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TO

THE STANDING COMMITTEE
ON INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

House of Commons - Chambre des communes

EXEMPLAIRE À CONSULTER SUR PLACE

Submitted by: MAKIVIK CORPORATION

on behalf of THE INUIT OF QUEBEC

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

March 20, 1981
Kuujjuaq, Québec

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APPENDIX III - Dagenais, "Lévesque refuse le droit de veto réclamé par les Amérindiens", Le Devoir, 10 octobre 1980

APPENDIX IV - Letter dated February 10, 1981, to the Hon. John Munro, Minister of Indian Affairs and Northern Development, from Makivik Corporation and Kativik Regional Government concerning the Transfer Agreement issue

I. INTRODUCTION

We welcome this opportunity to appear before the Standing Committee on Indian Affairs and Northern Development. Makivik Corporation is an Inuit association whose membership is comprised of all of the Inuit beneficiaries of the James Bay and Northern Quebec Agreement signed in 1975. Makivik Corporation was contemplated by that Agreement and created by a special Quebec statute in 1978. It is the Inuit Native party for purposes of the Agreement, represents the Inuit of Northern Quebec for matters such as constitutional discussions and is responsible under its charter for the promotion of Inuit culture and economies.

There are approximately 5,200 Inuit in Northern Quebec. This territory, a part of the Inuit homeland in which we are the predominant population, is about one third the size of Quebec. We live in 14 coastal communities located, with the exception of Fort George, north of the 55th parallel.

We are pleased to express our views with respect to the James Bay and Northern Quebec Agreement. We understand that your invitation arises out of the study of the Main Estimates, 1981-82, for the Department of Indian Affairs and Northern Development and, in particular, the study of certain money votes in respect of aboriginal claims.

Although the negotiation of other comprehensive claim settlements is now underway, the James

Bay and Northern Quebec Agreement remains the only modern aboriginal claims settlement entered into in Canada. (The Northeastern Quebec Agreement, a separate agreement entered into with the Naskapi Indians of Schefferville arose out of the James Bay and Northern Quebec Agreement and served principally to bring the Naskapis within its terms).

In the context of your consideration of the abovementioned money votes, our experience to date with the James Bay and Northern Quebec Agreement will, without doubt, be highly relevant. By becoming better acquainted with the problems we shall discuss, we would expect this Committee to make a strong and supportive intervention so that similar problems will be avoided in any future aboriginal claims settlement. Equally important, we would expect that your new awareness of existing grievances with respect to to the James Bay and Northern Quebec Agreement will lead to your assistance in causing their prompt and equitable redress.

It should be clear that in drawing your attention to certain implementation problems, we do so to reinforce the principle of just and equitable settlement of aboriginal claims. Our remarks, therefore, should not be misconstrued. We encourage this Standing Committee to make recommendations which will further the aims of those native peoples who are currently involved in the claims settlement process.

We last appeared before you as witnesses in February, 1977 as the Northern Quebec Inuit Association, the predecessor of Makivik Corporation as the representative Inuit party under the Agreement. At that time, your

Committee was engaged in the study of Bill C-9, the James Bay and Northern Quebec Native Claims Settlement Act. This Act ratified the Agreement and was proclaimed on October 31, 1977. Our representations to you led to the tabling and eventual adoption of several useful amendments to that Act and we would hope our representations to you today will yield equally positive results.

II. THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT: AN INUIT PERSPECTIVE

We assume that the Committee has general knowledge of the circumstances leading to the signing of the Agreement and to the adoption of the ratifying federal and provincial legislation.

The alleged facts with respect to the signing and other aspects of the Agreement have been set forth in the "REPORT ON THE IMPLEMENTATION OF THE PROVISIONS OF THE JAMES BAY AND NORTHERN QUEBEC NATIVE CLAIMS SETTLEMENT ACT" tabled in the House of Commons on November 18, 1980 by the Honourable John C. Munro, Minister of Indian Affairs and Northern Development. We assume that this Report has come to your attention. We disagree with its contents and the manner in which it was prepared. We have detailed comments to make on the Report later in this Brief but would point out to the Committee that, to our knowledge, it represents the first such Report tabled by the Minister, notwithstanding his statutory obligation to do so on an annual basis since 1977, as set forth in section 10 of Bill C-9 (see Appendix I).

From an Inuit perspective, the Agreement must necessarily be viewed as a major first step, both in the evolution of Inuit-Quebec relations and in acquiring an adequate degree of self determination on a regional basis within both Quebec and Canada. The Agreement is, therefore, perceived as a cornerstone intended to be continually built upon. It must be seen as a "living" document, apable of being adapted to new government policies and to changes in political, economic and social circumstances.

At the time of its execution, the Agreement was viewed by both Inuit and Crees as one upon which we based not only our present aspirations but also our future development as native people and as participants in Quebec society. The Agreement is often described as a "comprehensive" settlement. It provides rights and benefits which fall into many different categories, including not only those in the private sector, but, equally important, those in the public sector. Both present and future generations of Inuit and Crees will be directly affected by the policies and operations of public and quasi-public institutions and bodies established as benefits under the Agreement on a regional basis.

In general, the majority of the rights and benefits in favour of the native people under the Agreement give rise to corresponding obligations for the Government of Quebec. Consequently, implementation problems have most often arisen directly with Quebec rather than with the federal government. We intend to examine in some detail the federal government's role in the case of certain problems but can state generally that implementation of the Agreement

by Quebec has been characterized by underlying negative attitudes, including

a) a prevailing distrust of Inuit intentions on any given point;

b) residual negative feeling on the part of some government fonctionnaires stemming from the negotiation process leading to the signing of the Agreement;

c) the attitude that when the Agreement is silent on even the most minor of points, it was meant to be limitative of the native peoples' rights and that, in any event, the Crees and Inuit received too much; and

d) the attitude that where obligations can not be met within the framework of existing programs, no new programs will be created and funded.

The approach of the federal government to the Agreement has often been characterized by similar attitudes both with respect to Canada's specific obligations under the Agreement and with respect to its overall constitutional responsibility for Inuit and Crees. This latter responsibility has been specifically referred to in the preamble of Bill C-9 where it is provided that

> "Parliament and the Government of Canada recognize and affirm a special responsibility for the said Crees and Inuit".

Our experience with implementation provides several examples of non-fulfilment of that responsibility.

III. THE AGREEMENT AS AN EVOLVING STATEMENT OF INUIT RIGHTS

We have already mentioned that we view the Agreement as a dynamic document while others view it as a fixed and static document. The danger is that this latter view results in the Agreement being interpreted legalistically and limitatively with respect to Inuit rights and benefits. This approach also places the Agreement in a legislative strait-jacket. The result is that what were thought of at the time of the signing of the Agreement as progressive provisions respecting Inuit individuals and institutions, in fact, become outdated as new legislative reforms are implemented in the rest of the Province. For example, new land use and taxation powers conferred upon municipalities in other parts of Quebec have not been extended to the territory above the 55th parallel (see Appendix II, an Act respecting land use planning and development, S.Q. 1979, c. 51, section 66, and an Act respecting municipal taxation and providing amendments to certain legislation, S.Q. 1979, c. 72, section 1). While those powers would have to be adapted to suit a northern context, it is inconceivable that Quebec should have specifically excluded their application from the region where the municipalities which would benefit from them most are located.

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

> "Nothing contained in this Agreement shall prejudice the rights of the native people as Canadian citizens of Quebec, and they shall continue to be entitled to all of the rights and benefits of all other citizens as

well as those resulting from any other legislation applicable to them from time to time."

It follows that the rights and benefits contained in new legislation of general application in the Province must automatically apply with appropriate adaptation to our northern territory.

IV. SPECIFIC PROBLEMS RELATED TO IMPLEMENTATION OF THE AGREEMENT

4.1 LEGISLATIVE ENCROACHMENTS

While the exclusion of Inuit and their territory from the general benefit of legislative reforms applicable to the Province as a whole may seriously threaten or hamper Inuit development in the future, legislative encroachments upon Inuit rights and benefits may sometimes do equal harm. The circumstances and events surrounding the adoption of Quebec's Charter of the French Language (Bill 101) serve as an example of the latter. The proposed wholesale application of the Quebec government's language legislation to Inuit did not take into account our status as original inhabitants and our right to self-determination in regard to cultural matters. Furthermore, it would have virtually prevented Inuit participation in the many public bodies contemplated by the Agreement.

As Inuit, the continual threat of assimilation and loss of our culture, which we faced from both the English and French cultures, was more at issue than any threat posed by our language or culture upon other

Quebecers. Ultimately, some language rights in respect of Inuktitut were provided in Bill 101. The conflict, however, serves to demonstrate the importance of constitutionally entrenching the fundamental rights and benefits accruing to the native people as the result of any aboriginal claims settlement.

At the same time, the Bill 101 conflict demonstrated that incompatibility clauses phrased in general terms are futile except to resolve the most apparent of conflicts between the provisions of a native claims agreement and offending legislation. Our efforts to have the Minister of Indian Affairs and Northern Development recognize that certain provisions of Bill 101 breached Inuit education rights under the Agreement were ultimately met with a narrow legal interpretation from the federal Department of Justice. Their view was that under ordinary rules of interpretation the conflicting clauses would be interpreted as broadly as possible so as to avoid conflict. The outcome, of course, was that the Federal government itself also avoided any political conflict with Quebec, even though Inuit rights were prejudiced as a result.

4.2 THE LEGISLATIVE PROCESS OF RATIFICATION AND IMPLEMENTATION

The Agreement provided at section 2.5 thereof that Canada and Quebec would recommend "forthwith" upon its execution, suitable legislation "to approve, give effect to and declare valid the Agreement and to protect, safeguard and maintain the rights and obligations contained in the Agreement". Pending the adoption and coming into force of

separate federal and provincial ratifying legislation, the Agreement did not come into force and was not binding upon the parties, with the exception of certain transitional measures. Notwithstanding the obligation of Canada and Quebec to act "forthwith", the ratifying legislation was not proclaimed until October 31, 1977, almost two years after the signing of the Agreement.

The adoption of the federal ratifying legislation (Bill C-9) required tremendous effort on the part of the native people to ensure that it was recommended to Parliament in a form which respected the provisions of the Agreement. Our efforts required in this area seriously detracted from time available to spend on the implementation of the substantive measures of the Agreement.

To an even greater extent, the legislative process involved in the implementation of specific Chapters of the Agreement falling under Quebec jurisdiction placed an undue burden upon the financial and human resources of the native peoples. This process became a renegotiation of the Agreement and threatened to erode the rights and benefits we had obtained under the Agreement.

Inuit and Crees take the position that as a result of the ratifying legislation (Bill C-9) stating that the native people have the rights and benefits contained in the Agreement, the Agreement itself has the force of law. We also contended, however, that complementary legislation was required in the case of certain Chapters, either to fill obvious gaps or to put some provisions in legislative form. Principally to avoid the former situation, Quebec chose to adopt additional legislation with respect to almost all

Chapters of the Agreement. The last of the more than a dozen acts which were thus required were not adopted until December 1978, more than three years after the signing of the Agreement.

More importantly, however, the negotiation and lobbying efforts by representatives of the native people to ensure that the legislation was in conformity with the Agreement were, in many cases, equal to those which went into the negotiation of the Agreement itself.

The fact that the federal government expressed the opinion that the ratifying legislation gave the Agreement the force of law, was unfortunately of no persuasive effect upon Quebec. The lesson is obvious. Where a future native claims settlement will not of itself constitute a statute or have the force of law, it should, wherever possible, have appended to it a proposed text of legislative amendments if such are contemplated. This is essential both to avoid unnecessary delays in the coming into force of such agreement and to enable the Native beneficiaries of such agreement to assure themselves at the time they enter into it that their proposed "statutory" rights are the equivalent of their "contractual" rights.

The real dangers of the two-step process are that native rights and benefits may come out in diminished or altered form and, secondly, that the effective renegotiation of their rights and benefits occurs in a forum in which they have limited participation, over which they have no control and at a time when they may have already ceded or surrendered their aboriginal title.

