

**Nunavut Land Claims Agreement  
Implementation Contract Negotiations for the  
Second Planning Period 2003-2013**

**Conciliator's  
Interim Report**

**August 31, 2005**

**Thomas R. Berger, O.C., Q.C.**

**By Thomas R. Berger, O.C., Q.C.**  
Conciliator

Contact

Craig E. Jones (Counsel to the Conciliator)  
Bull, Housser & Tupper  
3000-1055 W. Georgia Street  
Vancouver, British Columbia  
V6E 3R3  
[cej@bht.com](mailto:cej@bht.com)

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## I. INTRODUCTION

### A. Mandate

I have been appointed as Conciliator by the Minister of Indian Affairs and Northern Development, pursuant to an agreement reached by the Minister of State for Indian Affairs and Northern Development, the Premier of Nunavut, and the President of Nunavut Tunngavik Inc. ("NTI"). My job is to recommend new approaches to the implementation of the Nunavut Land Claims Agreement, with a view to renewing the 1993 *Contract Relating to the Implementation of the Nunavut Final Agreement* (the "Implementation Contract").

On May 22, 2005, the Director General, Implementation Branch, Department of Indian Affairs and Northern Development, provided me with:

1. Background Note on the Status of Negotiations;
2. Scope of work for Conciliation process;
3. Report to the Nunavut Implementation Panel on the progress of Negotiations; and
4. Terms of Reference for the Working Group on updating the Implementation Contract.

The Background Note stated that "the parties wish to embark on a new approach that involves engaging a recognized problem solver who could make a neutral assessment of the issues and provide the parties with recommendations that may resolve our differences and bring about a mutually acceptable solution."

The Background Note also states:

The role of the Conciliator, as agreed to by all parties, is to:

- Review the background, current status and outstanding issues related to the update of the Contract, and
- Make recommendations to the parties on possible approaches which could be taken to resolve the current impasse.

The document entitled Scope of Work provides:

The conciliator shall make written recommendations to the parties as to the steps that could be taken to move forward to renew the contract.

According to the same document the Conciliator is to "submit a draft report as soon as possible, and if not possible within 90 days, submit an interim report, outlining recommendations to the Parties."

This is my Interim Report.

I began my review on June 1, 2005 and met with representatives of the parties in Ottawa on June 8 and 9. Then I went to Nunavut and met again with the parties at Iqaluit, Pangnirtung and Clyde River on July 8 to 15. I met with them again in Ottawa on July 26 to 29, 2005 (see Appendix for a more detailed description of the meetings so far).

All parties have given me their complete co-operation.

The materials that I have reviewed – and am continuing to review – are voluminous, covering proposals and counter proposals submitted between May 2001 and November 14, 2004 as well as extensive briefs presented during the meetings held thus far. I have also reviewed much of the literature on the Nunavut Land Claims Agreement and the establishment of Nunavut.

## **B. The Nunavut Land Claims Agreement and Implementation Contract**

In terms of the land area encompassed, the Nunavut Land Claims Agreement (“NLCA”, the “Agreement”) signed in 1993 is by far the largest of the four land claim agreements reached between Canadian governments and the Inuit.<sup>1</sup> The NLCA covers one-fifth of the Canadian land mass. It has been noted that, if the Nunavut Settlement Area were an independent country, it would be the twelfth largest in the world; by the terms of the Agreement, the Inuit of Nunavut own in fee simple more land than any other Aboriginal people in Canada.

The Inuit claim was originally presented to the Government of Canada in 1976 by the Inuit Tapirisat of Canada. From 1982 the Tungavik Federation of Nunavut represented the Inuit of Nunavut in negotiations. In 1990, the Tungavik Federation of Nunavut, the Government of Canada and the Government of the Northwest Territories (GNWT) entered into an agreement-in-principle. After the Inuit ratified the agreement-in-principle, a Final Agreement was successfully negotiated and the Nunavut Land Claims Agreement was signed in Iqaluit on May 25, 1993. Parliament accordingly passed the *Nunavut Land Claims Agreement Act* S.C. 1993 c. 29.

The NLCA's terms are set out in 41 articles. The Agreement recognizes the collective title vested in the Inuit of Nunavut to 352,240 square kilometers of land in what was at the time the eastern part of the Northwest Territories, and Inuit subsurface rights to over 38,000 square kilometers in those same lands. Inuit beneficiaries have priority rights to harvest wildlife for domestic, sport and commercial purposes throughout all the lands and waters covered by the Agreement. Inuit also received financial compensation in the form of capital transfer payments of \$1.148 billion payable over a 14-year period.

Under the NLCA, the Inuit share in royalties on non-renewable resources. The Agreement also contains an obligation on the part of developers to conclude impact and benefit agreements; a \$13 million training trust fund; and a federal commitment to establish three national parks in Nunavut.

The NLCA provides for the establishment of Institutions of Public Government (“IPGs”) (Article 10.1.1(b)) and through these same institutions for co-management by Inuit and the federal and territorial governments of lands and resources within the Nunavut Settlement Area. The Nunavut Planning Commission is responsible for land-use monitoring (Article 11), the Nunavut Impact Review Board for environmental impact assessment (Article 12), the Nunavut Water Board for regulation of water use and management (Article 13), and the Nunavut Wildlife Management Board for management of wildlife and wildlife habitat (Article 5) within the Nunavut Settlement Area. These bodies are joint-management boards with representation from the Inuit,

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<sup>1</sup> The James Bay and Northern Quebec Agreement, settling outstanding Inuit claims in the province of Quebec, was signed in 1975 by the Inuit of Nunavik, the Quebec government and the federal government, the Grand Council of the Cree and several corporate entities; in 1984, the Inuvialuit signed the first comprehensive land claim settlement in the Northwest Territories with the Government of Canada. Most recently, the Inuit of Nunatsiavut (Labrador), along with the governments of Canada and Newfoundland & Labrador, finalized the Labrador Inuit Land Claim Agreement, which was signed on January 22, 2005.

the Government of Canada and the Government of Nunavut. The Nunavut Surface Rights Tribunal, while not a co-management board,<sup>2</sup> is another IPG created pursuant to the NLCA (Article 21), with jurisdiction mainly over disputes over access to lands and related matters including compensation payable for access and consequent environmental harm.

The creation of these bodies was necessary for the future management of the land and resources which were the subject of the Inuit land claim. An Arbitration Board was also established to resolve disputes that might arise under the NLCA, especially disputes among the parties over the interpretation, application or implementation of the Agreement.

From the time the original claim was presented in 1976, the Inuit insisted that any comprehensive settlement of their land claim must include the establishment of a territorial government of Nunavut ("our land" in Inuktitut<sup>3</sup>). The Inuit did not wish their claim to be subsumed within the then-existing Northwest Territories, which was demographically dominated by the more densely populated (and largely non-Inuit) Western Arctic. Nor, however, did they insist on Aboriginal self-government: Nunavut was to be a public government, with full enfranchisement of Inuit and non-Inuit residents.

The Agreement contained, in Article 4, an undertaking by Canada to recommend legislation to Parliament to establish the Territory of Nunavut. In 1992 a plebiscite was held to confirm the boundary between the NWT and the new territory, and a Political Accord was developed pursuant to Article 4 outlining the types of powers, financing and scheduling involved in establishing the new territory. On April 1, 1999, Nunavut came into being as Canada's third and newest territory.

The Inuit were expected to be full participants in their own governance at all levels within the Nunavut Settlement Area. As a consequence, through Article 23, the parties agreed to work towards a level of Inuit employment in the federal, territorial and municipal governments that would be equivalent to Inuit representation in the population of the new territory.

In the meantime, in May 1993, in accordance with Article 37.2 of the Agreement, the parties had developed an implementation plan which, under Article 37.2.3, was consolidated into a contract.<sup>4</sup> The Implementation Contract identified the projects and activities required to implement the objectives and obligations of the NLCA, including the identification of the responsible party for implementing each of the Agreement's provisions, time frames, and required funding levels for, among other things, the Institutions of Public Government, including the Arbitration Board.

Article 37 of the NLCA mandated the establishment of a tripartite Implementation Panel to oversee and provide direction on the implementation of the Agreement. Article 37.3.2 provides:

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<sup>2</sup> There is no requirement under the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* S.C. 2002, c. 10 or the NLCA that each of the parties be represented on the Tribunal, whose members are appointed by the Minister with the proviso that two members, and half of any panel dealing with a case involving Inuit Owned Lands, be residents of the Nunavut Settlement Area.

<sup>3</sup> I generally use the label "Inuktitut", which means "like the Inuit" to encompass not only Inuktitut but also Inuinnaqtun, a variant of Inuktitut spoken in the western part of the Kitikmeot Region of Nunavut.

<sup>4</sup> At the time, the parties to the Implementation Contract were the Government of the Northwest Territories, the Inuit of the Nunavut Settlement Area as represented by the Tungavik Federation of Nunavut, and the Government of Canada. The Government of the Northwest Territories and the Tungavik Federation of Nunavut have since been succeeded as parties by the Government of Nunavut and Nunavut Tunngavik Inc., respectively.

37.3.2 The Implementation Panel shall be composed of four members: one senior official representing the Government of Canada, one senior official representing the Territorial Government and two individuals representing [NTI].

Article 37.2.2(e) of the Agreement states that the Implementation Contract shall identify “as agreed from time to time by the parties to the Implementation Contract the obligations and funding levels for implementing the Agreement for successive multi-year periods.”

The Implementation Panel is required to take the initiative to renew the Implementation Contract; in particular, Article 37.3.3(g) of the Agreement requires the Implementation Panel to make recommendations to the parties for funding beyond the initial 10 year period:

37.3.3 The Implementation Panel shall... (g) make recommendations to the parties to the Implementation Plan respecting the identification of funding levels for implementing the Agreement for multi-year periods beyond the initial ten-year period

The Implementation Contract also provides that, prior to the expiry of the first 10-year implementation period in 2003, the parties are to negotiate funding arrangements for the subsequent implementation period:

8.1 Without in any way limiting the funding obligations of Government, at least one year prior to the expiry of any planning period, the parties shall enter into negotiations for the purpose of determining the amounts of funding that shall be provided under the Contract to implement the Nunavut Final Agreement in the following planning period.

