despite Inuit objections.

We maintain not only that Canada's responsibility for the present housing situation dates back to the pre-Agreement period, but that the Agreement itself contemplated a unified system under which federal-provincial duplication of effort would be eliminated. Under the unified system, Québec would assume responsibility for the delivery of a single housing program which would quickly meet housing needs and be administered by regional and local governments.

The unified system, contemplated by Section 29 of the Agreement, was purportedly given effect to by Canada's entry into a bilateral agreement with Québec in February 1981. The Inuit objected to the signing of the Northern Québec Transfer Agreement on the grounds that the provisions of paragraph 29.0.40 of the James Bay and Northern Québec Agreement contemplated that the Kativik Regional Government and the Northern Village Corporations were also to be parties. More importantly, the proposed terms of that Agreement did not establish levels of services or funding for the programs and services, including housing, that were foreseen by its terms. We maintain that the Transfer

Agreement was illegally signed and represents a breach by Canada and Québec of the Agreement.

Inuit housing is now carried out by the Québec Housing Corporation under which Canada's participation is made through cost-sharing arrangements with C.M.H.C.'s regular social housing program. The Québec Housing Corporation's own estimates indicate that at least 465 new houses and 700 renovations are needed over the next 10 years. Insofar as most of the 700 renovations are required immediately and given Inuit population increases, a 5 year program is required to meet Inuit housing needs.

The most recent Québec decision respecting Inuit housing shows the inadequacy of the efforts made to address the problem. While finally approaching the issue on other than a year-to-year basis, the April 1982 decision approved a 5-year program under which only 150 new houses would be built and 225 renovations would take place. On an annual basis under that program, which it should be remembered is 50% funded by C.M.H.C., 30 new houses and 45 renovations would take place. Actual needs are 80 new houses and 140 renovations per year.

The urgent need for a special federal initiative designed to accelerate the Inuit housing program has been amply demonstrated.

We have made several proposals as to the form which that initiative might take, including the allocation of additional C.M.H.C. housing units to Québec and the front-end loading of C.M.H.C. contributions to its joint program with S.H.Q.. Those proposals would be based on Québec's agreement to similarly accelerate its share of the program. Failing that, we have proposed that Canada, on its own initiative, take steps to meet Inuit housing needs, subject only to satisfactory arrangements being made concerning future O & M costs and to some form of guarantee that Québec would not cut back on its own program. Such a measure would be appropriate taking into account that housing shortages existed prior to the transfer of the program from Canada to Québec. We understand that the recommendations to Cabinet take our proposals into account.

3.4 Inuit School Facilities and Education

The condition of Inuit housing is mirrored by the conditions generally found in Inuit school facilities. In bureaucratic language, the Report confirms Inuit contentions that most Inuit school facilities should be replaced, and in their present condition, represent a gross embarrassment for Canada and Québec and an increasing danger to the health of Inuit students. As a direct result, the quality of education continues to be severely undermined and overall Inuit educational objectives are not being realized.

The Report acknowledges that the buildings serving as school facilities are seriously overcrowded and lacking in proper sanitation and fire-protection facilities. What it fails to indicate is that in many cases Inuit classrooms are spread helter-skelter throughout the communities and are housed in buildings never intended to serve as schools. Attempts have been made to convert warehouses and toolsheds into classrooms. The results are ludicrous.

As in the case of housing, the inadequate state of Inuit school facilities predates the Agreement and reflects the failure of Canada to carry out the necessary capital projects during that period.

Under the Agreement, Canada has an ongoing funding responsibility with Québec. Paragraph 17.0.85 of the Agreement provides that the annual budgets for operating and capital costs are to be jointly approved by Québec and Canada. To date, Canada has taken a passive posture in allowing Québec to determine the annual budget for the Kativik School Board. Despite our urging, it appears that in the case of the 1982-83 budget, DIAND representatives have again stood by on the sidelines.

The Kativik School Board adopted a comprehensive 5-year Capital Development Plan for educational facilities in Northern Québec in 1980. While Québec's Ministère de l'Éducation has acknowledged, in principle, the need for the 28 capital projects identified in the Plan, it has failed to formally approve the Plan and, taking into account the piecemeal construction already completed, approximately \$45 million of the Development Plan remains to be funded.

The recent decision from Québec on the Kativik School Board's capital budget offers further proof of the desperate situation in which the Inuit educational system finds itself. Out of a proposed capital budget of \$5.7 million, Québec approved the spending of \$786,000. (While an allocation of \$2.841 million was also made to rebuild a school in Wakeham Bay previously destroyed by fire, this item had not been included in the Kativik School Board's \$5.7 million submission). At the present rate of funding, Inuit needs for school facilities will not be met in 20 let alone 5 years.

Furthermore, as a result of insufficient operational budgets, the Kativik School Board has been obliged to virtually eliminate programs respecting curriculum development for Inuit language and culture, Inuit teacher training and adult education, all of which are significant benefits contemplated by Section 17 (Inuit Education) of the Agreement. Those programs essential to Inuit remain part of Canada's special responsibility for Inuit, notwithstanding that the Kativik School Board falls under Québec jurisdiction. Canada's ongoing responsibility for the funding of the Kativik School Board's operational

budget provides an avenue for Canada to "earmark", in the normal operating budget, the funds required for these programs.

In the case of Inuit school facilities, however, we have proposed that the federal government take special initiatives so that the Capital Development Plan may be completed over the next 5 years. These proposals include the acceleration of Canada's present contribution to the capital portion of the Kativik School Board's budget, or the front-end loading, if necessary, of Canada's contribution, both designed to encourage Québec to similarly accelerate its funding. Failing that, Canada should, of its own initiative, take steps to fund directly or through the Kativik School Board the building of the necessary facilities, conditional only upon Québec maintaining the level of its current funding. It is essential that any Cabinet decision take these proposals, or ones with similar effect, into account.