In certain instances, it was deemed sufficient in the Agreement to obtain an undertaking from the appropriate government that it would amend legislation which conflicted with a particular provision of the Agreement. This does not always prove to be the prudent approach. For example, Canada undertook "to endeavour to take all reasonable measures" to amend the Migratory Birds Convention to eliminate conflicts with the right of the native people to hunt all species of wild fauna at all times of the year. While an amending Protocol has been signed, it has yet to be ratified by the U.S. Senate and we have no indication as to what efforts Canada is making in this regard. At a less difficult level, however, Canada undertook to amend the Migratory Birds Convention Act regulations and, despite the frequent representations of the native peoples, it is only in the last year that some of the necessary amendments to those regulations have been made.

4.3 QUEBEC'S SECRETARIAT DES AFFAIRES GOUVERNEMENTALES EN MILIEU AMERINDIEN ET INUIT (S.A.G.M.A.I.)

The Agreement did not provide for the establishment of a body or committee which would oversee the implementation of the Agreement. After limited consultation with the Crees and Inuit, the Quebec government established the Secrétariat des activités gouvernementales en milieu amérindien et inuit ("S.A.G.M.A.I.") by Order-in-Council on January 18, 1978. It was our understanding that S.A.G.M.A.I. was placed directly under the control of Quebec's Prime Minister in order to ensure that the Agreement and its implementation be given a high priority.

At the time of its creation, we expressed the view that such a body should, insofar as Inuit and Crees were concerned, be restricted to coordinating and facilitating relations between ourselves and other government departments where necessary. We acknowledge the problems involved for the Quebec government in attempting to deal fairly with Quebec's native peoples and we recognize the useful role initially intended for S.A.G.M.A.I. in sensitizing Quebec civil servants to those problems.

Unfortunately S.A.G.M.A.I., rather than solving implementation problems, has too often itself become an implementation problem. Rather than being a body to which both government and native people could resort in the event of difficulties, it has become a body whose advice must be obtained by government officials before they feel free to act in even the most simple and mundane matters and whose approval must be obtained for virtually all budgets. In effect, S.A.G.M.A.I. generally sets the policy and direction in any matter which concerns Inuit. While the solution may not be to dismantle S.A.G.M.A.I., neither is it to further institutionalize it into a department. We propose a comprehensive and honest evaluation of its role in which Inuit and other aboriginal peoples of Quebec would fully participate.

Notwithstanding the importance of any role which a reconstituted S.A.G.M.A.I. might play in furthering the interests of aboriginal peoples in Quebec and in developing closer ties between the Government of Quebec and northern institutions and bodies, the most pressing

amendment needed to the Agreement - and an essential element of any future native claims settlement - would be the establishment of an Implementation Committee composed, in equal numbers, of members appointed by the native peoples and the governments involved. Such an Implementation Committee, which we discuss in greater detail in Section 5.1, would be formed to carry out certain duties and functions relating to implementation and would be funded by the governments involved.

4.4 SURRENDER AND EXTINGUISHMENT

The Agreement provided not only for the cession and surrender by James Bay Crees and Inuit of Quebec of their native claims, rights, titles and interests in and to lands in the territory and in Quebec, but also for federal legislation extinguishing those said claims, rights, titles and interests in and to the James Bay Territory. The Government of Quebec took the position that the federal legislation had to extinguish native claims. Their position was based on the historical use of the term "extinguish" in treaties with native persons and, secondly, to ensure that Quebec's title to the James Bay Territory was secure against native peoples who had not in fact participated in the cession and surrender provided for in the Agreement. The insistence upon the use of the term "extinguish" and the accession by Parliament to the recommendations of the Federal government in this regard have created one of the most important and continuing problems with respect to the Agreement.

While the concept of the extinguishment of aboriginal title may have been based on precedent, it is nevertheless abhorrent to native peoples and inherently unacceptable to them. While it is clear from our perspective that the extinguishment relates only to certain rights in and to land, the use of the term has proven extremely divisive for Inuit and is at the base of the objections of Inuit dissidents in northern Quebec.

We have always considered that Inuit aboriginal rights consist not only of rights pertaining to land, based on use and occupation since legal memory, but that they also include Inuit traditions and customs relating to Inuit language and culture, as well as to marriage, family and adoption. This broader view of aboriginal rights has gained increasing acceptance among non-natives and is reflected in recent amendments to the proposed Resolution adopted by the Joint Senate and House of Commons Committee on the Constitution.

As the Committee is aware, on January 30, 1981, the Joint Senate and House of Commons Committee on the Constitution unanimously adopted section 33(1) which reads as follows:

> "33(1) - The aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed".

While existing aboriginal rights may be altered and exchanged for other rights and benefits, we feel it was and is unnecessary to extinguish aboriginal rights which are unique to indigenous peoples and inseparable from their cultural identity.

To the extent that legislation assuring the right to develop may be necessary, formulas other than that providing for extinguishment of aboriginal title can be found. In our view, the concept of extinguishment is neither legally necessary and, as has become increasingly apparent, is neither politically nor morally acceptable to governments. The recent report in an article in Le Devoir (see Appendix III) that Quebec would not require the extinguishment of the aboriginal rights of the Attikameks and Montagnais as a necessary condition for the settlement of their aboriginal claims evidences that fact. Makivik Corporation is in the process of seeking to legally restore and protect the concept of aboriginal rights through constitutional and other discussions with government.

We would request that this Committee recommend that the concept of extinguisnment of aboriginal title not form part of any future native claims settlement and that steps be taken to find mutually satisfactory solutions between the interested native peoples and governments so as to restore aboriginal rights wherever they have been extinguished.

4.5 ISSUES LEFT UNRESOLVED BY THE AGREEMENT

4.5.1 LAND SELECTION

When we appeared before this Committee in February 1977, we described in some detail the problems we were then having with the Government of Quebec over the

finalization of the selection of approximately 35,000 square miles of Category II lands over which Inuit were to have the exclusive right of hunting, fishing and trapping and certain other rights related to those activities.

The issue of land selection demonstrates the necessity of finalizing, to the greatest extent possible, before signature of an agreement, all issues which are of fundamental importance to both the native parties and government. The selection of land for Inuit was such an issue. Selection was not finalized until almost two years after the signing of the Agreement. Even after settlement in principle, the formalization of the land selections in a Complementary Agreement took a further two years and that Agreement, which must be approved by proclamation of the Quebec Cabinet after tabling in l'Assemblée nationale, has still not come into force.

The result is that, as of this date, more than five years after the signing of the Agreement, the Inuit Landholding Corporations established for each community have still not received final title to the Category I lands they are to own.

4.5.2 OFFSHORE AREA

On November 15, 1974, Canada agreed in a special letter of undertaking to negotiate a settlement of Inuit claims in and to the offshore area surrounding northern Quebec and, in particular, to islands in proximity to Quebec Inuit communities. This letter of undertaking coincided with the signing of the Agreement in Principle which eventually led to the James Bay and Northern Quebec

Agreement. It was proposed that the regimes negotiated in favour of Inuit under the Agreement in such areas as hunting, fishing and trapping and local and regional government would, as far as is possible, be applied in the offshore area. On the basis of the foregoing undertaking and in the belief that negotiations with one party, namely Canada, would proceed more swiftly than those with six parties, we decided that the lack of a final settlement on the offshore area should not impede the signing of the James Bay and Northern Quebec Agreement.

While negotiations with the federal government on the offshore area have been interrupted on occasion by other implementation problems and more recently by our involvement in the process of constitutional reform, such negotiations as there have been have not proven to be fruitful. They have been characterized by a failure on the part of Canada to recognize the vital significance of the offshore area to Inuit in our past, present and future activities. Inuit are a coastal people whose use of and reliance upon the Arctic marine environment for subsistence are unique among aboriginal peoples of Quebec. Approximately 70% of the local food in Inuit communities is harvested in the offshore area. Moreover, marine resources are critical to the continuance and long-term stability of our economies and culture.

In our view, the federal government has yet to engage with us in meaningful negotiations. Any future settlement of our aboriginal claims in that area must include meaningful participation in broad aspects of environmental and wildlife management. For ecological,

biological and other reasons, an environmental and resource management zone must be established and must extend further than our immediate zone of interests in order to sufficiently protect those interests.

Moreover, any future offshore settlement must include adequate provisions for Inuit participation in economic development in the offshore. Our framework for creating a viable northern economy, in our region, includes substantial Inuit involvement in commercial fisheries and other economic ventures relating to both renewable and non-renewable resources. In addition, future offshore resource development within our region should include an appropriate rational scheme for revenue-sharing on a regional basis.

For some time now, we have sought funding from the Department of Indian Affairs and Northern Development for negotiation of our offshore claims on a basis equivalent to that provided to other native groups involved in claims settlement negotiations. To date, the Department has failed to provide such funding and we have, on occasion, been met with the argument that we should use the compensation received under the James Bay and Northern Quebec Agreement for such purposes. In principle, we do not accept the idea that the monetary benefits of one settlement are to be used to negotiate a second settlement, one principal effect of which would be to clear Canada's title in an area of vital importance to its national and international interests.

4.5.3 INUIT POLITICAL REPRESENTATION

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

The electoral districts in northern Quebec 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 by law for electoral districts. The result is that more southern municipalities 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.

The Agreement in Principle contemplated future discussions between the governments and the native parties with respect to the adequacy of existing federal and provincial electoral boundaries in providing meaningful political representation for the native inhabitants of the region. However, the final Agreement is silent on this subject and it remains an outstanding issue.

Several submissions to the governments by both Makivik and the Kativik Regional Government proposing re-alignment of electoral boundaries so as to provide greater opportunities for direct Inuit political representation have not received serious consideration by either Canada or Quebec.

The inadequacy of present political representation in northern Quebec remains an unresolved

issue for Inuit. It is only through direct Inuit political representation both federally and provincially that we can achieve a more complete sense of self-determination.

4.5.4 CONCLUSION

To conclude on the subject of unresolved issues, circumstances may dictate that a native claims settlement be signed before all issues have been fully negotiated and settled. Moreover, where the agreement is a comprehensive one cutting across all facets of Native peoples' lives - social, cultural, political and economic - it is more likely and in some cases appropriate that procedural matters or substantive issues of minor significance be left to be worked out during the implementation stage. The manner in which such issues are to be resolved and, more particularly, the time-frame for their settlement, must, however, be clearly spelled out. It is in this connection that the abovementioned Implementation Committee should be given special responsibility.

In the absence of a clearly defined implementation process and of the designation of an adequately funded implementation body, native peoples have been obliged to expend considerable portions of the monetary compensation received under the Agreement just to secure their entitlement to, much less the actual receipt of, the rights and benefits promised them under the Agreement. In fact, the land selection negotiations represent the sole area of implementation in respect of which Inuit recovered a significant portion of the several hundred thousand dollars they were obliged to spend.

With respect to the negotiation of all other issues left unsettled at the time of the execution of the Agreement and, in particular, with respect to the negotiation of the ratifying and implementing legislation, Inuit have, to date, been obliged to bear the costs out of compensation which was expressly intended by the parties to the Agreement to be used for future Inuit social, ecónomic and cultural development.

4.6 INTERPRETATION OF THE PROVISIONS OF THE AGREEMENT

We alluded earlier to the fact that it has been our experience that both the Governments of Canada and Quebec and, in the case of our particular Agreement, the Crown corporations involved, have generally tended to interpret the provisions of the Agreement in as narrow and legalistic a manner as possible so as to limit Inuit rights and benefits.

The surrender of their aboriginal title by the Native parties under the Agreement was contained in a single, all-embracing, unequivocal provision. However, the rights, privileges and benefits which they received in return from the various parties were contained in a hundred different clauses of varying clarity. In such circumstances, it was difficult in each and every case to attain the degree of precision which our experience with the government parties now indicates was necessary. For example, government obligations qualified by the phrases "insofar as possible" or "to the extent possible" are found repeatedly in the Agreement. It has become increasingly clear that the spirit with which the rights and benefits of the Agreement were to be provided to the native peoples is being largely ignored.

Given the inherent imbalance between the native and government sides in any negotiation process (notwithstanding any leverage which might be gained from the institution of legal proceedings), it is of course a first prerequisite that the native peoples be provided with adequate funding so that they might carry out the necessary preparation and obtain the required technical, legal and other assistance to enable them to present and argue the best possible claim.