In accordance with these provisions, in March 2001 a working group was formed by the Implementation Panel, through which the parties entered into negotiations for the purpose of providing recommendations to the Implementation Panel on levels of funding to implement the objectives and obligations of the parties under the NLCA for the next planning period, 2003-2013. On July 4, 2001, the Panel signed the *Nunavut Implementation Panel Terms of Reference for the Working Group on Updating the Implementation Contract*.

Since then, negotiations have stalled, resulting in uncertainty as to ongoing implementation, and uncertainty in particular as to funding levels for the Institutions of Public Government established under the NLCA.

To break the impasse, Ethel Blondin-Andrew, the Minister of State, Paul Okalik, the Premier of Nunavut, and Paul Kaludjak, the President of Nunavut Tunngavik Inc., agreed to move to the present conciliation process, and Andy Scott, the Minister of Indian Affairs and Northern Development, signed off on my formal appointment.

## **C. The Issues Subject to Conciliation**

### **(1) The Principal Substantive Issues**

There are two main areas of substantive disagreement between Canada and the other parties arising out of their differing views regarding adequate levels of funding and their differing views regarding the scope – indeed the very meaning – of implementation and the implementation process.

The first issue concerns the appropriate level of funding to be provided for the Institutions of Public Government and the Arbitration Board, bodies established under the NLCA and funded by Canada. The initial funding levels were established in the Implementation Contract in 1993: the question now is, what ought to be the appropriate level of funding for the IPGs in the next 10-year period?

The second main substantive issue, and the thornier question, concerns Article 23 of the NLCA, which establishes the goal of a representative public service in Nunavut.

Article 23.2.1 reads:

The objective of this Article is to increase Inuit participation in government employment in the Nunavut Settlement Area to a representative level.

Under Article 23.1.1, this objective applies to “all occupational groupings and grade levels” within government.

The population of Nunavut is presently approaching 30,000, of whom 85% are Inuit. Outside the larger centres of Iqaluit, Rankin Inlet and Cambridge Bay, the percentage of Inuit may exceed 90 per cent. Under Article 23 of the NLCA the parties agreed that they would pursue the objective of achieving a representative level of Inuit employment in all three levels of government – federal, territorial and municipal – within Nunavut. Since government is the main employer in Nunavut, opening up opportunities for Inuit employment in the public service is of paramount importance.

Over the last twenty years, Nunavut’s population has seen the fastest rate of growth in Canada, with an increase of 32% between 1986 and 1996, slowing to 8.1% between the 1996 and 2001 censuses, a rate of growth still twice the national average. Nunavut’s population has doubled in a single generation, from 15,000 in 1981 to 30,000 today, living in 28 widely dispersed communities. As a result, Nunavut’s population is also the youngest in Canada, with around 60 per cent of residents under 25 years of age, 92 per cent of whom are Inuit. This makes the need for educational and career opportunities in Nunavut particularly pressing. This in turn is complicated by language issues: the Inuit, owing to a great extent to their historical isolation and regional dominance, have retained their language to a degree that is remarkable among indigenous populations in the Americas, with over 70% of the residents of Nunavut (more than three-quarters of the Inuit) reporting Inuktitut or Innuinaqtun as their mother tongue, and almost as many maintaining it as the principal language of the home. Statistics Canada reports that 14% of Nunavut’s residents do not speak either of Canada’s two official languages.<sup>5</sup>

The fact is that the objective of Article 23 has not been realized. Although there are no exact figures, it appears that Inuit employment in all levels of government has stalled at around 43 per cent in the Government of Nunavut and 33 per cent in the Government of Canada in the

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<sup>5</sup> See for instance Statistics Canada, “Population by mother tongue, by provinces and territories (2001 Census)”, <http://www40.statcan.ca/l01/cst01/demo11d.htm>; Statistics Canada, “Population by knowledge of official language, by provinces and territories (1996 Census)”, <http://www40.statcan.ca/l01/cst01/demo17a.htm>. See also Statistics Canada, *2001 Aboriginal Peoples Survey – initial findings: Well-being of the non-reserve Aboriginal Population*, Catalogue no. 89-589-XIE at pp. 28-29.



Nunavut region.<sup>6</sup> The shortfall is particularly apparent in the middle management and upper professional and technical positions. The question of where responsibility lies for implementing (and funding the implementation of) Article 23 is still outstanding. Moreover, assuming the issue of where responsibility lies and the issue of funding were to be resolved, the question of how best to implement Article 23 remains.

I will deal with Article 23 in my Final Report.

Other issues have been raised as being of great concern to the Inuit, especially the question of housing. Everyone agrees that the shortage of housing and consequent overcrowding in Nunavut is one of the Territory's most pressing problems. It seems obvious that the housing shortage is fast approaching a crisis. Nevertheless, it is my view that the lack of housing in Nunavut does not truly give rise to an issue under the NLCA.

The argument for introducing housing as a land claim implementation issue is based on Article 2, which says:

2.7.3 Nothing in the Agreement shall:

- (a) be construed so as to deny that Inuit are an Aboriginal people of Canada, or, subject to Section 2.7.1, affect their ability to participate in or benefit from any existing or future constitutional rights for Aboriginal people which may be applicable to them;
- (b) affect the ability of Inuit to participate in and benefit from government programs for Inuit or Aboriginal people generally as the case may be; benefits received under such programs shall be determined by general criteria for such programs established from time to time; or
- (c) affect the rights of Inuit as Canadian citizens and they shall continue to be entitled to all the rights and benefits of all other citizens applicable to them from time to time.

It is true that, after CMHC discontinued social housing in 1993, Canada continued to fund housing for First Nations people on Indian reserves. It is argued that the Inuit, the majority of whom are dependent on social housing, should have the same access to federal support as on-reserve First Nations people, particularly because the Inuit's relocation into settlement communities in the postwar period was the result of a concerted resettlement effort by Canada. It is said that Canada ought to make good on its postwar commitment to provide housing for the Inuit when they came off the land and settled in the government's designated communities, as they did.

But any right the Inuit may have to federally funded housing is not established or affirmed by Article 2 of the NLCA. That Article does not set out a claims objective or a claims obligation with respect to housing. Inuit are entitled to benefit, under Article 2.7.3 (b), "from government programs for Inuit or Aboriginal people generally". However, the housing programs from which

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<sup>6</sup> Representation levels for Inuit in Nunavut's municipal governments are said to be in the neighbourhood of 90%, but a large number of the local positions held by Inuit are part-time: PriceWaterhouse Coopers, *The Cost of Not Successfully Implementing Article 23: Representative Employment for Inuit Within the Government* (February 17, 2003, report commissioned by the Government of Nunavut and NTI), pp. 26-27.

they are excluded are not "for Inuit or Aboriginal people generally", they are programs for Indians on reserves, as those terms are defined in the relevant legislation. To the extent that Article 2.7.3 (a) or (c) might apply to rights with respect to housing, they explicitly seek to preserve rights which exist *outside* the NLCA; they do not create such rights. For all these reasons, I cannot conclude that housing properly belongs in a discussion of the land claims implementation process.

Moreover, I am concerned that the attempt to deal with the housing shortage through land claims implementation negotiations might well be injurious to the Inuit cause.

In April 2004 the Prime Minister made a commitment to transformative change at the Canada-Aboriginal Peoples' Roundtable. In May 2005, general agreement was reached on the main policy objectives of the Aboriginal file at the Canada - National Aboriginal Organizations' Policy Retreat. The federal government also signed political accords with the individual national Aboriginal organizations, including Inuit Tapiriit Kanatami,<sup>7</sup> which identified key areas of joint concern requiring additional exploration.

With respect to housing, the federal government stated at the May 2005 Policy Retreat its intention to support new and sustainable approaches to Aboriginal housing systems and to improve housing conditions. There is new money in the budget now, and the subject is being very actively and effectively pursued by both the NTI and Inuit Tapiriit Kanatami on behalf of the Inuit. I can't imagine that Canada's commitment to improve Aboriginal housing will not include restoration of funding for social housing for Inuit. It may be that, since Canada has now signed land claims agreements with all four Inuit groups in our country, a program of social housing for Inuit will be developed independently of programs for First Nations people, to ensure that housing for Inuit does not fall through the policy cracks again.<sup>8</sup>

It seems to me the time is ripe to pursue the housing issue through these venues only recently established. To try to bring the issue to the land claims table might impede the progress that is likely to be made in direct discussion at the highest levels. Attempting to shoehorn housing into Article 2 might deflect the parties from developing, outside the land claims framework, a new program for Inuit housing needs.

As to other issues that may fall under Article 2 (i.e. areas in which there is disparity of benefits accorded Inuit as against other Canadian Aboriginal groups), the Government of Nunavut has suggested that they ought to be discussed through the Nunavut Social Development Council established under Article 32.

I agree that these issues may legitimately be taken up under Article 32. Whether the Council is the most productive forum to do so, particularly in light of the Cabinet-level discussions now under way, is for the parties to decide.

## **(2) Questions of Process**

My job is to make a neutral assessment of the issues and to recommend new approaches to the disputes over ongoing funding for the IPGs and the implementation of Article 23. But

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<sup>7</sup> Inuit Tapiriit Kanatami (ITK) is the national Inuit organization in Canada, representing the Inuit of four regions – Nunatsiavut (Labrador), Nunavik (northern Quebec), Nunavut, and the Inuvialuit region in the Northwest Territories.

<sup>8</sup> Since *Re: Eskimos*, [1939] SCR 104 it has been clear that Canada has constitutional responsibility for the Inuit under the *Constitution Act, 1867*, s. 91 (24).

overarching these substantive questions is a controversy about the implementation process itself.