In a number of instances, Canadian courts have interpreted ambiguous treaty clauses in favour of the Native beneficiaries of such treaties, in recognition of the invariably disadvantageous position the natives were in when such clauses were negotiated and so as to avoid bringing "dishonor to the Government" (see R. v. Batisse, (1978) 84 D.L.R. (3d) 377). The principle that vague or ambiguous clauses should be interpreted in favour of the Native peoples is one which should form part of every aboriginal claims settlement.

The application of the foregoing rule of interpretation might appear to some to be overly advantageous to the native peoples. However, where a real effort is made on the part of government to set forth its obligations clearly, such a rule should only need to be invoked on rare occasions.

The problems of interpretation arising out of any settlement can also be avoided or reduced if the parties take care to clearly set out at the beginning of each chapter the guiding principles and objectives governing the

subject matter of that chapter. By so doing, it is more likely that the spirit in which the Agreement was entered into will be respected in interpreting its provisions.

4.7 PROGRAMS AND SERVICES: THE LACK OF ADEQUATE BUDGETS

4.7.1 SOCIAL, CULTURAL AND ECONOMIC MEASURES

The Agreement provided that Canada and Quebec would initiate measures designed to encourage and promote Inuit and Cree social, cultural and economic development. These measures were designed to foster native development in all spheres of their activities and ranged from assistance in traditional areas, such as outfitting and native arts and crafts, to aid in connection with current activities, such as preferential treatment in the awarding of contracts and in employment opportunities for projects located in the territory.

Native peoples have yet to see the meaningful implementation of the majority of those measures. Canada's approach to these measures illustrates the magnitude of the problem. In the case of every measure, no matter how concrete or imperative the terms of Canada's obligations in this regard may have been stated, implementation has not taken place unless the measure fit squarely within the four corners of existing federal programs.

In other words, in the absence of criteria established for the implementation of such measures through existing programs and in the absence of funds earmarked for

such measures, Canada has taken the position that it has no obligation to create special programs or amend existing ones or to seek additional budgetary allocations.

Both Inuit and the Crees were aware of the principle applying to government expenditures, namely, that funding of programs was subject to the approval of Parliament. They did not agree, however, that measures which Canada and Quebec undertook to establish in their favour had to be pigeon-holed into existing program criteria which are inflexible and do not contemplate those measures, nor that such measures were to be funded out of non-existent budgets. In such event, the benefits of those measures are rendered totally illusory.

4.7.2 INUIT ECONOMIC DEVELOPMENT

The experience of Makivik Corporation to date in obtaining assistance of any kind from the federal government in the area of economic development has been largely unsatisfactory. Paragraph 29.0.39 of the Agreement reads as follows:

> "Canada and Quebec shall support Inuit entrepreneurs by providing them with technical and professional assistance and financial assistance."

In fulfilling its own responsibilities to promote Inuit economic development, Makivik, in addition to funding certain cultural organizations, has established subsidiaries in the construction, airlines and fisheries fields to promote economic development in our region in

those important areas of endeavour. Notwithstanding the specific provisions of paragraph 29.0.39, our efforts to obtain Canada's assistance with start-up costs of economic activities in the region have essentially been to no avail. We are presently awaiting a federal response to our detailed submission for funds to off-set expenditures in respect of infrastructures for these subsidiaries. These infrastructures are of general benefit to the region and would normally qualify for DREE grants which to date are not applicable in northern Quebec. In our view, such grants are contemplated by the Agreement and should be made under its terms, independently of DREE programs.

All this suggests to us that Canada is not prepared to accept us as equal participants in economic development in the north. It seems instead that Canada would rather have us remain on the periphery of any such development and consider ourselves fortunate to be able to glean a few jobs or service contracts from large-scale development in the region.

4.7.3 ESSENTIAL MUNICIPAL SERVICES

For Inuit, the problem of inadequate programs and budgets has been even more acute in the area of essential municipal services. Here, the problem affects both the institutions created under the Agreement to deliver those services and the services themselves. As we have indicated, the laws adopted for the implementation of rights and benefits of the Agreement are, in most instances, already in force. Many of the powers conferred upon regional and local bodies in the territory, however, are

unable to be exercised in the manner intended because of a lack of adequate budgets from Quebec.

The creation of social, economic and governmental institutions in favour of Inuit beneficiaires serves no useful purpose if these institutions are not adequately funded. Substantial benefits for Inuit are most often tied to the annual budgets of the various Quebec departments responsible for implementing different sections of the Agreement. To date, the negotiation of these budgets, particularly in the case of the principal regional body, the Kativik Regional Government, has been marked by frustration and disagreement.

The autonomy of our regional entities, such as the Kativik Regional Government, in their different spheres of jurisdiction is seriously threatened if they do not have access to adequate financial resources to meet their responsibilities.

The establishment of a forum or process for fixing adequate budgets for the many bodies created pursuant to the Agreement is essential.

4.7.4 THE TRANSFER AGREEMENT ISSUE

Five years after the signing of the Agreement, Inuit find themselves with the same inadequate essential services. There have been no significant improvements in existing infrastructures in Inuit communities since before the signing of the Agreement. Those communities are still faced with substandard housing with no

running water, unsanitary sewage disposal, inadequate community centers, lack of fire protection, insufficient electrification and a shortage of heavy machinery for community purposes.

On February 13, 1981, a Transfer Agreement was entered into between Quebec and Canada whereby Quebec assumed responsibility for the provision to Inuit of the housing, electricity, water, sanitation and related municipal services mentioned in paragraph 29.0.40 of the Agreement. The Minister of Indian Affairs and Northern Development signed the Transfer Agreement on behalf of Canada before information and guarantees as to the level of the both abovementioned services and other services contemplated by the James Bay Agreement were obtained from Quebec. Paragraph 29.0.40 provided that such services would continue to be provided by Quebec and Canada according to the arrangement existing at the date of the Agreement, until a Unified System was worked out with the representative public institutions of the Inuit, namely the Kativik Regional Government and the local municipalities.

For Inuit, the "Unified System" indicated the rationalized delivery of services where they were been delivered by more than one party and the elaboration of the level of services and of the roles of each party in the future administration of programs respecting those services.

The whole point of paragraph 29.0.40 was that the senior governments would not enter into arrangements respecting the provisions of those essential services to

Inuit, without Inuit being a party to the arrangement. The importance of this principle, long advocated by native peoples in respect of all programs or services which affect them, was recently recognized by the federal government. Distribution of federal and provincial programs in native communities is slated for discussion with aboriginal peoples at the next First Ministers Conference.

The history of the level of services in Inuit communities provides a clear example of the unhappy results of federal-provincial posturing and disagreement over constitutional responsibilities. Until 1963 when the Quebec Government first set foot in northern Quebec, it had been content to let the federal government provide services to Inuit in the territory. As Quebec and the federal government began to compete for jurisdiction in Quebec's north, Inuit communities in many cases witnessed both a duplication of certain services and a lack of other essential ones. An administration disporportionate in size to the minimal and inadequate services it supported was established by each government.

In the early 1970's, both the James Bay litigation and the possibility of a native claims settlement which would transfer responsibility to the province led Quebec and Canada to freeze the level of services and programs in the north. During that period, the federal government did not improve any services in northern Quebec, nor did Quebec attempt to do so. This situation led to an even greater shortage of essential services in Inuit communities throughout northern Quebec.

At the time the Agreement was signed, Inuit agreed in principle to the eventual transfer of responsibility for essential services from Canada to Quebec, subject to their agreement to the terms and conditions, on the understanding from both governments that the level of such services would be substantially improved.

In recognition of the need for federal contributions to a "catch-up" program for essential services in Inuit territory, the Minister of Indian Affairs and Northern Development undertook in September 1980 to present a submission to Cabinet on behalf of Inuit on an urgent basis. To date, the Minister has not advised us as to whether the submission has been made or of the reaction of Cabinet if in fact it has.

On February 10, 1981, Makivik Corporation and the Kativik Regional Government asked the Minister not to sign the Transfer Agreement until Quebec finalized the program most critical to Inuit and upon which other programs depended, namely, the long-term Housing Program (see Appendix IV). Insofar as the Central Mortgage and Housing Corporation had agreed to absorb 50% of the funding of a long-term program, it seemed reasonable to expect that Quebec could tell us what its program was before it took over responsibility for housing from Canada.

In what we consider to be a breach of the Agreement, the Minister signed the Transfer Agreement on February 13, on the basis in part that he had given assurance that the Treasury Board of Quebec would shortly approve a substantial housing program.

On March 17, 1981, Inuit were informed that the program they had agreed upon with the Société d'habitation du Québec ("S.H.Q."), and which had been submitted to Quebec's Treasury Board by S.H.Q. and S.A.G.M.A.I., had been refused. Instead, the Treasury Board approved a housing construction and renovation program of less than half the size of that proposed. The new program utterly fails to meet the housing needs of Inuit in either the short or long term.

Furthermore, the Quebec Minister responsible for its application has suggested that this year's budget be used "on an experimental basis" to erect non-permanent trailer-type units of a kind normally used at temporary construction sites.

Canada's assurances to the Inuit were that the funds it transferred to Quebec would form a partial "contribution" to the substantially increased funding which could be expected from Quebec to meet actual Inuit housing needs. The irony is that Quebec's $3.6 million housing budget for the current year is in fact totally funded out of Central Mortgage and Housing Corporation contributions and out of the sums transferred by Canada to Quebec under the Transfer Agreement.

4.7.5 INUIT OF PORT BURWELL - HEALTH AND SOCIAL SERVICES

We would, at this time, cite a further example of the approach of the senior governments in the

implementation of certain benefits of the Agreement. It was provided in Section 15 of the Agreement that agencies of Canada would immediately undertake to improve health and social services for persons residing in the community of Port Burwell. The Inuit population of Port Burwell, located on Killinek Island in Hudson Strait in the Northwest Territories, just off the coast of Quebec, had been slowly dwindling as a result of poor services over the course of several years.

Canada's failure to improve health and social services for the Inuit of Purt Burwell was, in our view, the primary factor leading to the evacuation of the approximately 50 Inuit living in that community, against their will, by the Government of the Northwest Territories. They were dispersed, without compensation or assistance, among Inuit communities in northern Quebec.

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

Moreover, there has been no provision by either Canada or Quebec for an increase in health and social services budgets or in housing to take into account the influx of Port Burwell Inuit into Inuit communities on the Quebec mainland.

Canada curiously interpreted its obligation to improve health and social services as having been met by the fact that it maintained the same level of services,

notwithstanding the decrease in Port Burwell's population. The government's rationale was that in other circumstances a similar decrease in population would have actually led to a cut-back of services.

Having failed to meet its obligations under the Agreement in respect of Inuit of Port Burwell, Canada must take the necessary measures to redress the damages suffered by Inuit of Port Burwell as a result of their forced evacuation and to restore to them the meaningful exercise of their rights under the Agreement.

4.7.6 AIRSTRIPS IN INUIT COMMUNITIES

Canada's special undertakings to Inuit contained in the letter of November 15, 1974 mentioned earlier included the following provision:

> "Canada undertakes to construct airstrips for the permanent Inuit and Cree communities in accordance with the criteria established from time to time for the construction of airstrips in such communities."

In the Agreement itself, both Canada and Quebec acknowledged the need for the establishment or upgrading of airstrips in virtually all Inuit communities. Notwithstanding these specific undertakings and the actual or proposed expenditure of $100 million in the Northwest Territories for similar services, no program for airstrip construction has yet been elaborated for northern Quebec.

While token amounts have on occasion appeared in the annual budgets of both provincial and federal governments for this vital service in Inuit communities, by and large the Inuit have been caught in the middle of federal-provincial inability to arrive at a joint program. Inuit have been forced to live with airstrips which do not meet the minimum safety standards established by the Department of Transport and which represent a constant danger to all people travelling to and from our communities.

We cite all of the aforementioned problems with respect to services to demonstrate the absolute necessity of providing in claims settlements not only for specific levels of services and a schedule for their implementation, but also for the recognition of the special appropriations required to carry them out.

V. IMPLEMENTATION AND ENFORCEMENT PROCEDURES

5.1 IMPLEMENTATION BODY

We referred earlier to the necessity that any aboriginal claims settlement include provision for the establishment of a formal implementation body. In particular, we have advocated the formation in the case of our Agreement of an Implementation Committee composed, in equal numbers, of members appointed by the native people and the governments involved.

Principles governing such an Implementation Committee in the performance of its functions must include: a) the interpretation of the agreement in question in accordance with its spirit and intent, b) the recognition of

the special social and economic needs and conditions prevailing in the territory contemplated by the agreement and c) the promotion of greater self-determination on a local and regional basis, so that the social, economic and cultural development aims and objectives of the native peoples might be achieved.

Our experience indicates that the purposes of the Implementation Committee should be, wherever necessary, to supervise implementation and deal with, either of its own initiative or by virtue of referral from any body created under an agreement, any matter or dispute relating to implementation.

While such an Implementation Committee would normally fulfill an advisory and recommendatory function, its decisions should, in certain circumstances and subject to certain approvals, be binding upon the parties affected.

The Implementation Committee should be funded by government, have an appropriate secretariat and be enabled to retain such expertise as it might reasonably require.

5.2 ADEQUATE BUDGETS

In particular, we foresee an Implementation Committee having special responsibility, in consultation with the interested parties, for the coordination, review and finalization of all budgets for programs and bodies created or contemplated by an agreement, subject to the approval by Parliament of the necessary appropriations.

In the same connection, the private and the public and quasi-public institutions and bodies established on a local and regional basis as benefits for native peoples under an agreement must be guaranteed initial and continuing viability through adequate funding. One way of ensuring this is to provide for the meaningful participation of such institutions in the process of budgetary review.

Another way to meet the foregoing objectives, in the case of every agreement, is for Canada to take the necessary steps to ensure that the funding required to fulfill its obligations and to exercise its functions and responsibilities in accordance with the spirit and intention of an agreement is appropriated by Parliament.

In the case of our Agreement, Canada must, as soon as possible, recommend, in consultation with the Crees and Inuit, the necessary amendments to Bill C-9 which will ensure that the social, economic and cultural measures contemplated by the Agreement are considered specific statutory obligations and, furthermore, that the funds required to carry them out are appropriated by Parliament on an annual basis. In view of the elapsed time since the signing of the Agreement during which so little has been done, an immediate appropriation for purposes of a general "catch-up" program for essential services is in order.

We referred to the role of the Implementation Committee in the budgetary review process. We should add here that Canada has expressed agreement in principle to the concept of an Implementation Committee but that Quebec has

remained opposed to our proposal in this regard. In formulating its recommendations in regard to budgets, the Implementation Committee would give due consideration to the following:

a) the program priorities established by the body under review, taking into account the degree of autonomy of the body;

b) the significance of the body, having regard to the matters within its competence and to the spirit and intention of the aboriginal claims agreement;

c) the higher costs generally associated with a northern territory due to geographic, climatic, transportation and other factors;

d) the values, priorities and cultural aspects of the region and its native peoples and,

e) the desirability of promoting greater self-determination on a regional basis and greater economic opportunities.

5.3 DEFINITION AND ENFORCEMENT OF NATIVE RIGHTS

By virtue of the Agreement, Inuit and Crees exchanged certain rights based on aboriginal title for specific rights, benefits and privileges based on both the contractual obligations of the government signatories and on the statutory effect given to those rights, privileges and benefits by federal and provincial legislation. Those rights, privileges and benefits, however, fall into several categories. They are private rights, both individual and collective in nature. They pertain to individual beneficiaries insofar, for example, as they concern hunting, fishing and trapping rights, and to Inuit bodies and institutions insofar, for example, as they concern the right of Inuit Landholding Corporations to hold Category I lands

and the right of Makivik Corporation to administer the compensation received under the Agreement and to act as the Inuit native party for purposes of the Agreement.

We take the position that all of the rights and benefits of the Agreement in favour of Inuit - whatever their nature - are personal to the Inuit and may be invoked by individual Inuit beneficiaries. It remains to be seen, however, what legal distinctions will eventually arise with respect to the nature of the individual and collective rights of Inuit and Cree beneficiaries. For that reason, we believe that to avoid any uncertainty, every aboriginal claims settlement should establish precise rules respecting the enforcement of the individual and collective rights of the native beneficiairies contemplated by those agreements.

In any comprehensive settlement, the sheer number and variety of rights and obligations involved will inevitably give rise to disputes. We have suggested that one of the functions of an Implementation Committee would be to facilitate the resolution of those disputes. We would also suggest that where a dispute is unable to be resolved, resort to an arbitration procedure is, in most cases, likely to be more appropriate and less costly and time-consuming than the institution of legal proceedings before the ordinary courts of justice.

5.4 MONITORING AND PERIODIC REVIEW OF AGREEMENTS

5.4.1 GUARANTEE OF CONTINUED RELEVANCE OF AGREEMENTS

We have already stated our views that the Agreement must be considered only as a "beginning" for

Inuit. It is crucial that the rights, benefits and privileges granted to Inuit and Cree beneficiaries under the Agreement remain relevant within the context of changing social, political and economic conditions in Quebec and Canadian society. That same principle would apply to every aboriginal claims settlement.

In order to ensure the continuing relevance of an agreement, a formal evaluation and review process must be undertaken on a periodic basis. Ideally, the parties to an agreement would extend such a review to all aspects of the agreement but, at the very least, such process should apply in particular with respect to the level and standard of all essential services contemplated by the agreement and should fully involve the representative native organizations responsible for the administration and delivery of such services.

5.4.2 INDEXATION OF CERTAIN OBLIGATIONS

Moreover, where the obligations undertaken by the government are to be fulfilled over an extended period, as might be the case in respect of monetary compensation, either the agreement itself should contemplate the indexation of such obligations to take into account all relevant factors applying in the region or such indexation should be specifically contemplated as part of the periodic review process.

5.4.3 INTEGRATION OF ABORIGINAL POLICIES INTO OVERALL GOVERNMENT POLICIES

The problems that we have had with implementation are the result in part of a failure by Quebec to integrate the principles established by the Agreement in favour of the native peoples into the overall policies of government and its Crown corporations. A case in point is Hydro-Quebec's development program which is based primarily on the development of every major river in our northern territory. The absence of any consideration that the preservation of such rivers from development is integral to the protection of the rights, culture and traditions of the aboriginal peoples reveals how unbalanced such a policy is.

We have already indicated that the result of the updating of any aboriginal claims agreement would be the extension to the beneficiaries thereof of any new right or privilege enjoyed by other citizens of Canada or a province, as the case may be, and the consequent amendment, where necessary, of the agreement itself. In the case of the bodies created by an agreement, the same rule would apply if new rights or powers were granted to bodies exercising similar functions elsewhere in Quebec. A corollary to this, of course, is that government should at the same time refrain from the creation or support of structures parallel to those contemplated by an agreement, whose functions would inhibit or prevent the development of local and regional native entities.

We alluded earlier to the need for a comprehensive policy with respect to Québec's aboriginal peoples and the integration of that policy into all of Québec's general policies. We have already suggested to Québec that a Parliamentary Commission be established to pursue this goal.

5.4.4 ENSHRINEMENT OF ABORIGINAL RIGHTS

Moreover, the commitments stated in any comprehensive aboriginal policy must be translated into legal rights, where appropriate, and made enforceable by the aboriginal peoples so affected.

The fundamental principles in regard to our rights and status as well as our relationship with governments must be enshrined in Canada's Constitution. Based upon our past historical experience, we conclude that it is only in this way that our aspirations may be realized and that the obligations of government shall be fulfilled.

5.5 REPORT BY THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT ON IMPLEMENTATION

We referred earlier to the REPORT ON THE IMPLEMENTATION OF THE JAMES BAY AND NORTHERN QUEBEC NATIVE CLAIMS SETTLEMENT ACT tabled by the Honourable John Munro on November 18, 1980.

We agree that a report to Parliament with respect to the administration and operation of an agreement

is appropriate, provided that all interested parties are consulted with respect to its contents and that their comments are incorporated to form part of such report.

In view of our remarks and those of the Crees, it is evident that the Minister's Report is not only tardy but, on its face, inaccurate and incomplete. Our general criticisms concerning the Report include the following:

(a) Neither Makivik Corporation nor, to our knowledge, any other native organization, was consulted in connection with the contents of the Report. While Section 10 of Bill C-9 imposes no specific obligation on the Minister to consult with Inuit and Crees in the preparation of the Report, one of the clearest principles found in the Agreement is that native parties shall at the very least be consulted with respect to all matters which concern them;

(b) While the Report detailed a number of implementation measures, it fails, in the case of the Inuit, to reflect in any comprehensive way the actual economic and social conditions of Inuit communities; and

(c) the Report fails to elaborate upon any of the real conflicts which have confronted both Inuit and Crees since the signing of the Agreement. It tends to neutralize implementation problems by either ignoring them altogether or glossing over them, including those mentioned in this Brief where the specific assistance of the Minister was sought. One is left with the false impression that implementation has proceeded more or less smoothly, with only the usual number of incidental problems to be expected.

We have, furthermore, a number of specific grievances:

(a) We have described at length to this committee the struggle we have had with both Canada and Quebec over the question of the Transfer Agreement. Under Section III titled "The Federal Role in Implementation", and particularly at pages 11 and 17 of the Report, that role has been minimized and Inuit concerns which have been expressed over the past several years have been dealt with in a single line. There is no attempt to deal fairly, for example, with Inuit objections to the Transfer Agreement based on legal arguments as to the breach of the James Bay and Northern Quebec Agreement.

(b) The reference to the Inuit Tripartite Committee indicates merely that it has met three times since the signing of the Agreement and fails to give any indication of the conflict which has surrounded its operations. It is in connection with this Committee, for example, that Inuit efforts to obtain recognition for a formal implementation process have taken place. The fact that Canada has recognized the need for such a formalized process is absent from the Report.

(c) We would observe, however, that in certain instances the Report is eloquent in what it does not say. Under sub-section 12 of Section III(A), titled "Economic and Social Development", the fact that there is not a single reference to the Inuit reflects accurately the lack of federal initiatives in this area on behalf of Inuit and the absence of any aid for individual Inuit in our communities

or for the principal economic entities which have been formed under Makivik Corporation, namely, Imaqpik Fisheries Inc., Air Inuit Limited and Kigiak Builders Inc.

(d) The Report refers at page 22 to the role of the Department of National Health and Welfare in connection with the provision of health and social services to the Crees and Inuit. The Report makes no mention of the dispute between Canada and Inuit over the evacuation of Inuit of Port Burwell. This problem has been, to the knowledge of the Minister, an area of great concern to Inuit and shall remain so until the claims of the Inuit of Port Burwell have been equitably redressed.

(e) The Report purports to describe the role of the Department of Environment at pages 23 and following. In describing that Department's activities in the context of the traditional activities of the native peoples and the environment, no mention is made of the problems posed to the Crees and Inuit by the proposed Great Whale River Hydroelectric Project, nor of federal concerns over the potential negative cumulative impacts of such projects in Quebec and Manitoba upon the waters of Hudson Bay.

The Report is also silent on the federal role in negotiations presently taking place with the Inuit of Great Whale River concerning their possible relocation from Great Whale River to Richmond Gulf. By comparison, the Report devotes considerable discussion to the Cree relocations of Nemiscau and Fort George. Although Canada has obligated itself under paragraph 6.4 of the Agreement to provide assistance to Inuit in carrying out a move to

Richmond Gulf "within the scope of federal programs", its representatives have been little more than observers in the negotiations and have taken the position that there are virtually no federal programs which could be applicable to Inuit in this case.

(f) As we have indicated earlier, with respect to the Migratory Birds Convention, both Inuit and Crees have been engaged in a lengthy process with Canada to achieve not only an amendment to the Convention itself but, equally important, amendments to the Migratory Birds Convention Act Regulations which would have the effect of resolving inconsistencies between the regulations and the provisions of the Agreement. No reference to the latter issue is made in the Report.

(g) With respect to the role of the Department of Transport, the Report acknowledges at page 28 that the sums allocated for airstrip construction are probably inadequate. But, once again, the Report fails to impart the true sense of urgency with which the Inuit view the situation or the fact that, insofar as they fail to meet minimum federal standards, existing airstrips are wholly inadequate.

(h) Finally, the Report fails to acknowledge the fact that the Minister is not only obligated with respect to the specific provisions of the Agreement for which Canada is responsible but, in addition, has an overall trust responsibility to Inuit and Crees. This responsibility, as we have earlier indicated, is expressly referred to in the preamble of Bill C-9.