The substantive questions have not been settled because the parties, having established the implementation process under the NLCA, could not reach agreement on renewing the Implementation Contract. Without agreement on the process, reaching substantive decisions is all but impossible. Many questions are outstanding: Is the NLCA superseded by the Implementation Contract? What ought the scope of "implementation" to be in a renewed Implementation Contract? Is federal responsibility for implementation confined to the Department of Indian Affairs and Northern Development ("DIAND") or does it extend across all government departments?

It appears that the parties - Nunavut and NTI on one side, Canada (represented by DIAND) on the other - lack confidence in one another's good faith – they do not have the sense that they are working together towards common goals. They cannot agree on what issues fairly arise under the NLCA, and they cannot agree on what is properly considered "implementation". NTI seeks to cloak as many issues as possible in the language of contractual obligation; Canada wishes to limit the scope of its legal obligations and to discuss broader issues as questions of policy having nothing to do with the land claim.

In my view any new approach to implementation must involve a reconsideration of the process itself. This is important if the parties are to reach agreement on funding levels for the IPGs. And it is essential if they are to reach agreement on the implementation of Article 23.

#### **D. The Scope of this Interim Report**

In this Interim Report I intend to deal with three subjects: I will comment on the meaning and scope of the implementation process; I will set out my views on the substance of the funding issue with respect to the IPGs (and the related issues of flexibility and adjustment) and I will urge that the new Implementation Contract incorporate a more effective model of dispute resolution.

My Final Report will deal mainly with Article 23, which raises profound issues of concern to all Canadians. I should like to give these issues further consideration and to meet with the parties again before finalizing my recommendations.

## **II. APPROACH TO IMPLEMENTATION OF THE LAND CLAIMS AGREEMENT**

### **A. Overview**

Treaty making and treaty implementation are distinct but not strictly isolated concepts.<sup>9</sup>

I am of the view that the implementation process must be approached broadly with a view to achieving the purposes of the NLCA.

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<sup>9</sup> By "treaties" we usually mean treaties with the First Nations of Canada. The modern land claims agreements, beginning with the James Bay and Northern Quebec Agreement of 1975, are properly described as land claims agreements in the *Constitution Acts, 1982 and 1985*. I think it is appropriate to refer to the NLCA as a land claims agreement to distinguish it from treaties with First Nations. I refer to "treaties" in my discussion here of implementation because it is in keeping with the vocabulary more often used in the jurisprudence, and it encompasses land claims agreements.

My approach to the implementation of the NLCA is premised on three underlying considerations: the status of the NLCA as a constitutional document; the principle that the honour of the Crown must be observed in all its dealings with the Inuit; and the terms set out in the Agreement itself. It is also based on the observation (and indeed the parties' consensus) that a new approach is needed because the present one is not working to anyone's satisfaction.

## **B. The NLCA is a Constitutional Document**

On its face, it is the Nunavut Land Claims Agreement, not the Implementation Contract, that fundamentally governs the relationship between the Crown and the Inuit of Nunavut. The NLCA is by its own terms explicitly a constitutional document. The Agreement provides:

2.2.1 The Agreement shall be a land claims agreement within the meaning of Section 35 of the *Constitution Act, 1982*.

On the other hand, the parties have also agreed that the Implementation Contract has no constitutional status:

37.2.5 The Implementation Plan ... is not intended to be a land claims agreement within the meaning of Section 35 of the *Constitution Act, 1982*.

## **C. The Honour of the Crown**

The honour of the Crown must be observed in all the Crown's dealings with the Aboriginal peoples.<sup>10</sup> Canada entered into treaties because nothing less was consistent with the honour of the Crown, and it is a concept which must inform the process of implementation.

The idea underlying the necessity of the Crown dealing honourably with the Aboriginal people is to reconcile the pre-existence of Aboriginal societies with the sovereignty of the Crown. In *Haida Nation v. B.C. (Minister of Forests)* [2004] 3 S.C.R. 511, Chief Justice McLachlin wrote, at paras. 16 and 17:

16 The government's duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown. The honour of the Crown is always at stake in its dealings with Aboriginal peoples: see for example *R. v. Badger*, [1996] 1 S.C.R. 771, at para. 41; *R. v. Marshall*, [1999] 3 S.C.R. 456. It is not a mere incantation, but rather a core precept that finds its application in concrete practices.

17 The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required if we are to achieve "the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown": *Delgamuukw*, *supra*, at para. 186, quoting *Van der Peet*, *supra*, at para. 31. [emphasis added]

The Chief Justice continued, at para. 20:

<sup>10</sup> *R. v. Badger* [1996] 1 S.C.R. 771 and *R. v. Sundown* [1999] 1 S.C.R. 393.

20 Where treaties remain to be concluded, the honour of the Crown requires negotiations leading to a just settlement of Aboriginal claims: *R. v. Sparrow*, [1990] 1 S.C.R. 1075, at pp. 1105-6. Treaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty, and to define Aboriginal rights guaranteed by s. 35 of the *Constitution Act, 1982*. Section 35 represents a promise of rights recognition, and “[i]t is always assumed that the Crown intends to fulfil its promises” (*Badger, supra*, at para. 41). This promise is realized and sovereignty claims reconciled through the process of honourable negotiation. It is a corollary of s. 35 that the Crown act honourably in defining the rights it guarantees and in reconciling them with other rights and interests. This, in turn, implies a duty to consult and, if appropriate, accommodate.<sup>11</sup>

The Chief Justice went on, at para. 32:

32 The jurisprudence of this Court supports the view that the duty to consult and accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution. Reconciliation is not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s. 35(1) of the *Constitution Act, 1982*. This process of reconciliation flows from the Crown’s duty of honourable dealing toward Aboriginal peoples, which arises in turn from the Crown’s assertion of sovereignty over an Aboriginal people and *de facto* control of land and resources that were formerly in the control of that people.

In *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, Chief Justice McLachlin wrote at para. 24:

24 As discussed in the companion case of *Haida, supra*, the principle of the honour of the Crown grounds the Crown’s duty to consult and if indicated accommodate Aboriginal peoples, even prior to proof of asserted Aboriginal rights and title. The duty of honour derives from the Crown’s assertion of sovereignty in the face of prior Aboriginal occupation. It has been enshrined in s. 35(1) of the *Constitution Act, 1982*, which recognizes and affirms existing Aboriginal rights and titles. Section 35(1) has, as one of its purposes, negotiation of just settlement of Aboriginal claims. In all its dealings with Aboriginal peoples, the Crown must act honourably, in accordance with its historical and future relationship with the Aboriginal peoples in question. The Crown’s honour cannot be interpreted narrowly or technically, but must be given full effect in order to promote the process of reconciliation mandated by s. 35(1).

I refer to these cases not to offer a legal opinion but simply as a reminder of the historical and constitutional origins of treaty-making and treaty implementation. The fact that a treaty, in this case the NLCA, has been reached does not put an end to the obligation which Canada has to uphold the honour of the Crown. Implementation represents a new stage in the relationship

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<sup>11</sup> *Haida Nation* was a case arising in British Columbia in which the issue was whether, in respect of lands to which the Haida had a legitimate claim of Aboriginal title, there existed a duty on the part of the Crown to consult with and, if necessary, accommodate the Haida before alienating interests in the land to third parties. *Taku*, discussed below, was a similar case.

between the Crown and the Inuit. But the Crown cannot shed the high constitutional obligations that led it to undertake treaty-making in the first place.

Canada fully acknowledges its obligations in this respect. On May 31<sup>st</sup> of this year, Canada signed a Partnership Accord with the Inuit of Canada, represented by Inuit Tapiriit Kanatami. The preamble to the Accord states that "the parties recognize that the honour of the Crown is at stake in all the Crown's dealings with Inuit."

This statement, and the language of the cases, make another point clearly: the duty to act consistently with the honour of the Crown applies to the entire federal government. While DIAND may take the lead in implementation, the obligations imposed by the honour of the Crown are borne by all government departments with whom the Inuit have dealings. In implementing treaties, all departments, not just DIAND, should be prepared to participate.

#### **D. A New Approach is Needed**

Canada's 1986 Comprehensive Claims Policy states:

[L]and claims negotiations are more than real estate transactions. In defining their relationships, Aboriginal peoples and the Government of Canada will want to ensure that the continuing interests of claimants in settlement areas are recognized. This will encourage self-reliance and economic development as well as cultural and social well-being. Land claims negotiations should look to the future and should provide a means whereby Aboriginal groups and the federal government can pursue shared objectives such as self-government and economic development.

On a number of occasions during my meetings, a very specific frustration was expressed to me, by the Inuit, by officials of the government of Nunavut, and by representatives of the federal government, including workers in the field and at every level. They believe that a malaise set in during the implementation process after the 1999 miracle of the creation of Nunavut. The ailment was described as fatigue experienced by all parties after reaching agreement on the NLCA, followed by the extraordinary effort to construct Nunavut virtually out of whole cloth, coupled with an attitude in the federal government that, once the NLCA was signed, the hard work was over and attention was better directed to the next land claim or treaty. More than once, they summarized Canada's attitude with a gesture – dusting off their hands – and a word – "next!"

I have now met with many officials of all the parties – politicians, public servants, managers and other professionals, as well as staff in the field. Without exception, I have been struck by their determination that Nunavut should succeed. This observation applies with equal force to representatives of the Inuit, of Nunavut and of Canada: their passion, their pride in what has so far been achieved, and their commitment is obvious. They are not fatigued, though they are certainly frustrated. They want to get on with the job.

This requires that the parties, through the Implementation Panel, adopt an approach that is consistent with the broad objectives of the NLCA.

The 1993 Implementation Contract represents a series of choices made in that year about how best to implement the NLCA. But much has happened and, more importantly, much has been learned, in the 12 years since. The concern of the parties today ought not to be limited to

updating the commitments made in the 1993 Implementation Contract, but rather revisiting them with a view to answering the question: how best can we achieve the objectives of the NLCA itself?

The Auditor General made this point in her 2003 Report on the implementation of the NLCA and the Gwich'in land claims agreement.<sup>12</sup> She wrote, at Chapter 8, p. 1:

Signing a land claim agreement is a major accomplishment. Managing it afterward is an ongoing challenge that requires collaboration by all parties to the agreement. That collaboration must begin with Indian and Northern Affairs Canada (INAC) taking a leadership role in making the claims work. It must also manage federal responsibilities set out under the agreements in a way that achieves results. We found that with respect to [the claim of] the Inuit of Nunavut, INAC's performance on both counts has left considerable room for improvement.