In view of the foregoing remarks, we would ask you to consider and act upon the following conclusions and recommendations:

VI. CONCLUSIONS AND RECOMMENDATIONS

1. After reviewing the problems experienced by Inuit and Crees with the implementation of the James Bay and Northern Quebec Agreement, the Standing Committee on Indian Affairs and Northern Development should make the appropriate interventions to ensure that those problems are redressed as soon as possible in the case of Inuit and Crees and avoided in the case of any future aboriginal claims settlement.

2. Aboriginal claims settlements, whether comprehensive or specific, and the James Bay and Northern Quebec Agreement in particular, form the basis not only of the present aspirations but also of the future development of native peoples within their own cultures and as participants in Canadian society at large. Accordingly, such settlements should be seen as the basis for an evolving, rather than static, relationship between the native beneficiaries of such settlements and governments and other peoples of Canada.

3. Canada's role in the implementation of any aboriginal claims agreement should be marked not only by the strict fulfilment of any specific obligations it may have undertaken, but also by an overriding awareness of its constitutional responsibilities in virtue of section 91(24) of the B.N.A. Act, 1867 for the native beneficiaries of such settlements.

4. Settlements implemented by specific laws should not become legislative "strait-jackets" for their native beneficiaries. Legislative reforms of general application in a given province or territory must automaticaly apply with appropriate adaptation to the territory contemplated by any aboriginal claims agreement.

5. More generally, aboriginal claims agreements should contemplate procedures which will ensure compliance with the principle that nothing contained in such agreements shall prejudice the rights of native peoples as citizens of Canada and of a given province or territory and, furthermore, that they shall continue to be entitled to all rights and other benefits accruing to such citizens.

6. Native claims agreements should provide for the adoption of adequate legislative safeguards (for example, by effective incompatibility clauses and by the constitutional entrenchment of rights) to ensure that the rights, privileges and benefits affirmed or granted in favour of aboriginal peoples are not encroached upon by subsequently enacted legislation of general application.

7. Any aboriginal native claims settlement, if not drafted in statutory form, should, before it is entered into, have appended to it any proposed ratifying or implementing legislation. In such way, unnecessary delays in the coming into force of an agreement may be avoided. More importantly, native peoples will not be forced to

renegotiate their rights and benefits in a forum in which they have limited participation and no control and at a time when they may have ceded or surrendered their aboriginal title. Differences between "statutory" rights and "contractual" rights would therefore be avoided.

8. The role of Quebec's Secrétariat des affaires gouvernementales en milieu amérindien et Inuit (S.A.G.M.A.I.) must be jointly re-examined by Québec and the aboriginal peoples of Québec before it is further institutionalized in view of its ongoing failure to meet the needs of Inuit and other aboriginal peoples.

9. Extinguishment of aboriginal title is inherently unacceptable to aboriginal peoples. Despite precedent and the fact that it relates only to certain rights in and to land, the concept is neither legally necessary nor any longer politically or morally acceptable to governments. The Standing Committee should recommend that the concept of extinguishment not form part of any future aboriginal claims settlement.

10. Inuit aboriginal rights, as an inseparable part of our individual and collective identities, must not be subject to extinguishment by Parliament. In this regard, the aboriginal rights extinguished under the James Bay and Northern Quebec Agreement, as well as those of other native peoples, should be restored in accordance with mutually acceptable solutions worked out with government.

11. The offshore area surrounding northern Quebec is of vital significance to past, present and future Inuit activities. Inuit dependence upon marine resources and Inuit interest in economic ventures relating to renewable and non- renewable resources must be recognized by Canada as a basis for meaningful negotiation of Inuit claims in this area.

12. Canada and Quebec must establish special commissions concerning the re-alignment of electoral boundaries so as to provide for direct political representation in the House of Commons and l'Assemblée nationale for Inuit and other aboriginal peoples.

13. In the case of every comprehensive settlement, all matters of fundamental importance to the parties should be resolved prior to the signing of the Agreement. Where procedural or minor substantive matters are left to be negotiated during the implementation stage, adequate funding and a specific time-frame for the negotiation process should be provided.

14. In view of the inherent imbalance between native and government parties, native peoples must be provided with adequate funding to carry out the required preparation and to obtain technical, legal and other assistance to enable them to present the best possible claim.

15. Every aboriginal claims settlement should provide that in the event of ambiguity, inconsistency or doubt, the provisions of the agreement and the implementing legislation shall be interpreted in favour of the native peoples.

16. To ensure that the spirit in which the aboriginal claims settlement is entered into will be respected in interpreting its provisions, the parties must clearly set out guiding principles and objectives governing the subject matter of every chapter of an agreement.

17. The obligations of Canada under the Agreement to carry out measures designed to encourage and promote Inuit and Cree social, cultural and economic developments have not been fulfilled. The Standing Committee should strongly recommend that Canada fulfill those obligations and that, where necessary, the criteria for the application of existing programs be amended or new programs be created.

18. Canada should take immediate steps to fulfill its obligations to support Inuit entrepreneurs with technical, professional and financial assistance and, in particular, should provide such assistance to Makivik Corporation and its principal subsidiaries involved in economic development, namely, Imaqpik Fisheries Inc., Air Inuit Limited and Kigiak Builders Inc. so as to offset start-up costs and ensure the future viability of these enterprises.

19. Political and other public and quasi-public institutions and bodies established on a local and regional basis as rights and benefits for Inuit and Crees under the James Bay and Northern Quebec Agreement, must be guaranteed initial and continuing viability through adequate funding. In the future, less dependency on government budgets for such institutions must evolve through such schemes as revenue-sharing on a regional basis.

20. Under the terms of any aboriginal claims settlement, the autonomy of local and regional entities in their different spheres of jurisdiction must be ensured.

21. The inadequacy of essential community services for Inuit, including substandard housing, unsanitary sewage disposal and water delivery and insufficient electrification, has reached proportions that constitute a danger to the health and welfare of local Inuit populations. Such conditions result directly from the failure of Canada and Quebec to maintain or improve essential services over the past decade or to respect the countless promises to Inuit in this regard and, more recently, the failure to respect their obligations under the Agreement.

22. Canada breached the James Bay and Northern Quebec Agreement by entering into a Transfer Agreement whereby its responsibility for the provision of essential services was transferred to Quebec, without adequate guarantees having been first obtained with respect to the levels of services to be provided by Quebec.

23. Canada has, furthermore, entered into the Transfer Agreement respecting the provision of essential services to Inuit, without regional and local entities being a party to such agreement. Such action is contrary not only to the James Bay and Northern Quebec Agreement, but to alleged federal government policies that such transfers are not to be made between senior governments without the consent of the native peoples involved.

24. Despite promises to the contrary, the Minister of Indian Affairs and Northern Development has taken no measures to put into effect a "catch-up" program for essential municipal and other services in Inuit territory in northern Quebec.

25. Contrary to the express recommendations of its own Société d'habitation de Québec (S.H.Q.), Quebec has failed to approve a Housing Program agreed upon with Inuit and has instead approved a program which may meet, over the course of the next five years, less than half of the actual existing Inuit housing needs.

26. Having failed to meet its obligations under the Agreement in respect of Inuit of Port Burwell, Canada must take the necessary measures to redress the damages suffered by Inuit of Port Burwell as a result of their forced evacuation and to restore to them the meaningful exercise of their rights under the Agreement.

27. Canada has failed to fulfill its express undertaking to construct airstrips for the permanent Inuit and Cree communities. Inuit and Crees have been forced to use airstrips that do not meet mininum federal safety standards and which are a constant danger to all people travelling to and from our communities. In the absence of a joint federal-provincial program, Canada must immediately obtain the necessary appropriations to provide for adequate airstrips.

28. To ensure that obligations under native claims settlements in favour of native beneficiaries are fulfilled, such settlements should provide for a formalized implementation procedure, an essential element of which would be the formation of an Implementation Committee composed, in equal numbers, of members appointed by the native peoples and the governments involved.

29. Every Implementation Committee should be funded by government, fulfill an advisory, recommendatory and, in certain cases, decision-making function and have special responsibility for the coordination, review and finalization of budgets for programs, bodies and institutions created or contemplated by an aboriginal claims agreement, subject to the approval by Parliament of the necessary appropriations.

30. In the case of the James Bay and Northern Quebec Agreement, Canada must recommend, on an urgent basis, in consultation with the Crees and Inuit, the necessary amendments to Bill C-9 which will ensure that the social, economic and cultural measures contemplated by the Agreement are considered specific statutory obligations and, furthermore, that the funds required to carry them out are appropriated by Parliament on an annual basis. In view of the failure to implement those measures to date, an immediate appropriation for purposes of a general "catch-up" program for essential services is in order.

31. The purpose of the Implementation Committee shall be, where necessary, to supervise the implementation of any native claims settlement and, in that connection to deal with, either of its own initiative or by

virtue of referral from any body created under an agreement, any matter or dispute relating to its implementation.

32. The rights and benefits in favour of the native peoples under an aboriginal claims settlement fall into several categories. They are private rights which are both individual and collective ir nature. Every aboriginal claims settlement should establish precise rules respecting the enforcement of the individual and collective rights of the native beneficiaries contemplated by those settlements.

33. Where an Implementation Committee is unable to facilitate the resolution of disputes arising under a native claims agreement, such agreement should provide for an arbitration procedure. Arbitration would be, in most cases, more appropriate and less costly and time-consuming than the institution of legal proceedings before the ordinary courts of justice.

34. The rights, benefits and privileges granted to Inuit and Cree beneficiaries under the James Bay and Northern Quebec Agreement must remain relevant within the context of changing social, political and economic conditions in Quebec and Canadian society. This principle should apply to every native claims settlement.

35. Every aboriginal claims settlement should provide for a formal evaluation and review process on a periodic basis. In particular, such review should apply with respect to the level and standard of all essential services contemplated by the Agreement and should fully involve the representative native bodies responsible for the administration and delivery of those services.

36. In the case of certain obligations which might be fulfilled by government over an extended period, such as monetary compensation, native claims settlements should contemplate the indexation of such obligations to take into account all relevant factors or such indexation should be specifically contemplated as part of a periodic review process.

37. Governments involved in an aboriginal claims settlement should develop a comprehensive policy in relation to the aboriginal peoples contemplated by such settlements and integrate such policy into all other government policies.

38. Quebec and Canada must take the necessary measures to ensure that the rights and privileges accorded to Quebecers and Canadians under the laws of general application are made applicable to Inuit and Crees in Quebec on an equivalent basis and in a manner consistent with the James Bay and Northern Quebec Agreement and that, where amendments to the Agreement are required to achieve the above result, the necessary amendments are made.

39. Government should refrain from the creation or support of structures parallel to those contemplated by an aboriginal claims agreement, whose functions would inhibit or prevent the development of local and regional native entities.

40. The commitments elaborated by governments in any comprehensive aboriginal policy must be translated into legal rights, where appropriate, and made enforceable by the aboriginal peoples so affected.

41. The fundamental principles in respect to the rights and status of the native peoples as well as their relationship with governments must be enshrined in Canada's Constitution.

42. The Report on the Implementation of the James Bay and Northern Quebec Native Claims Settlement Act tabled by the Honourable John Munro, on November 18, 1980, was prepared without the consultation of the Crees and Inuit. In the case of Inuit, it fails to reflect in any comprehensive way the economic and social conditions of Inuit communities and either ignores or glosses over the real conflicts which have confronted Inuit and Crees in the Implementation of the Agreement.

The Minister of Indian Affairs and Northern Development must carry out his statutory obligation to table a Report in Parliament on an annual basis in regard to the implementation of the James Bay and Northern Quebec Agreement. Moreover, the interested native parties must be consulted with respect to the proposed contents of such Report and the comments of the native parties should be incorporated to form part of it.

43. The Report by the Minister fails to acknowledge that he is not only obligated with respect to the specific provisions of the James Bay and Northern Quebec Agreement for which Canada is responsible but, in addition, that Canada has an overall trust responsibility to the Crees and Inuit. This responsibility, based on section 91(24) of the B.N.A. Act, 1867, is expressly referred to in the preamble of Bill C-9.