For example, INAC [DIAND] seems focused on fulfilling the letter of the land claims' implementation plans but not the spirit. Officials may believe that they have met their obligations, but in fact they have not worked to support the full intent of the land claims agreements. [emphasis added]

I agree.

Under Article 37.2.2 (e) the parties can, at the time of the renewal of the Implementation Contract for another 10 years, agree to certain legal obligations, but they are not limited to renewal of the legal obligations in the original Implementation Contract. A better approach may be to use the occasion to review the objectives the parties originally agreed to and, if they have failed of achievement, to work out new means of achieving them and, yes, *if necessary*, to reduce these means to the language of legal obligation.<sup>13</sup>

Let me give an example of where too narrow or legalistic an approach may be counterproductive. In this Interim Report I am principally concerned about recommending new approaches to the funding of the IPGs. There is clearly a "legal" requirement that funding be provided. Under Article 37.1.1.(e) of the NLCA, Canada has an obligation to provide the IPGs "with sufficient financial and human resources to plan for and carry out the duties and responsibilities assigned to them in the Agreement in a professional manner with appropriate public involvement."

"Sufficient", "professional" and "appropriate" are not precise terms. The parties might also agree that the provision of "fair and reasonable remuneration" to members of IPG boards (the language used from time to time in both the NLCA and 1993 Implementation Contract) is similarly a legal obligation; yet it too is an uncrystallized phrase.

So what do such words really settle? The obligation is expressed so generally as to be exceedingly difficult to enforce. So long as *some* funding is provided, arguments will be

<sup>12</sup> Office of the Auditor General of Canada, "Chapter 8: Indian and Northern Affairs Canada – Transferring Federal Responsibilities to the North" in *Report of the Auditor General of Canada to the House of Commons, November 2003* (Ottawa: Government of Canada, 2003).

<sup>13</sup> The NLCA gave the parties room for flexibility. Article 37.2.1 requires the creation of an "Implementation Plan". Article 37.2.3 provides: "All provisions of the Implementation Plan shall be consolidated into a contract except as otherwise agreed by the parties to the Plan."

premised on the interpretation of the language, and it is subject to almost impossibly wide interpretation. Drafters employ such phrases to describe obligations precisely because the parties cannot agree on the specifics; it is a mistake to think that, come implementation, consensus among the parties as to what the text means – legally speaking – will be any more advanced.

In the end, successful implementation depends far more on the goodwill of the parties and the honour of the Crown than on any formal requirements derived from the NLCA or the Implementation Contract.

I am not advocating the abandonment of the contract model of implementation planning. Nevertheless, the parties must be aware of its very real limitations. I think it is a mistake to speak solely of enforcing legal obligations, or for that matter designing new ones. Under the NLCA, the parties should adopt a broader approach.

It is an approach found in the NLCA itself. Article 37 of the Agreement describes a number of principles underlying its implementation. Prominent among them are Articles 37.1.1 (a) and (b), which provide that the implementation planning process “shall mirror the spirit and intent of the Agreement and its various terms and conditions” and, moreover, that “implementation shall reflect the objective of the Agreement of encouraging self-reliance and the cultural and social well-being of Inuit”. These are not narrowly technical requirements. As I read them, they describe an agreement by the parties to employ a purposive approach to implementation.

The goal of implementation, then, must be to fulfill the shared objectives of the NLCA. This would be entirely in keeping with Canada’s 1986 policy statement on comprehensive claims quoted above.

It is obvious that the parties cannot predict how events will unfold over a decade in a land as vast as Nunavut, and in a society as dynamic as Nunavut’s. It wasn’t possible in 1993. The parties’ experience with Article 23 is a sufficient illustration of the point. Nor is it possible today. It is my firm view that to try to reduce the NLCA to a document consisting of no more than a list of legal obligations would be altogether a mistake. And it would be equally mistaken to regard the Implementation Contract or the renewal of the Implementation Contract as foreclosing a review of the objectives agreed in the NLCA, or exhaustive of the parties’ obligations in fulfilling those objectives.

The Nunavut Land Claims Agreement is a constitutional instrument. Although, like most constitutional instruments, it contains very specific provisions, its central purpose is to describe an *idea*. Its framers were drafting a document to establish a new relationship between Canada and the Inuit of Nunavut that would last for generations; they were not simply setting out performance requirements in a contract. A new approach requires that the parties be as constructive and creative in its implementation as the visionary men and women on both sides of the negotiating table who drafted the NLCA.

When the NLCA was negotiated, the question of the future of Nunavut and the Inuit, and the question of Canada’s future in the North, were not determined as a series of trade-offs worked out among lawyers. The realization of the Nunavut Land Claims Agreement was a national project in the best sense, in which the success of Nunavut was sought by all parties, and indeed by the entire country. Today, implementing the NLCA remains a national project. The parties must work together to fulfill the *idea* that is reflected in the NLCA, recognizing that the NLCA could not have anticipated every necessary step to its full implementation. The future of



Nunavut and of the Inuit is still at stake, and it is bound up with the future of Canada's place in the North.

This is the approach that I will take in this Interim Report, and that I will take in my Final Report in dealing with on Article 23. It is the approach that I urge the parties to adopt in the implementation process.

### III. THE INSTITUTIONS OF PUBLIC GOVERNMENT

#### A. Introduction

##### (1) The Role of the IPGs

Articles 5.2.1 and 10.1.1 of the Nunavut Land Claims Agreement provide for the "Institutions of Public Government" (IPGs). These IPGs provide for the management of wildlife, water, land and resources, and harvesting in Nunavut. The IPGs consist of the Nunavut Wildlife Management Board (NWMB); the Nunavut Planning Commission (NPC); the Nunavut Impact Review Board (NIRB); the Nunavut Water Board (NWB); and the Nunavut Surface Rights Tribunal (NSRT).

A key objective of the Nunavut Land Claims Agreement is to implement a new land and resource management system in the Nunavut Settlement Area (NSA), the area to which the terms of the land claim apply — and which is almost coterminous with the boundaries of the Nunavut Territory.<sup>14</sup>

According to Hicks and White:

This system is intended to be comprehensive, exercising authority over the entire Nunavut Settlement Area (including surface lands, waters, marine areas and the maximum limit of land fast ice). It is also intended to achieve integration linking a number of different institutions and processes together in one unified management system with jurisdiction over both Crown and Inuit owned lands in Nunavut.<sup>15</sup>

Hicks and White go on:

At the centre of this new set of power-sharing arrangements between Inuit and non-Inuit are four co-management bodies. Co-management arrangements between the state and an aboriginal people are regarded by many as an achievable way to "bring together the traditional Inuit system of knowledge and management with that of Canada's ... blending ... two systems of management in such a way that the advantages of both are optimised and the domination of one over the other is avoided."<sup>16</sup>

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<sup>14</sup> The Nunavut Territory includes the islands of Hudson Bay, Hudson Strait, James Bay and Ungava Bay, which are not in the Nunavut Settlement Area. For the purposes of this Interim Report, the distinction between the Settlement Area and the Territory has no consequence.

<sup>15</sup> Jack Hicks and Graham White, "Nunavut: Inuit Self-determination Through a Land Claim and Public Government?" in Dahl, Hicks and Jull, eds, *Nunavut: Inuit Regain Control of Their Lands and Their Lives* (Copenhagen: IWGIA, 2000) at p. 59.

<sup>16</sup> *Ibid* at pp. 59 and 60, citing Chesley Anderson, former Vice President of Inuit Tapirisat of Canada, as quoted in Thierry Rodon, "Co-Management and Self-Determination in Nunavut" (1998) 22 *Polar Geography* 123.

The funding of the IPGs is guided by the principles established in Article 37.1.1(e) of the Agreement says that:

- (e) reflecting the level of independence and the authorities of the NWMB and the other institutions of public government identified in Article 10, the funding arrangements for implementation of the Agreement shall

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- (ii) provide those institutions with sufficient financial and human resources to plan for and carry out the duties and responsibilities assigned to them in the Agreement in a professional manner with appropriate public involvement...

An additional board, the Nunavut Arbitration Board, was created with jurisdiction to arbitrate in respect of any matter concerning the interpretation, application or implementation of the NLCA. It is not an advisory or regulatory body. It has to do with the resolution of disputes. I will deal separately with the Nunavut Arbitration Board in Part IV of this Interim Report.

All decisions of the IPGs are subject to review by a Minister of the government of Canada. In practice, though, an IPG's decision is very rarely overturned, as when the federal Minister for the Department of Fisheries and Oceans vetoed a decision of the Wildlife Management Board regarding the turbot quota, in order to protect the species.<sup>17</sup> As a practical matter, decisions within the competence of the IPGs are (subject to judicial review where appropriate) the final word.

## **(2) The Issue of Funding for IPGs**

As noted above, under Article 37.1.1.(e) of the NLCA, the IPGs are to be funded by Canada as one of its obligations under the NLCA.

In 2002 the IPGs submitted proposals for their funding for the next ten years. Nunavut and the Inuit also submitted proposed budgets for each of the IPGs, and Canada countered with an offer based on its own assessment of the IPGs' needs. There were further proposals and counter-proposals. It became apparent that no agreement could be reached, and Canada committed to funding the IPGs at the level of its best offer, made on May 4, 2004 (each federal offer had been at a higher rate than that provided for in the previous 10-year planning period) until a new level of funding could be agreed.

Under the Implementation Contract the parties (Canada, the Government of Nunavut, and NTI) are required to enter into negotiations for the purpose of determining the amounts of funding that shall be provided under the Contract to implement the NLCA in the planning period beyond the initial planning period. For the purpose of the present exercise, the parties have agreed that the planning period shall be 10 years covering the period 2003 to 2013.