C-9

Second Session, Thirtieth Parliament,
25-26 Elizabeth II, 1976-77

THE HOUSE OF COMMONS OF CANADA

BILL C-9

An Act to approve, give effect to and declare valid certain agreements between the Grand Council of the Crees (of Quebec), the Northern Quebec Inuit Association, the Government of Quebec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, la Commission hydro-électrique de Québec and the Government of Canada and certain other related agreements to which the Government of Canada is a party

AS PASSED BY THE HOUSE OF COMMONS
MAY 4th, 1977

C-9

Deuxième Session, Trentième Législature,
25-26 Elizabeth II, 1976-77

CHAMBRE DES COMMUNES DU CANADA

BILL C-9

Loi approuvant, mettant en vigueur et déclarant valides certaines conventions conclues entre le Grand Council of the Crees (of Quebec), la Northern Quebec Inuit Association, le gouvernement du Québec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, la Commission hydro-électrique de Québec et le gouvernement du Canada et certaines autres conventions connexes auxquelles est partie le gouvernement du Canada

ADOPTÉ PAR LA CHAMBRE DES COMMUNES
LE 4 MAI 1977

2nd Session, 30th Parliament, 25-26 Elizabeth II, 1976-77

THE HOUSE OF COMMONS OF CANADA

BILL C-9

An Act to approve, give effect to and declare valid certain agreements between the Grand Council of the Crees (of Quebec), the Northern Quebec Inuit Association, the Government of Quebec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, la Commission hydro-électrique de Québec and the Government of Canada and certain other related agreements to which the Government of Canada is a party

Preamble

WHEREAS the Government of Canada and the Government of Quebec have entered into an Agreement with the Crees and the Inuit inhabiting the Territory within the purview of the 1898 acts respecting the Northwestern, Northern and Northeastern Boundaries of the Province of Quebec and the 1912 Quebec Boundaries extension acts, and with the Inuit of Port Burwell;

AND WHEREAS the Government of Canada and the Government of Quebec have assumed certain obligations under the Agreement in favour of the said Crees and Inuit;

AND WHEREAS the Agreement provides, *inter alia*, for the grant to or the setting aside for Crees and Inuit of certain lands in the Territory, the right of the Crees and Inuit to hunt, fish and trap in accordance with the regime established therein, the establishment in the Territory of regional and local governments to ensure the full and active participation of the Crees and Inuit in the administration of the Territory, measures to safeguard and protect their culture and to ensure their involvement in the promotion and develop-

2e Session, 30e Législature, 25-26 Elizabeth II, 1976-77

CHAMBRE DES COMMUNES DU CANADA

BILL C-9

Loi approuvant, mettant en vigueur et déclarant valides certaines conventions conclues entre le Grand Council of the Crees (of Quebec), la Northern Quebec Inuit Association, le gouvernement du Québec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, la Commission hydro-électrique de Québec et le gouvernement du Canada et certaines autres conventions connexes auxquelles est partie le gouvernement du Canada

Préambule

ATTENDU QUE le gouvernement du Canada et le gouvernement du Québec ont conclu une Convention avec les Cris et les Inuit habitant le Territoire visé aux lois concernant la délimitation des frontières nord-ouest, nord et nord-est de la province de Québec, 1898 et aux Lois de l'extension des frontières de Québec, 1912, et avec les Inuit de Port Burwell;

ATTENDU QUE le gouvernement du Canada et le gouvernement du Québec ont, aux termes de cette Convention, contracté certaines obligations à l'égard desdits Cris et Inuit;

ATTENDU QUE ladite Convention prévoit, *inter alia*, l'octroi ou la mise de côté pour les Cris et les Inuit de certaines terres dans le Territoire, le droit des Cris et Inuit de chasser, de pêcher et de trapper en vertu d'un régime établi par la Convention, la création sur le Territoire d'administrations régionales et locales permettant aux Cris et Inuit de participer pleinement à l'administration du Territoire, des mesures visant à protéger et à promouvoir leur culture, l'établissement d'une législation, d'une réglementation et de

ment of their culture, the establishment of laws, regulations and procedures to manage and protect the environment in the Territory, remedial and other measures respecting hydro-electric development in the Territory, the creation and continuance of institutions and programs to promote the economic and social development of the Crees and Inuit and to encourage their full participation in society, an income support program for Cree and Inuit hunters, fishermen and trappers and the payment to the Crees and Inuit of certain monetary compensation;

AND WHEREAS the Agreement further provides in consideration of the rights and benefits set forth therein for the surrender by the said Crees, the Inuit of Quebec and the Inuit of Port Burwell of all their native claims, rights, titles and interests, whatever they may be, in and to the land in the Territory and in Quebec;

AND WHEREAS Parliament and the Government of Canada recognize and affirm a special responsibility for the said Crees and Inuit;

AND WHEREAS it is expedient that Parliament approve, give effect to and declare valid the Agreement;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

procédures destinées à protéger l'environnement sur le Territoire, des mesures de correction et autres relatives au développement hydro-électrique sur le Territoire, la création et le soutien d'institutions et de programmes destinés à promouvoir les intérêts économiques et sociaux des Cris et des Inuit et leur pleine participation dans la société, la mise sur pied d'un programme de sécurité du revenu pour des chasseurs, pêcheurs et trappeurs Cris et Inuit et le versement aux Cris et Inuit de certaines indemnités pécuniaires;

ATTENDU QUE la Convention prévoit en outre la remise par lesdits Cris, Inuit du Québec et Inuit de Port Burwell, en considération des droits et des avantages qu'elle leur accorde, de tous leurs revendications, droits, titres et intérêts autochtones, quels qu'ils soient, aux terres et dans les terres du Territoire et du Québec;

ATTENDU QUE le Parlement et le gouvernement du Canada reconnaissent et affirment une responsabilité particulière envers lesdits Cris et Inuit;

ATTENDU QU'il y a lieu pour le Parlement d'approuver, de mettre en vigueur et de déclarer valide la Convention;

SA MAJESTÉ, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

SHORT TITLE

Short title

1. This Act may be cited as the *James Bay and Northern Quebec Native Claims Settlement Act.*

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre: *Loi sur le règlement des revendications des autochtones de la Baie James et du Nord québécois.*

INTERPRETATION

Definitions

"Agreement"

2. In this Act,

"Agreement" means the agreement between the Grand Council of the Crees (of Quebec), the Northern Quebec Inuit Association, the Government of Quebec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, la Commission hydro-électrique de Québec and the Government of Canada

INTERPRÉTATION

Définitions

«Convention»

2. Dans la présente loi,

«Convention» désigne la convention entre le Grand Council of the Crees (of Quebec), la Northern Quebec Inuit Association, le gouvernement du Québec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, la Commission hydro-électrique de Québec et le gouvernement du Canada en date du 11

dated November 11, 1975, as amended by the agreement between the same parties dated December 12, 1975, tabled in the House of Commons by the Minister of Indian Affairs and Northern Development on July 13, 1976 and recorded as document number 301-5/180C;

"Territory" "Territory" has the meaning assigned to that word by subsection 1.16 of the Agreement, namely, the entire area of land contemplated by the 1912 Quebec boundaries extension acts (an Act respecting the extension of the Province of Quebec by the annexation of Ungava, Que. 2 Geo. V, c. 7 and the Quebec Boundaries Extension Act, 1912, Can. 2 Geo. V, c. 45) and by the 1898 acts (an Act respecting the delimitation of the Northwestern, Northern and Northeastern boundaries of the Province of Quebec, Que. 61 Vict. c. 6 and an Act respecting the Northwestern, Northern and Northeastern boundaries of the Province of Quebec, Can. 61 Vict. c. 3).

AGREEMENT

Agreement approved 3. (1) The Agreement is hereby approved, given effect and declared valid.

Conferral of rights and benefits (2) Upon the extinguishment of the native claims, rights, title and interests referred to in subsection (3), the beneficiaries under the Agreement shall have the rights, privileges and benefits set out in the Agreement.

Extinguishment of claims (3) All native claims, rights, title and interests, whatever they may be, in and to the Territory, of all Indians and all Inuit, wherever they may be, are hereby extinguished, but nothing in this Act prejudices the rights of such persons as Canadian citizens and they shall continue to be entitled to all of the rights and benefits of all other citizens as well as to those resulting from the *Indian Act*, where applicable, and from other legislation applicable to them from time to time.

Exemption from taxation (4) The total amount mentioned in subsection 25.3 of the Agreement as monetary compensation and all the other sums mentioned in that subsection are exempt from

novembre 1975, ainsi que la convention modificative en date du 12 décembre 1975, déposées devant la Chambre des communes par le ministre des Affaires indiennes et du Nord canadien le 13 juillet 1976 et enregistrées sous le numéro 301-5/180C;

«Territoire» «Territoire» a le sens que lui donne le paragraphe 1.16 de la Convention, à savoir la superficie complète des terres prévues aux lois de 1912 relatives à l'extension des frontières du Québec (Loi concernant l'agrandissement du Territoire de la province de Québec par l'annexion de l'Ungava, Qué. 2, Geo. V, c. 7, et Loi de l'extension des frontières de Québec, 1912, Can. 2, Geo. V, c. 45) et aux lois de 1898 (Loi concernant la délimitation des frontières nord-ouest, nord et nord-est de la province de Québec, Qué. 61, Vict. c. 6, et Acte concernant la délimitation des frontières nord-ouest, nord et nord-est de la province de Québec, Can. 61, Vict. c. 3).

CONVENTION

Convention approuvée 3. (1) La Convention est approuvée, mise en vigueur et déclarée valide par la présente loi.

Acquisition de droits et avantages (2) Les bénéficiaires aux termes de la Convention ont, à compter de l'extinction des revendications, droits, titres et intérêts autochtones visés au paragraphe (3), les droits, privilèges et avantages qu'elle prévoit.

Extinction des revendications (3) La présente loi éteint tous les revendications, droits, titres et intérêts autochtones, quels qu'ils soient, aux terres et dans les terres du Territoire, de tous les Indiens et de tous les Inuit, où qu'ils soient, mais rien dans la présente loi ne porte atteinte aux droits de telles personnes en tant que citoyens canadiens et celles-ci continuent de bénéficier des mêmes droits et avantages que tous les autres citoyens, et de ceux prévus dans la *Loi sur les Indiens*, telle qu'applicable, et dans toute autre loi qui les vise en tout temps.

Exemption fiscale (4) L'indemnité globale ainsi que toutes les sommes visées au paragraphe 25.3 de la Convention sont exemptes d'impôt suivant les modalités prévues audit paragraphe.

taxation in the manner and to the extent set out in that subsection.

Regulations

(5) The Governor in Council may make such regulations as are necessary for the purpose of carrying out the Agreement or for giving effect to any of the provisions thereof.

Interest

(6) Any sum of money payable by the Government of Canada under section 25 of the Agreement shall, in the event of default in making payment, bear interest from the date of such default at the legal rate of interest.

(5) Le gouverneur en conseil peut établir les règlements nécessaires à l'application de la Convention ou de l'une de ses dispositions.

Règlements

(6) Advenant le défaut par le gouvernement du Canada de payer une somme d'argent due en vertu du chapitre 25 de la Convention, ladite somme d'argent portera intérêt au taux légal à partir de la date dudit défaut.

Intérêt

SUPPLEMENTARY AND OTHER AGREEMENTS

Supplementary and other agreements approved

4. (1) Subject to sections 5 and 6, the Governor in Council may, by order, approve, give effect to and declare valid

(*a*) any agreement pursuant to subsection 2.15 of the Agreement to which the Government of Canada is a party that amends or modifies the Agreement; or

(*b*) any agreement to which the Government of Canada is a party with the Naskapi Indians of Schefferville, Quebec, or with any other Indians or Inuit or groups thereof, concerning the native claims, rights, title and interests that such Indians, Inuit or groups thereof may have had in and to the Territory prior to the coming into force of this Act.

Idem

(2) No order shall be made under paragraph (1)(*b*) in respect of any agreement under that paragraph that expressly or by necessary implication amends or modifies the Agreement unless the procedure set forth in subsection 2.15 of the Agreement has been followed.

Conferral of rights and benefits

(3) Upon the coming into force of an order of the Governor in Council approving, giving effect to and declaring valid an agreement referred to in paragraph (1)(*b*), the beneficiaries under the agreement shall have the rights, privileges and benefits set out in the agreement.

Exemption from taxation

(4) Any capital amounts payable as compensation under an agreement approved,

CONVENTIONS COMPLÉMENTAIRES ET AUTRES

Conventions complémentaires et autres approuvées

4. (1) Sous réserve des articles 5 et 6, le gouverneur en conseil peut, par décret, approuver, mettre en vigueur et déclarer valide

a) toute convention modifiant la Convention et visée au paragraphe 2.15 de celle-ci à laquelle le gouvernement du Canada est partie,

b) toute convention à laquelle le gouvernement du Canada est partie avec les Indiens Naskapi, de Schefferville, province de Québec, ou avec tous autres Indiens ou Inuit ou groupes d'entre eux, concernant les revendications, droits, titres et intérêts autochtones aux terres et dans les terres du Territoire que ces Indiens ou Inuit ou groupes d'entre eux pouvaient faire valoir avant l'entrée en vigueur de la présente loi.

Idem

(2) Nulle convention visée à l'alinéa (1)*b*) et modifiant expressément ou par voie de conséquence la Convention ne peut faire l'objet d'un décret en vertu dudit alinéa si la procédure prévue au paragraphe 2.15 de la Convention n'a été suivie.

Acquisition de droits et avantages

(3) Les bénéficiaires aux termes d'une convention visée à l'alinéa (1)*b*) ont, à compter de l'entrée en vigueur d'un décret du gouverneur en conseil approuvant, mettant en vigueur et déclarant valide cette convention, les droits, privilèges et avantages qu'elle prévoit.

Exemption fiscale

(4) Tout versement de capital accordé à titre d'indemnité aux termes d'une conven-

given effect to and declared valid under paragraph (1)(*b*) shall be exempt from taxation in the manner and to the extent set out in the agreement.

tion approuvée, mise en vigueur et déclarée valide en vertu de l'alinéa (1)*b*) est exempt d'impôt suivant les modalités prévues par la convention.

Regulations

(5) The Governor in Council may make such regulations as are necessary for the purpose of carrying out any agreement approved, given effect and declared valid under subsection (1) or for giving effect to any of the provisions thereof.

(5) Le gouverneur en conseil peut établir les règlements nécessaires à l'application des conventions approuvées, mises en vigueur et déclarées valides au terme du paragraphe (1) ou de l'une de leurs dispositions.

Règlements

Tabling order

5. (1) An order under subsection 4(1), together with the agreement to which the order relates, shall be laid before Parliament not later than fifteen days after its issue or, if Parliament is not then sitting, within the first fifteen days next thereafter that Parliament is sitting.

5. (1) Le décret aux termes du paragraphe 4(1), accompagné de la convention visée par le décret, est déposé devant le Parlement dans les quinze jours de son établissement ou, le cas échéant, dans les quinze premiers jours de la séance suivante.

Dépôt devant le Parlement

Coming into force

(2) An order referred to in subsection (1) shall come into force on the thirtieth sitting day after it has been laid before Parliament pursuant to that subsection unless before the twentieth sitting day after the order has been laid before Parliament a motion for the consideration of the House of Commons or Senate, to the effect that the order be revoked, signed by not less than fifty members of the House of Commons in the case of a motion for the consideration of that House and by not less than twenty members of the Senate in the case of a motion for the consideration of the Senate, is filed with the Speaker of the appropriate House.

(2) Le décret visé au paragraphe (1) entre en vigueur le trentième jour de séance suivant son dépôt devant le Parlement conformément audit paragraphe, à moins qu'avant le vingtième jour de séance, une motion d'examen devant la Chambre des communes ou le Sénat tendant à annuler le décret, signée par au moins cinquante députés ou par au moins vingt sénateurs, selon le cas, n'ait été remise à l'Orateur de la Chambre des communes ou au président du Sénat.

Entrée en vigueur

Consideration of motion

(3) Where a motion for the consideration of the House of Commons or Senate is filed as provided in subsection (2) with respect to a particular order referred to in subsection (1), that House shall, not later than the sixth sitting day of that House following the filing of the motion, in accordance with the rules of that House, unless a motion to the like effect has earlier been taken up and considered in the other House, take up and consider the motion.

(3) Au cas de dépôt, comme prévu au paragraphe (2), d'une motion d'examen devant l'une ou l'autre Chambre, concernant un décret visé au paragraphe (1), la Chambre doit, dans les six jours de séance suivant le dépôt, examiner la motion conformément à ses règles, sauf si l'autre Chambre a déjà été saisie d'une motion au même effet.

Examen de motion

Procedure on adoption of motion

(4) If a motion taken up and considered in accordance with subsection (3) is adopted, with or without amendments, a message shall be sent from the House adopting the motion informing the other House that the motion

(4) En cas d'adoption, avec ou sans modification, d'une motion présentée et examinée conformément au paragraphe (3), la Chambre qui a adopté la motion envoie un message à l'autre Chambre pour lui annoncer qu'elle

Procédure à suivre en cas d'adoption

has been so adopted and requesting that the motion be concurred in by that other House.

Procedure in other House

(5) Within the first fifteen days next after receipt of a request pursuant to subsection (4) that the House receiving the request is sitting, that House shall, in accordance with the rules thereof, take up and consider the motion that is the subject of the request.

Where motion adopted and concurred in

(6) Where a motion taken up and considered in accordance with this section is adopted by the House in which it was introduced and is concurred in by the other House, the particular order to which the motion relates shall stand revoked but without prejudice to the making of a further order of a like nature to implement a subsequent agreement to which the Government of Canada is a party.

Where motion not adopted or concurred in

(7) Where a motion taken up and considered in accordance with this section is not adopted by the House in which it was introduced or is adopted, with or without amendments, by that House but is not concurred in by the other House, the particular order to which the motion relates comes into force immediately upon the failure to adopt the motion or concur therein, as the case may be.

Definition of expression "sitting day"

(8) For the purpose of subsection (2), a day on which either House of Parliament sits shall be deemed to be a sitting day.

Negative resolution of Parliament

6. When each House of Parliament enacts rules whereby any regulation made subject to negative resolution of Parliament within the meaning of section 28.1 of the *Interpretation Act* may be made the subject of a resolution of both Houses of Parliament introduced and passed in accordance with the rules of those Houses, section 5 of this Act is thereupon repealed and an order made thereafter under subsection 4(1) is an order made subject to negative resolution of Parliament within the meaning of section 28.1 of the *Interpretation Act*.

CONSEQUENTIAL AMENDMENT

1912, c. 45; 1946, c. 29

7. Paragraphs 2(*c*), (*d*) and (*e*) of *The Quebec Boundaries Extension Act, 1912* and the words "upon the following terms and conditions and subject to the following provi-

a adopté la motion et lui demander d'y souscrire.

Procédure devant l'autre Chambre

(5) La Chambre qui reçoit la demande visée au paragraphe (4) doit, dans les quinze jours de séance suivant sa réception, examiner la motion visée par la demande conformément à ses règles.

Motion adoptée à laquelle souscrit l'autre Chambre

(6) Si une motion présentée et examinée conformément au présent article est adoptée par une Chambre et qu'il y est souscrit par l'autre Chambre, le décret est annulé. Cette annulation est compatible avec l'établissement d'un nouveau décret rendant exécutoire une convention ultérieure à laquelle le gouvernement du Canada est partie.

Refus d'adopter la motion ou d'y souscrire

(7) Si une motion présentée et examinée conformément au présent article n'est pas adoptée ou si elle est adoptée, avec ou sans modification, mais que l'autre Chambre n'y souscrit pas, le décret entre en vigueur dès l'instant du refus d'adopter la motion ou d'y souscrire.

Définition de l'expression «jour de séance»

(8) Pour l'application du paragraphe (2), tout jour où l'une des Chambres du Parlement siège est un jour de séance.

Résolution négative du Parlement

6. L'adoption de règles par chacune des Chambres du Parlement portant que tout règlement établi sous réserve de résolution négative de ce dernier, au sens de l'article 28.1 de la *Loi d'interprétation*, peut faire l'objet d'une résolution des deux Chambres, présentées et adoptées conformément à leurs règles, a pour effet d'abroger l'article 5 et de faire d'un décret visé au paragraphe 4(1) un décret pris sous réserve de résolution négative du Parlement au sens de l'article 28.1 de ladite loi.

MODIFICATION CORRÉLATIVE

1912, c. 45; 1946, c. 29

7. Les alinéas 2*c*), *d*) et *e*) de la *Loi de l'extension des frontières de Québec, 1912*, ainsi que le membre de phrase: «aux termes et conditions qui suivent et subordonnément

sions:-" immediately preceding those paragraphs are repealed.

aux dispositions suivantes» qui les précède, sont abrogés.

INCONSISTENT LAWS

Inconsistency or conflict

8. Where there is any inconsistency or conflict between this Act and the provisions of any other law applying to the Territory, this Act prevails to the extent of the inconsistency or conflict.

INCOMPATIBILITÉ

Conflit ou incompatibilité

8. En cas de conflit ou d'incompatibilité, la présente loi l'emporte sur toute autre loi qui s'applique au Territoire dans la mesure nécessaire pour résoudre le conflit ou l'incompatibilité.

APPROPRIATION

Payments out of C.R.F.

9. There shall be paid out of the Consolidated Revenue Fund such sums as may be required to meet the monetary obligations of Canada under section 25 of the Agreement.

IMPUTATION

Paiements sur le F.R.C.

9. Les sommes nécessaires au Canada pour s'acquitter des obligations financières que lui impose le chapitre 25 de la Convention sont prélevées sur le Fonds du revenu consolidé.

REPORT TO PARLIAMENT

Annual Report

10. The Minister of Indian Affairs and Northern Development shall, within sixty days after the first day of January of every year including and occurring between the years 1978 and 1998, submit to the House of Commons a report on the implementation of the provisions of this Act for the relevant period.

RAPPORT AU PARLEMENT

Rapport annuel

10. Le ministre des Affaires indiennes et du Nord canadien doit, dans les soixante jours qui suivent le 1er janvier de chaque année entre les années 1978 et 1998 inclusivement, présenter à la Chambre des communes un rapport sur l'application de la présente loi pendant la période écoulée.

COMMENCEMENT

Coming into force

11. This Act shall come into force on a day to be fixed by proclamation.

ENTRÉE EN VIGUEUR

Entrée en vigueur

11. La présente loi entre en vigueur à la date fixée par proclamation.

Published under authority of the Speaker of the House of Commons by the Queen's Printer for Canada

Available from Printing and Publishing, Supply and Services Canada, Ottawa, Canada K1A 0S9

Publié en conformité de l'autorité de l'Orateur de la Chambre des communes par l'Imprimeur de la Reine pour le Canada

En vente: Imprimerie et Édition, Approvisionnements et Services Canada, Ottawa, Canada K1A 0S9

APPENDIX II

(1) An Act Respecting Land Use Planning and Development, S.Q. 1979, Chapter 51. Section 266 provides:

"This Act does not apply in the territories situated north of the fifty-fifth parallel nor in the Territory described in the schedule to the James Bay Region Development Act (R.S.Q., C. D-9), after excluding the municipalities contemplated in Section 40 of the said Act."

(2) An Act Respecting Municipal Taxation and Providing Amendments to Certain Legislation, S.Q. 1979, Chapter 72. Section 1 of this Act excludes northern village corporations in the Territory from the definition of municipal corporations under this Act.

APPENDIX III

2 Le Devoir, vendredi 10 octobre 1980

Lévesque refuse le droit de veto réclamé par les Amérindiens

par Angèle Dagenais

Le gouvernement du Québec n'entend pas céder de droits de souveraineté territoriale aux autochtones du Nord-Est québécois et rejette du même coup le droit de veto réclamé par le Conseil Attikamek-Montagnais lors de la rencontre du 18 septembre dernier à Québec, sur le développement de leur territoire et de ses ressources.

Tel est ce qui ressort d'une longue lettre du premier ministre René Lévesque au président du Conseil Attikamek-Montagnais, M. René Simon, datée du 30 septembre et rendue publique hier. Au cours de la rencontre de la mi-septembre, les Amérindiens avaient soumis au premier ministre un document en onze points intitulé «Revendications territoriales des bandes Attikameks et montagnaises.».