The Implementation Contract, Part 8, provides:

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<sup>17</sup> André Légaré, "The Nunavut Tunngavik Inc.: An Examination of Its Mode of Operation and Its Activities" in Anderson & Bone, eds, *Natural Resources and Aboriginal People in Canada* (Concord, Ont: Captus Press, 2003) at pp. 127-8.

Without in any way limiting the funding obligations of Government, at least one year prior to the expiry of any planning period, the parties shall enter into negotiations for the purpose of determining the amounts of funding that shall be provided under the Contract to implement the Nunavut Final Agreement in the following planning period.

The parties do not agree about what is adequate funding, and Canada has thus far been unwilling to submit funding issues to arbitration. By adopting this position, the Crown can effectively frustrate the negotiation of funding levels for the IPGs. Although I appreciate that Canada's decision in 2004 to increase funding levels to match its own 'best offer' level was one made in good faith, it still left negotiations stranded. The Inuit can be forgiven for seeing the refusal to arbitrate the issue of adequate funding as a mechanism for simply imposing Canada's determination as to appropriate funding levels. I will have more to say on improving the dispute resolution process in Part IV of this Interim Report.

With respect to IPGs that hold hearings (the NIRB, the NWB, the NSRT), the funding for such hearings is provided case-by-case. When hearings are required DIAND makes a submission on an *ad hoc* basis to Treasury Board to supply the hearing budget. All parties appear to be satisfied with the level of funding provided for these hearings: what is at issue is the funding for the basic operations and primary activities of the IPGs. In some cases, there is no disagreement regarding what the particular IPG should be doing in the coming period, there is only disagreement regarding what its activities should cost. In several cases, however, there are disagreements between Canada and the other parties regarding the scope of the activities to be undertaken by the IPGs. I will discuss each IPG in turn and attempt to describe the points of departure among the positions of Canada, Nunavut and NTI. I will also, where appropriate, indicate an approach to the issues that may enable them to be resolved by the parties.

### **(3) Summary of the Parties' Proposals**

Canada has provided the following chart summarizing the positions of the parties at the time negotiations broke down in late 2004. The chart indicates the order of magnitude of the proposed funding levels for the IPGs on an annual basis, as well as the differences among the parties.

<b>IPG</b>	<b>Canada Offer May 4, 2004</b>	<b>Change from 2002/03 Level</b>	<b>Nunavut Proposal</b>	<b>NTI Proposal</b>
Nunavut Water Board	1,876,202*	+ 20 %	1,921,166	2,223,677
Nunavut Impact Review Board	2,004,363	+ 19 %	2,134,089	2,195,339
Nunavut Planning Commission	3,299,152	+ 18 %	3,423,202	3,388,072
Nunavut Wildlife Management Board	5,559,169	+ 30 %	7,523,904	6,919,169
Surface Rights Tribunal	190,781	+ 6 %	254 ,866	270,891
Arbitration Board	60,364	+ 100 %	106,760	60,364 (for 2 yrs), plus 250,000 for 2 year study
<b>TOTAL</b>	<b>12,990,031</b>	<b>+ 25 %</b>	<b>15,363,987</b>	<b>15,307,512</b>

\*All figures expressed in dollars.

#### **(4) Approach to Funding for IPGs**

The purpose of funding the IPGs is to enable them to fulfill their obligations under the NLCA. The setting of budgets for these organizations cannot be done through positional bargaining, with one party bidding high and the other offering low in the expectation that they will meet somewhere in the middle. Some agreement must be reached in the first instance regarding the necessary functions and activities of the boards. The correspondence among the parties reveals that, too often, positions hardened on numbers before much discussion had occurred on structural requirements and activities proposed.

The IPGs have been established under the NLCA. Under Article 37.3.3 (a) of the NLCA the Implementation Panel has authority to "oversee and provide direction on the implementation of the Agreement." Under Article 37.3.3 (g), the Implementation Panel is to

make recommendations to the parties to the Implementation Plan respecting the identification of funding levels for implementing the Agreement for multi-year periods beyond the initial ten-year period[.]

Under Article 37.3.2 the Implementation Panel consists of four members: one "senior official" representing Canada, one "senior official" representing the government of Nunavut, and "two individuals" representing NTI. Under Article 37.3.5 all decisions of the Implementation Panel are to be unanimous.

Article 37.3.2 should be observed. Only senior officials of the governments of Canada and Nunavut should be named to the Implementation Panel. In keeping with this, Canada has

recently appointed DIAND's Director-General of Implementation to be its representative on the Implementation Panel. The government of Nunavut has likewise appointed a senior official, the Deputy Minister in the Department of Culture, Language, Elders and Youth. And I would add, notwithstanding the reference in Article 37.3.2 to "two individuals" to be named by NTI, NTI should follow the same rule. The members of the Implementation Panel should speak with authority. The Implementation Panel should be able to dispose of most issues without resort to dispute resolution.

The government of Canada, with the negotiation of the NLCA itself long past, might be inclined to regard NTI's place in negotiating the level of funding for the IPGs as anomalous. Why not simply discuss their budgets directly with the IPGs, without any participation by NTI?

NTI's presence at the negotiating table for the renewal of the Implementation Contract is, however, an arrangement entrenched in the NLCA. Moreover, NTI has the advantage of an overview of the whole regulatory scene from an Inuit point of view. And NTI, as the representative of the Inuit, has a continuing interest in the performance of the IPGs. NTI's participation in this process is an important feature of the NLCA.

And what of the participation of the IPGs themselves in the negotiation? The NTI and the Government of Nunavut took the position in 2003 that the federal government ought not to discuss matters of funding directly with the IPGs. Although the apparent concern – that Canada might 'settle' with the IPGs and then step back from the table leaving other important issues (such as Article 23) unresolved – is understandable, it is also true that the IPGs are often in the best position to represent their own needs to the federal government which will – at least at some stage – be detailing a proposal for their funding.

There should be an opportunity for the IPGs to participate in round table discussions with the members of the Implementation Panel when funding levels are being established or reviewed.

## **(5) Further Preliminary Funding Questions**

### **(a) *Funding for Ten Years: The Search for Flexibility***

The Implementation Contract provided for funding for a 10 year period, 1993 to 2003. The parties are now engaged in planning the activities of the IPGs for the period 2003 to 2013. Planning for a period of ten years presents a number of problems. Foremost among them is anticipating changing circumstances. The spread of contaminants is now impacting Arctic peoples and Arctic wildlife. Global warming may bring – is already bringing – notable change in the Arctic landscape; its impact on the geography of the North is now quite obvious to any visitor to Nunavut.

Then there is a second layer of uncertainty: global petroleum supply and demand and prices for precious metals and minerals, which will govern the extent to which it is practical to explore and develop the subsurface resources of Nunavut, cannot be predicted. It is possible that we may see major mining projects, new transportation corridors – and even new communities – established.

The IPGs are uniquely sensitive to these pressures, to these uncertainties. Some, like the Water Board, the Impact Review Board and the Surface Rights Tribunal could see their work grow exponentially as increased numbers of applications for access to land, exploration permits, leases, water etc. are brought forward. A changing environment and burgeoning development

could put similar capacity pressures on the Planning Commission and the Wildlife Management Board.

How can we plan then for a 10 year period, and provide the necessary flexibility to enable the IPGs to carry out the tasks assigned to them in what may be altered circumstances, perhaps greatly altered circumstances?

It is possible, I suppose, to devise a contractual clause in the Implementation Contract, such as that proposed by NTI:

The government of Canada agrees to provide additional funding for IPGs required as a result of unanticipated proposed major development projects wholly or partly within the NSA, or a general increase in the workload of the IPGs.

But I see difficulties with that approach. Is a particular "proposed major development project" one that was "unanticipated"? What about subtle but substantial changes in the landscape itself? Does any increase in the workload of the IPGs trigger an obligation to provide additional funding? Or must the increase be substantial? And so on.

I appreciate that the language proposed by NTI is simply for purposes of discussion. But I think that it takes the parties down a winding path, one that leads away from the main road. It must be kept in mind that the IPGs are central to the management of the land and resources of Nunavut. They have jurisdiction over both federal and Inuit-owned lands. As Hicks and White have written, the four co-management bodies are of "central importance", "linking a number of different institutions and processes together in one unified management system with jurisdiction over both Crown and Inuit owned lands in Nunavut."<sup>18</sup>

Reducing Canada's obligation to react to unanticipated growth in workload or other unexpected events to a narrow contractual one promotes the adversarial approach to Implementation Panel discussions. Any possible wording of such a clause both limits as well as creates obligations, and invites arguments over interpretation that would likely impede the ability of the parties to react cooperatively and in good time to a changing situation. The positions of the parties with respect to such a clause seem premised, at least in part, on mutual distrust of the other's motives: NTI does not trust Canada to provide adequate additional funding if there is unanticipated (or even anticipated but unaccounted for) growth without a contractual obligation to do so. Canada is obviously concerned that if it concedes that additional funding is captured by the clause in one situation, NTI will use that concession as a wedge to try to render Canada's obligations open-ended.

The parties must accept that each of them is committed to making the NLCA work but, more than that, each must accept that they are all committed to the success of Nunavut itself. In the context of the present discussion, this requires trust on the part of the Inuit that Canada will exhibit the necessary ongoing flexibility to continue to provide, as the NLCA requires, adequate funding for the IPGs, and trust that Canada will do so not because there is a finely-worded clause in a contract requiring it, but rather because it is in Canada's interest that Nunavut succeed.

Canada today is an Arctic nation. It has a particular concern about the exercise of jurisdiction in the Arctic by Canada itself, as well as by the Government of Nunavut and by the Institutions of

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<sup>18</sup> Hicks and White, *supra* note 15 at p. 59.

Public Government established under the NLCA, and about the importance of being seen to exercise such jurisdiction. The first ten years under the NLCA may have been comparatively quiet; the next 10 years will not be. It is in Canada's interest, and in the interest of the Inuit, that Canada come to the meetings of the Implementation Panel with flexibility in mind - with a readiness to provide additional resources for the sake of the proper management of Crown lands belonging to all Canadians, as well as the lands held by the Inuit. This will help to ensure that there can be no slightest doubt about Canada's commitment to the continuing maintenance of the institutions that it established jointly with the Inuit to oversee the management of, and to exercise continuing and undoubted jurisdiction over, the Nunavut Settlement Area.

Given that NTI does not point to any past denial by Canada of necessary additional funds (apart from the present dispute over renewal of the Implementation Contract) I am content to leave it to the parties to deal with changing circumstances as they arise.

**(b) Annual Adjustment**

As is usual for long-term funding arrangements, the Implementation Contract must include a provision that anticipates inflation. Until now, the funding levels in the Implementation Contract have been annually adjusted by a formula known as the Final Domestic Demand Fixed Weighted Price Index (FDDIPI), pursuant to Schedule 2, Part 5 of the Contract.

NTI submits that implementation costs generally should be adjusted using the Population-Adjusted Gross Expenditure Escalator (PAGE). This method compounds the budgeted amount in two ways; once by a factor based on GDP growth and the growth of provincial-local expenditures nationally, and then again to account for increases to the population.

The PAGE method may be appropriate when designing government funding generally (indeed the Government of Nunavut advocates that it be used when calculating transfers between Canada and Nunavut). However, it does not seem appropriate as a method for accounting for inflation as it relates to the IPGs.

Although the needs of these bodies may increase with GDP or population growth, they will not necessarily do so.

The concerns respecting cost escalation in the IPGs' budgets are two: first, they must be able to respond to unforeseen increases in activity level, particularly in the case of the NIRB, the SRT and NWB, whose workload is mainly driven by demands of development that cannot be predicted. I have already dealt with the question of flexible funding; an inflation index is not the most helpful way of compensating for such events. The level of exploration and resource development of the North will drive the funding requirements of the boards, not increases or declines in the Canadian economy or in the population of Nunavut.

The second concern, though, does directly concern inflation: the IPGs have a certain cost of doing business, and it will increase over time. Funding must be adjusted for inflation, as it is now through the FDDIPI.

NTI argues that the cost of doing business in Nunavut inflates at a greater rate than in the south. It is not difficult to see why this might be so. Goods are brought to Nunavut's communities either through shipborne container or by air. In either case, capacity is sharply limited, and as demand increases, so does the relative price of transport. It is also likely that the

cost of virtually everything in the North will be affected more by increases in fuel prices than it will be in the south.

Nevertheless, official indicators seem to suggest that inflation is not a greater problem in Nunavut than it is in the rest of Canada. The federal government maintains Consumer Price Index information for all provinces and for Whitehorse, Yellowknife, and Iqaluit. In Statistics Canada's most recent release, it was noted that the rate of inflation in Iqaluit from June 2004 to June 2005 (as measured by the CPI) was, at 1.2%, below the national average of 1.7%, and in fact was actually lower in Nunavut's capital than in any other Canadian jurisdiction save Alberta, and half the rate of some of the Maritime Provinces'.<sup>19</sup> I am conscious, of course, that these figures are only for Iqaluit; arguably they are inapt as a measure for the smaller communities in the Territory, which might be more sensitive to such pressures.

I am not prepared to say, however, on the information I have before me, that the FDDIPI index is inappropriate as a measure used to offset inflation in Nunavut. If information comes to light that it is in fact inadequate as a guide for ongoing adjustment, I think the parties should be prepared to consider a more appropriate measurement. In the particular case of air travel, which has been increasing at a higher rate than inflation and which accounts for a substantial part of several of the IPGs' budgets, it may be best to consider, on an ongoing basis, through the flexible approach I have described in the previous section, whether the budgeted amounts need to be supplemented.

## **B. The Nunavut Wildlife Management Board**

### **(1) The Role of the NWMB**

The NWMB was the first of the co-management boards established under the Nunavut Land Claims Agreement. It has been working since 1994 to ensure the protection of wildlife and wildlife habitat for the long-term benefit of Inuit and the residents of Nunavut. It carries out its functions in cooperation with the Inuit and the governments of Canada and Nunavut, and through its relationships with its subordinate bodies, the Regional Wildlife Organizations (RWOs) and community-based Hunters and Trappers Organizations (HTOs). In a recent speech, World Wildlife Fund President Emeritus Monte Hummel said:

Nunavut has presented the world with a unique, community-based model for wildlife management. The system has been one of setting quotas for harvested species such as polar bears, walrus, belugas, narwhals and even bowheads, by a central science-based authority, often using expertise from both Nunavut and the federal government. Based on assessments of regional sub-populations of these species, the quotas are allocated to various communities by the Nunavut Wildlife Management Board, and then distributed to individual hunters by the local HTO. As I say, this system is unique in the world, and although there have been problems, on balance I believe it has worked.<sup>20</sup>

While the NWMB performs both a decision-making and, with respect to offshore wildlife, an advisory role,<sup>21</sup> ultimate responsibility for wildlife management rests with the Government of

<sup>19</sup> <http://www.statcan.ca/english/Subjects/Cpi/cpi-en.htm>.

<sup>20</sup> Monte Hummel, "A Conservation Challenge for Nunavut", Keynote Address, Nunavut Teachers' Conference, Iqaluit, February 21, 2005.

<sup>21</sup> Either in its own right or as a member of the Nunavut Marine Council, pursuant to Article 15.4.1 of the Agreement.



Nunavut and the Government of Canada. It is these governments that carry out NWMB decisions, once they are made.

The NWMB's nine-member board consists of four representatives of Inuit organizations and four representatives of the governments of Nunavut and Canada along with an independent chairperson. The Board's membership consists of:

- 3 members nominated by the Regional Inuit Associations, one in each of a the Kitikmeot, Kivalliq and Qikiqtaani (Baffin) regions.
- 1 member nominated by Nunavut Tunngavik Incorporated
- 1 member nominated by the Government of Nunavut
- 1 member nominated by Indian and Northern Affairs Canada
- 1 member nominated by the Department of Fisheries and Oceans
- 1 member nominated by Environment Canada, Canadian Wildlife Service
- 2 alternate members nominated by Makivik Corporation<sup>22</sup>
- an independent chairperson nominated by the Board members

The NWMB meets in person four times a year. I should make at this point a comment that is relevant not only to the NWMB but also to the other IPGs whose members must meet regularly: Holding these meetings is very expensive. Travel between communities is always by air and very costly. Hotel accommodation and food is likewise more expensive than it would be in the South. It is likely that it would be cheaper to bring together representatives of every Canadian province, to meet in any major city, than it would be to bring together the members of many of these IPGs to meet in Iqaluit or in another Nunavut community. The cost for a single meeting can exceed \$100,000. But it must nevertheless be done. As anyone who has pursued projects by email and teleconference knows, there is no substitute for face-to-face contact. Effective group management is, despite the promise of the electronic age, impossible without it. The activities of the boards are central to the governance of one-fifth the landmass of Canada and to the welfare of a widely-dispersed but unique community of Canadians. The NLCA requires that the IPGs be provided with "sufficient financial ... resources to plan for and carry out the duties and responsibilities assigned to them in the Agreement in a professional manner with appropriate public involvement." It must be obvious that they cannot do so unless they meet on a regular basis.

The NWMB is the principal instrument of wildlife management in Nunavut. This is important work: the area overseen by the Board is 1.9 million square kilometres, and contains about 43 per cent of Canada's ocean coastline, as well as the 12-mile territorial sea adjacent to Nunavut. The Board is responsible for the well-being of large populations of animals and plants in this vast wilderness: caribou, muskoxen and polar bears; ptarmigan, snowy owls and peregrine falcons; in addition, lichens, mosses and more than 200 species of flowering plants found on the tundra. It is also responsible for a great deal of marine life: seals, walruses, narwhal, beluga and bowhead whales, as well as the fishery: char, turbot and shrimp. And this list, of course, represents only some of the most familiar flora and fauna in the Nunavut Settlement Area.

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<sup>22</sup> These represent the Inuit of Nunavik (northern Quebec) when the Board discusses certain issues shared by Nunavut and Nunavik. When the Makivik representatives' participation is required, two members of the Board are replaced by the alternate Makivik representatives for the duration of the relevant discussions and decisions.

**(2) The Issues**

**(a) *Wildlife Harvest Survey***

The main issue dividing the parties with respect to the funding of the NWMB is the issue of updating the information derived from the Nunavut Wildlife Harvest Study, which was conducted in the first implementation period pursuant to the NLCA. Article 5.4.1 reads:

5.4.1 A Nunavut Wildlife Harvest Study (Study) shall be undertaken in, and cover, each of the three Regions of the Nunavut Settlement Area. Terms of reference for the Study are set out in Schedule 5-5.

The main purpose of the Nunavut Wildlife Harvest Survey was to determine current harvesting levels and establish the 'basic needs levels' required by Inuit communities, with a view to proper management and utilization of wildlife resources. These basic needs levels ensure that the first allocation from any total allowable harvest established by the NWMB will be to Inuit.

The Harvest Study collected harvest data from Inuit across the territory. Six thousand, two hundred and fifty harvesters took part in the survey. The Board began collecting data in 1996 and completed data collection in the summer of 2001, issuing its final report in August, 2004.

The effort was by its very nature a significant undertaking. To gather the data for the Study, the NWMB contracted the Qikiqtaaluk Wildlife Board, the Kivalliq Wildlife Board (formerly the Keewatin Wildlife Federation) and the Kitikmeot Hunters and Trappers Organization to collect harvest data from Inuit hunters. A fieldworker (sometimes two) was required in each community, as well as a data entry clerk for each of Nunavut's three regions – around 35 employees were involved in the data collection phase of the study, spread among NWMB headquarters in Iqaluit, the three regional offices, and the 28 communities. When preliminary reports were complete, the Harvest Study Coordinator visited each community to review the preliminary data and consult with community members, and particularly with the local HTOs.

The Harvest Study was completed in 2004, discharging the parties' responsibilities under Article 5, Part 4. There nevertheless remains an ongoing obligation under Article 5.2.37 for the NWMB to conduct research to maintain current information on wildlife in Nunavut.