Tout en reconnaissant le principe que les autochtones ont le droit de disposer d'eux-mêmes en ce qui touche leur identité culturelle — langue, école, services sociaux, etc. — le gouvernement du Québec a clairement fait savoir aux Attikameks-Montagnais qu'il entend demeurer propriétaire du sous-sol et maître d'oeuvre de son développement économique. Québec reconnait toutefois que les projets de développement doivent se faire en consultation et si possible avec la participation des Amérindiens; mais si un développement vient en conflit avec des droits des Attikameks et des Montagnais, des mesures compensatoires devront être trouvées. Le gouvernement considère à cet effet que «l'exploitation du territoire et de ses ressources doit se faire en tenant compte de toute la société y inclus les besoins des Attikameks et des Montagnais et sans oublier leur droits».

Par ailleurs le gouvernement se dit favorable «dans la mesure du possible» à ce que le développement des ressources renouvelables soit favorisé mais également les ressources non renouvelables, notamment les ressources minières.

Contrairement aux ententes intervenus avec les Cris et les Inuit lors du développement de la Baie James, le gouvernement ne fait pas de l'extinction des droits sur leur territoire une condition préalable aux ententes qui pourront être conclues avec les Attikameks et les Montagnais. Il indique également qu'il est prêt à négocier des «dédommagements pour les accroc concrets» qui ont pu être faits aux droits historiques de ce peuple qui comprend le tiers des autochtones québécois et revendique un territoire grand comme la France, et pour les injustices subies et concrètement identifiées. Le Québec reconnait également que les Attikameks et les Montagnais ont des droits historiques en matière de chasse et de pêche.

APPENDIX IV

LPA
société Makivik corporation

February 10, 1981

Honourable John Munro
Minister of Indian and Northern Affairs
Terrasses de la Chaudière
10, Wellington Street
21st Floor
Hull
KIA OH4

RE: PROPOSED TRANSFER AGREEMENT
(Paragraph 29.0.40, James Bay and Northern Quebec Agreement)

Dear Mr. Munro:

We wish to bring you up to date on negotiations concerning outstanding matters relating to the above.

POSITION OF INUIT ON JANUARY 22, 1981

At your meeting on January 22, 1981 with Inuit representatives, we indicated that the position of the Kativik Regional Government and Makivik Corporation, both duly mandated by the Northern Quebec Inuit communites, was that the Transfer Agreement should not be signed:

(i) Until a satisfactory letter of undertaking indicating the future level of the services specifically contemplated by the Transfer Agreement and other related services was received from the responsible Quebec Minister; (In particular, the letter was to reflect the decision of the Quebec Government, specifically Treasury Board, as to the key program - the proposed long-term Housing Program);

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(ii) Until the Unified System contemplated in paragraph 29.0.40 was finalized and, ideally, incorporated as part of the Transfer Agreement; and

(iii) Unless the Inuit were themselves, through their representative organizations, namely, the Kativik Regional Government and the Northern Village Corporations (municipalities), parties to the Transfer Agreement.

SUMMARY OF NEGOTIATIONS

The following summarizes recent negotiations, the details of which you and your officials should be fully aware:

1. On Friday, January 23, Inuit representatives met with the Hon. Guy Tardif, the Quebec Minister responsible for Housing. We learned that no decision had been made to submit a formal proposal to Treasury Board and that Mr. Tardif had doubts as to whether the Inuit were satisfied with semi-detached dwellings rather than single-dwelling units. On Tuesday, January 27, after verifying with the mayors of Inuit communities, Messrs. Willie Makiuk and Charlie Watt telexed Mr. Tardif to the effect that, while the Inuit hoped that his submission could incorporate as an option a design for a single-dwelling unit, they supported whichever design was retained and urged him to submit the Housing Program for the approval of Treasury Board so that it would be implemented without fail this year.

2. On the same Tuesday, January 27, we met with Mr. Eric Gourdeau and other SAGMAI representatives. Enough progress was made in reviewing the draft Unified System Agreement so that it was agreed to meet in Quebec on Thursday, January 29 to attempt to finalize same. There was also some consensus that the Inuit would not be a party to the Transfer Agreement, provided that the Unified System Agreement was finalized and executed at the same time as the Transfer Agreement and was attached to the latter as an Appendix and provided, furthermore, that a suitable letter of undertaking was first given by the responsible Quebec Minister reflecting, in particular, the decision of the Quebec Government on the Housing Program.

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3. On Thursday, January 29, Inuit representatives met again with SAGMAI representatives and a representative of the Ministére des Affaires inter-gouvernementales and finalized the Unified System document, subject, in particular, to any comments which Canada might have with respect to the text. At this meeting, Mr. Gourdeau indicated, however, that Quebec's position was that the Unified System agreement could not form an appendix to the Transfer Agreement, with which position the Inuit did not agree.

4. (i) On Friday, January 30, the Inuit representatives met with Messrs. Eric Gourdeau and Patrick Kenniff, Deputy Minister, Ministére des Affaires municipales. The Inuit agreed to Mr. Kenniff's proposal that, rather than referring to the Unified System agreement in the Transfer Agreement and annexing same as an appendix thereto, Quebec's Order-in-Council authorizing the execution of both agreements would reflect the connection between the two. Mr. Gourdeau undertook to talk to the Ministers who might be concerned with the Unified System agreement and to submit same for approval of the Executive Council last week.

The Inuit undertook to have the Kativik Regional Government and the Northern Village municipalities pass the necessary ordinance and by-laws to authorize them to enter into the Unified System agreement and maintained their position that both documents should be executed at the same time. Mr. Gourdeau's position, not accepted by the Inuit, was that the agreements would be executed at the same time, but that if the necessary approvals were not obtained, Quebec would, in any event, proceed with the execution of the Transfer Agreement on February 10.

(ii) At the same meeting, the letter of undertaking was discussed. Mr. Gourdeau advised that the Minister responsible for Housing, the Hon. Guy Tardif, had agreed to sign the submission for the Inuit Housing Program for submission to Treasury Board. It was suggested that the submission might be considered by Treasury Board at its regular meeting on Tuesday, February 3 or, more likely, on February 10.

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(iii) With respect to other services mentioned in the proposed letter, Mr. Kenniff undertook to find out when the Sanitary Installations Program recommended in the Jolicoeur Report (concerning the collection and disposal of waste water and sewage and the distribution of drinking water) was to be implemented in Inuit communities and to state his Department's proposed implementation schedule in the letter. Mr. Kenniff also agreed to indicate in a separate letter the Department's revised consultation process to ensure that the Kativik Regional Government is fully involved in budgetary review.

(iv) With respect to airstrips, Mr. Gourdeau undertook to advise exactly as to the status at Treasury Board of the Department of Transport's alleged $3 million proposal made in 1980.

(v) Finally, Mr. Gourdeau indicated that the letter would not be signed by the responsible Ministers but rather by Mr. Kenniff on behalf of the Department of Municipal Affairs and by himself on behalf of all other Departments involved, without indicating, in the case of his own signature, under what authority he could be acting. The Inuit stated that the letter should be signed by the responsible minister or ministers and that, as before, the letter should reflect the decision of Treasury Board on the Housing Program.

PRESENT STATUS OF OUTSTANDING MATTERS

As of today, the date originally proposed for execution of the Transfer Agreement, the following appears to be the situation:

1. Notwithstanding Mr. Gourdeau's indication otherwise, the Housing Program Proposal has yet to be signed by the Minister, Hon. Guy Tardif. Furthermore, the proposal has not been formally submitted to Treasury Board for its consideration. We understand that certain information about the proposal has been furnished on an unofficial basis to Treasury Board financial analysts who have indicated that Treasury Board could not consider the matter before February 24. We have contacted Mr. Tardif's office to inquire why the submission has not proceeded, have received no answer and have been referred to Mr. Roger Beaudoin of SAGMAI and the Société d'Habitation du Québec (S.H.Q.). In Mr. Beaudoin's absence today, we spoke to Mr. Serge Pageau of S.H.Q. who could shed no light on Mr. Tardif's failure to act.

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In view of Mr. Gourdeau's representations of Canada's agreement to contribute through CMHC to the Housing Program and of the serious difficulties foreseen by Mr. Beaudoin in connection with the sealift if approval is not given by February 15, we are at a loss as to why no decision has been made.

2. (i) Mr. Gourdeau has not yet submitted the draft Unified System agreement for ministerial approval, now proposes that same shall only take place "within the next few weeks", and has left open the door to further changes. Mr. Kenniff, furthermore, has indicated that Québec's Order-in-Council authorizing execution of the Unified System agreement and making the abovementioned linking reference to the Transfer Agreement will probably not be adopted this week.

(ii) The Inuit, on the other hand, have had the local municipalities enact the necessary by-laws and the mayors are prepared (and expect) to come to Quebec to execute the Unified System agreement next week.

(iii) We understand that by virtue of the Treasury Board authority given in respect of the Transfer Agreement and the authority given in respect of the James Bay and Northern Quebec Agreement, you have the necessary authority to execute the Unified System agreement and, accordingly, no further delays need ensue. With respect to the text of the agreement, we believe we have settled with Mr. Connelly any outstanding problems concerning provisions affecting Canada and shall be forwarding a revised text of those provisions to him.

3. Mr. Gourdeau has now sent a revised letter of undertaking to Mr. Makiuk, dated February 5, 1981, under his signature and that of Mr. Kenniff rather than the responsible Minister which, nevertheless, incorporates in revised form a number of the changes we had proposed. (There is one important unrequested deletion in that the opening paragraphs no longer acknowledge the general need for catch-up measures.) The letter, of course, does not reflect the decision of the Quebec government with respect to the Housing Program.

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Furthermore, despite Mr. Kenniff's undertakings, the letter does not indicate the proposed schedule for implementation of the Sanitary Installations Program which, it is indicated, will be implemented according to the spirit and orientation of the Jolicoeur Report. That Report was issued in 1978 and called for implementation of essential sanitation measures within 5 years, none of which have yet taken place. This program is linked to and dependent upon the Housing Program, which makes the decision in regard to the latter all the more critical.

Finally, the letter is silent on the proposed funding levels for the airstrip program and, in particular, on the disposition of the abovementioned $3 million Quebec Department of Transport proposal to Treasury Board.

INUIT POSITION ON FEBRUARY 10, 1981

In view of the abovementioned facts, we must reiterate our position as follows:

We understand that Quebec has signed the proposed Transfer Agreement and forwarded same to you for your execution. The Inuit object to Canada's entering into the Transfer Agreement at this time. Québec has expresssed its wish to take over responsibility for the furnishing to the Inuit of the essential services referred tc in paragraph 29.0.40 and has evidenced this desire by proceeding to sign the Transfer Agreement unilaterally. At the same time, it has been unable or unwilling to proceed with the same alacrity in indicating to the Inuit what the future level of those essential services is to be.

In view of the many conflicting reports concerning the eventual outcome of the submission on Housing and in view of its critical importance for the Sanitary Installations Program, the Inuit must insist that the Housing Program be finalized before Canada transfers responsibility. We would expect that in view of the unexplained delays in this regard it would be prudent for Canada, on its own behalf, to ask for the same clarifications, independently of any like request by the Inuit.

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There is, to our knowledge, no requirement that the execution of the Transfer Agreement take place before the proposed long-term Housing Program for the Inuit is finalized, particularly in light of CMHC's agreement to share the funding of the latter. (We might add here that a decision by Quebec to defer any overall decision on the proposed Housing Program and to simply divert a portion of Canada's payment under the Transfer Agreement to Inuit housing would, in the context of all of the discussions and promises concerning the Housing Program, be unacceptable).

It is appropriate, in view of the finalization of the Unified System agreement, that this agreement and the Transfer Agreement be executed at the same time, when those most vitally affected by the transfer of services, the Inuit, know what the decision of the Quebec government is with respect to the level of those services.

We trust that you shall share our view with respect to the foregoing and would ask you to communicate your position in this regard as soon as possible. In the meantime, we shall continue to seek the Quebec government's decisions in the program areas mentioned and its approval of the Unified System agreement.

Yours faithfully,

Willie Makiuk
Chairman
Kativik Regional Government

Jobie Epoo
Second Vice-President
Makivik Corporation

JE/WM/dlg

cc: Mr. Paul Tellier
Deputy Minister
Indian Affairs and Northern Development