The total cost of the Harvest Study was approximately \$7.3 million dollars, with the largest part of that sum spent on data collection (around \$1.065 million spent in each of the five years of the Data Collection phase).

Information of the type gained from the Harvest Study is important for a number of reasons beyond the allocation of basic needs levels. Given the central importance of wildlife harvesting to the region (both as a principal food source and as a vital Inuit cultural activity), the data collected (which is by virtue of Article 5 of the Agreement available to the governments of Nunavut and Canada in its raw form) may also form the basis for other types of policy decisions at all levels of government, from land use and resource exploitation to the development of employment and other social initiatives in Nunavut communities.

The Harvest Study, it seems agreed by the parties, needs to be updated, and some of its methodology modified to benefit from the lessons learned in carrying it out. The issue is the scope of the survey necessary to update the information gained from the Study.

Initially, there was disagreement over the scope of the survey. Should it be confined to the Baffin Region? Or should the survey effort cover the whole of Nunavut?

The recent controversies over the polar bear hunt and the Peary caribou population figures illustrate the need for accurate assessment of wildlife populations and harvesting.

The NWMB, in its written submission dated July 13, 2005, has reconsidered its original proposal to do only a partial survey (of the Baffin Region) and now agrees with the Government of Nunavut that "the [previous] NWMB proposal to reduce the harvest study to one region only [the Baffin Region] would not be adequate." The Board concedes that its earlier proposal "to spread a single Harvest Survey across two planning periods (20 years) would undoubtedly lead to a number of important harvest limitation decisions having to be made on estimates based on individual memories or out-of-date information." The Board concludes:

Accordingly – on sober second thought and based upon its growing experience in this second planning period – the NWMB has come to the conclusion that a modest Nunavut-wide Harvest Survey during this planning period is the responsible way to proceed. [emphasis added]

The reasons advanced for this position seemed to me compelling. The following passage, from the submission of NTI on this issue, is apt:

The impact of climate change on wildlife habitat, patterns of migration, and numbers of animals are likely to make more studies essential to maintain the status of knowledge of species. The effects on species will also be a significant indicator of what is happening in the environment. To cut the study off after ten years is merely to provide a small snapshot in time of animal numbers. Such a limited study of Nunavut's wildlife will, with the impacts of climate change, rapidly become worthless.

So what is required? Neither Canada nor the Board appears to believe that it is necessary to redo the Study. I do not think it makes sense to limit the survey geographically. A global budget should be established for a survey across Nunavut. This would not be of the same magnitude as the Harvest Study; the Board itself proposes a more "modest" harvest survey to verify, update, and maintain the data developed in the original Study.

The NWMB has managed in the last two fiscal years to roll over approximately \$1.7 million to put towards its Inuit Qaujimagatuqangit (IQ) program and an updating harvest survey. By the end of the current fiscal year the NWMB may have close to \$2 million set aside, with up to \$1.5 million or more earmarked for the updating survey.

It is not clear whether Canada's proposed budget for ongoing study of wildlife of \$500,000 per year, or \$5 million over the 10-year implementation period, is sufficient to conduct an adequate Nunavut-wide survey and to carry out other projects, such as ongoing IQ research work, that might also fall within that line item in the NWMB's budget.<sup>23</sup>

<sup>23</sup> There are three items which, in the Board's view, fall within the line item of ongoing research for which Canada has proposed a \$5 million budget:

1. A Nunavut Wildlife Harvest Survey;
2. An Inuit Qaujimagatuqangit Program; and
3. A Community-Based Wildlife Research Program.

The NWMB has now prepared, as it offered to do, "a detailed revised proposal for the Conciliator and the parties...concerning the carrying out of a Nunavut-wide Harvest Survey during the second planning period." The Board's proposal contains a budget that is considerably more generous than Canada's proposal of \$5 million over 10 years for research activities, and suggests that an additional \$5 million dollars is in fact required.

I think negotiations should proceed on the footing that a Nunavut-wide survey is required, but I do not view it as my place to set out the appropriate funding level. The federal government has not, as yet, had an opportunity to study the Board's proposal in any depth; it may be that once it has done so (and once both parties have reviewed my recommendations with respect to HTO funding, which might support some aspects of the Board's field research), negotiations as to the dollar figures involved will be relatively straightforward.

**(b) Honoraria for NWMB Board Members**

The NLCA provides that:

5.2.20 Each member shall be paid fair and reasonable remuneration for work on the NWMB.

The level of honoraria for NWMB members has been an issue for some time, and was mentioned in the 5 Year Review as an outstanding concern.

Unlike the other IPGs, whose classification for the purposes of determining the level of honoraria is the responsibility of DIAND, the determination of the level of remuneration for members of the Nunavut Wildlife Management Board falls within the purview of the Privy Council Office.

The *Nunavut Land Claims Agreement Act* states that the Governor in Council shall set the remuneration of the members of the NWMB. Article 5.2.20 of the NLCA states that Board members are to receive "fair and reasonable remuneration" for their work. In the 1993 Implementation Contract, the parties agreed that the NWMB members should be paid \$200 a day, and the chairperson \$275 a day. Those rates were confirmed by orders in council in 1993 and 1994 respectively.

Until 2000, Canada's guidelines for honoraria did not mention the NWMB. In that year, the NWMB was listed as what is known as a category IV agency and its members received an increase to \$225 a day, and the Chairman to \$325 a day. An order-in-council confirmed those rates in 2001.

The federal "Remuneration Guidelines for Part-time Governor in Council Appointees in Agencies, Boards and Commissions" (Privy Council Office, October 1, 2000) do not purport to be binding:

These guidelines set out the amounts and conditions of payment for the part-time services of persons appointed to office by the Governor in Council (GiC). They are not an authority in themselves. They set out what can be recommended

routinely and without substantiation for the approval of the GiC. Each organization must obtain its own Order in Council for authority to pay.

In February 2002, it appears that the government substantially upgraded the pay scales of so-called Category II and Category III agencies, with the result that the NWB and NIRB (Category II) and the NSRT (Category III), which had previously been paid at the same scale as the NWMB, were now to be paid substantially more (in the case of the NWB and NIRB, 67% more) than the NWMB. In February 2002 the Chairman of the NWMB requested the PCO to review the board's classification under the guidelines, with a view to elevating the NWMB to a category II agency. The PCO decided that the NWMB should remain a category IV agency. PCO's refusal letter stated that "based on the evaluation criteria and in relation to other executive board positions, [NWMB] is appropriately classified as a Category IV board".<sup>24</sup>

The federal Guidelines state that "Service to the public and not adherence to market rates influences the remuneration of the highest executive levels". The NWMB provides a service to the public as important as that of any board, tribunal or commission in Nunavut and its members should receive remuneration equal to their peers in the NIRB and NWB. The inequity leads to the perception that the Government of Canada values highly those bodies such as the NIRB and NWB, which facilitate the activities of industry in Nunavut, but does not take as seriously the IPG responsible for the management of the resource most closely connected to the day-to-day welfare of Inuit.

In my view the disparity is simply an aberration that must be corrected, for the sake of providing "fair and reasonable remuneration", as required by Article 5.2.20. Whether this will require reclassification of the Board, changes to the classification criteria themselves, or simply moving the NWMB out of the classification structure altogether and into the realm of contract (where it was originally) I leave to the parties to decide.

Canada has suggested that reclassification of the Board or increasing its honoraria may have broader implications for wildlife management boards in other jurisdictions. I would be surprised if there are bodies in the other territories the scope and scale of whose activities are truly comparable to that of the NWMB in Nunavut. It seems to me to be a singular case. However, it is for Canada to decide on the measure of remuneration for members of those other bodies, and I do not offer a view on the broader question.

### **(c) *Hunters and Trappers Organizations***

The HTOs in each of the 28 communities of Nunavut are funded by Canada through the NWMB. Under Article 5.7.13 of the NLCA, it is provided that:

Adequate funding for the operation of HTOs and RWOs shall be provided by the NWMB.

The HTO is a central body in Inuit communities. In a 1993 Report by RT & Associates, it was reported that 90% of Nunavut households relied on harvesting of country food.<sup>25</sup> In addition to the assistance it provides for subsistence hunters, trappers and fishers in the community, the

<sup>24</sup> There was a lawsuit brought in the Federal Court of Canada to resolve this matter. The judgment of the Court in *Nunavut Tunngavik Inc. v. Canada* 2004 FC 85 (T.D.) was handed down on January 26, 2004. But the judgment has no bearing on the merits of this issue.

<sup>25</sup> Légaré, supra note 17 at p. 132.

HTO also assists in the application for and distribution to beneficiaries of benefits under the NLCA. As well it supervises, monitors and reports harvesting activity in the community and outpost camps, provides a regulatory role for local guides and outfitters, and can sue on behalf of an Inuk.

These are only some of the formal responsibilities that have been imposed on the HTOs. Each HTO has a locally-elected Board and a single staff position. Having met with the members of the HTOs in both Pangnirtung and Clyde River, I can report that their accommodations are rudimentary. This appears to be the state of affairs throughout Nunavut. The Aarluk Consulting Report of 2004 summarized the plight of the HTOs in the following terms, a characterization that has not been disputed by any party:

HTOs, which, for the most part, are one-person operations, are also responsible for a much broader range of obligations, programs and services than originally conceived, but without a concomitant increase in resources, staffing, training, or policy support. Expectations and demands are growing: neither resources nor capacity, by and large, are keeping pace.

The consequences are now being felt. Major management failures have occurred within several HTOs and, within the last six months, in two RWOs. Organizations throughout the sector continue to experience high levels of turnover, with the consequent loss of corporate memory and impact on organizational effectiveness and inter-organizational communication.<sup>26</sup>

The HTOs have a unique place in Inuit society.<sup>27</sup> From the earliest days, they were, in the words of one historian of the postwar period, "in effect non-governmental political bodies."<sup>28</sup> They have had, and I expect they will continue to have, a pivotal role in the development of Nunavut and the guardianship of the resources of the region. They deserve a substantial level of support.

Prior to the NLCA, the HTOs (then HTAs) received minimal funding from the Government of the Northwest Territories (\$4,000 each, rising to \$10,000 in later years). This proved utterly inadequate, and financial problems led to not infrequent shutdowns. This situation has improved under the NLCA regime, but HTOs still have a precarious financial existence.

Canada has proposed a funding formula by which \$2 million will be distributed annually to the 27 HTOs, for an average of around \$74,000 each. Canada's estimates of HTO needs are premised on a graduated scale depending on the population, with HTOs in larger communities receiving more than those in smaller communities. The Aarluk Report, on the other hand, proposed a higher level of core funding, across the board, of \$119,000 per HTO.

I am concerned that Canada's approach, based on the size of each community, may be mistaken for two reasons. First, it is said, reasonably, that the smaller communities, which tend to be those with the lowest levels of employment and economic opportunity, rely on wildlife harvesting to a greater extent, per capita, than larger communities, and so the demands on

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<sup>26</sup> Aarluk Consulting Inc., *Structural Issues and Options for Wildlife Management by Inuit in Nunavut* (October, 2004) at p. 27.

<sup>27</sup> Prior to the NLCA, HTOs were referred to as Hunters and Trappers Associations, or HTAs.

<sup>28</sup> R. Quinn Duffy, *The road to Nunavut: The progress of the Eastern Arctic Inuit since the Second World War* (Kingston ON: McGill-Queen's University Press 1988) at p. 232.

HTOs in smaller communities are likely to be greater than in larger ones.<sup>29</sup> Second, if funds are concentrated in the larger centres, the amounts dedicated to the smallest communities may be insufficient to maintain the consistent presence and level of professional management that is required of every HTO if the wildlife management system is to succeed. The HTO in Clyde River, a smaller community, may be competing for the same prospective staff person with the Pangnirtung or Iqaluit HTO. To fund the former insufficiently may be to deny a long-term, committed manager to the community that would most benefit from having such a person on the HTO payroll.

It may be true that, once a consistent professional presence is established in most or all of the HTOs, a more accurate assessment can be made of particular community and regional needs, and the available funds can be redistributed to better serve the wildlife management goals of the NLCA. However, for the time being, it makes sense to me to fund all of the 27 HTOs equally, and at a level sufficient to address these concerns.

The role of HTOs can be expected to evolve as the Inuit struggle to maintain their connection to the land. It is routinely predicted that the subsistence economy based on hunting, fishing and trapping will disappear. But it never does. I do not think that its place in Nunavut is likely to diminish. It is desirable that each HTO be able to maintain a strong and consistent presence, with long-term staff and officers in place and properly supported. A strong professional core in the HTOs will also diminish the risk of program abuses that are said to have occurred in the past.

In the 5 Year Review in 1999, it was noted that both the RWOs and the HTOs identified a need for more resources for HTOs. Nevertheless, the Review listed the funding obligations as being met on an ongoing basis, apparently because the HTOs were unable to clearly articulate their needs.<sup>30</sup> As I have suggested, until a level of funding sufficient to support a stable, long term management and board is in place in each community and some expertise and experience has been gained, even basic project and budget proposals will be difficult to put together.

Predicting the HTOs' needs over a 10 year period is not easy. HTO funding must be sufficient to enable them to attract qualified staff, including at least one full-time equivalent position for each HTO at a competitive rate of pay. So also HTO funding must be sufficient to provide fair and reasonable honoraria for HTO Board members, and to provide them with the office and facility support necessary to operate professionally, to the extent that the environment will permit. In my view a substantial increase is appropriate. I am persuaded that the level of funding recommended in the Aarluk report represents the minimum level of support required to enable the HTOs to fulfill their role under the NLCA. I would expect that the Government of Nunavut will continue to top this up at an amount at least equal to the current level in recognition of the HTOs' important role in the communities.

The NWMB and the Implementation Panel must oversee the development of the wildlife management system into a cohesive Territory-wide organization. It may be that, as this effort unfolds, the NWMB may wish to reallocate the HTOs' funds to better address regional and community circumstances. But this should be approached with caution. If the system is to

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<sup>29</sup> This will of course vary by the community. It is said that a high percentage of harvesting is often done by a few part-time hunters whose employment permits them to purchase better equipment and transportation. This may or

<sup>30</sup> Vertes, Connelly and Knott, *Implementation of the Nunavut Land Claims Agreement: an independent 5 year review, 1993 to 1998* (Iqaluit: Nortext Multimedia Inc., 2000) at p. 9at p. 2-14.

recover from its recent troubles, it must be done from the grass roots up, with good management in the HTOs as well as with improved oversight from above.

**(d) Regional Wildlife Organizations**

Regional Wildlife Organizations (RWOs) are mandated under Article 5, Part 7 of the NLCA to provide a forum for coordinating and regulating Inuit harvesting at a regional level. Ideally, the RWOs provide a conduit through which the Board's decisions are acted upon in the communities; they also represent the interests of their communities and regions to the Board.

All parties agree that the RWOs are crucial to the success of a renewed wildlife management regime in Nunavut. The parties also agree that a 'fresh start' for the RWOs means adequate funding and other initiatives to streamline management practices. At present, the parties are agreed that the appropriate funding for each RWO is \$230,000 per year. It would therefore appear that the parties do not require my guidance here.

**C. Nunavut Planning Commission**

**(1) The Role of the NPC**

Article 11.4.1 of the NLCA provides:

A Nunavut Planning Commission (NPC) shall be established with the major responsibilities to:

- a) establish broad planning policies, objectives and goals for the Nunavut Settlement Area in conjunction with Government;
- b) develop, consistent with other provisions of this Article, land use [<sup>31</sup>] plans that guide and direct resource use and development in the Nunavut Settlement Area; and
- c) generally, fulfill the objectives of the Agreement in the manner described, and in accordance with the general principles mentioned in Section 11.2.1, as well as such additional functions as may be agreed upon from time to time by Government and the DIO."

The size of the Commission may vary, but the Agreement requires that the Inuit nominate a number of members equal to the total number recommended by the governments of Canada and Nunavut. The members are then appointed by the Minister of Indian Affairs and Northern Development on the basis of these recommendations and nominations; the Minister also appoints a chair, nominated by the members.

The NPC's main function is to develop land use plans, policies and objectives to guide resource use and development throughout Nunavut.

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<sup>31</sup> The term "land use" also includes water, wildlife and offshore areas.



**(2) The Issues**

**(a) Land Use Planning**

The Planning Commission has for several years been mapping wildlife populations, migratory routes, human use, waste sites and areas of archeological significance. This mapping work combines the traditional knowledge of the Inuit with the best available science, fed through the latest computer mapping technology; its objective is to produce a comprehensive land use plan for each of the NPC's six planning regions.

The NPC, in its 10-year funding submission, says:

The past two years has seen a major shift in how the Commission collects data, we have moved towards a methodology which involves doing map biographies which substantively increases the accuracy of our data for use in making land use decisions. Over time it will be an important tool which will enable communities to make informed decisions based on traditional land use and occupancy. A recent operational planning session identified that it will take up to 12 years to produce land use plans for each region in Nunavut. As a result of that session the Commission is considering a Nunavut wide planning process which could effectively create a Nunavut Land Use Plan in the next 4-6 years provided that sufficient staff and resources to fully consult with communities, stakeholders, industry and government are available to the Commission. Sub regional plans could then be produced later under the umbrella of the Nunavut Plan. Our focus over the last few years has been in the West Kitikmeot which the Commission has found extremely challenging; the absence of land use planning legislation for Nunavut has frustrated and delayed successful land use planning in the Region. Recently the Government of Nunavut and Canada has agreed to meet and work on 11.4.1 issues at the senior level which should provide needed guidance in broad policies and goals for land use planning. This should enable all parties to move forward towards ensuring that land use planning is implemented in Nunavut.

The NPC has also said:

High commodity prices could open up huge areas and result in accelerated development in the Arctic. Road developments such as the Bathurst Project and the Keewatin to Manitoba Road have the potential to open up valuable resources which will involve marine and overland issues. Pressures from oil and gas exploration and development namely the community of Coral Harbour request to remove the moratorium on oil and gas could open these areas up for development. Diamond interests in the West Kitikmeot are developing along with gold prospects out of Rankin Inlet. Increased development will certainly result in a requirement for increased monitoring of both the ecosystem and social environment. Projects such as this will certainly put a strain on the NPC and its resources. Our submission for the 10 year period has taken into account normal increases in workload but consideration has to be given to the NPC when considering the volume of development activity. The land use planning process is doing its best to keep up to a rapid and constantly evolving development climate.

In my view the proposal to complete the Nunavut Land Use Plan in 4 to 6 years is sound and funding ought to be provided. Nunavut is undoubtedly experiencing an unprecedented rush for prospecting permits, mineral leases and claims. But the rate and extent of future industrial development on the Arctic frontier is not something known to any of us. Nunavut may or may not be on the cusp of extensive mineral development. I think the NPC must, however, proceed as if it were. The sooner land use planning is completed, the better the prospects for orderly development.

Canada has offered approximately \$3.3 million per annum. However, the NPC itself has now submitted, in response to Canada's last proposal, a proposed budget of \$3,890,855.09. There is a gap of \$591,703.41.

The NPC has indicated that it needs additional funds (beyond those proposed by Canada) in order to open and staff an office in Iqaluit (the NPC's headquarters are in Cambridge Bay), professional training for Board members and staff, beefing up communications, data acquisition and digitizing, map biographies, etc.

The disagreement between the two sides' budget figures is premised on particular line items, many of which are related to the proposed establishment of an office in Iqaluit.

The establishment of an Iqaluit NPC office may well be a good idea. But Canada has, as yet, had little opportunity to consider the proposal and no opportunity to advise me as to the government's position. This is another area, therefore, that could and should be resolved through negotiation among the parties.

**(b) Monitoring**

NTI has suggested that I should make recommendations regarding the funding of NPC to enable it to play its part in developing a general monitoring plan pursuant to Article 12.7.6 of the NLCA, which provides:

12.7.6 There is a requirement for general monitoring to collect and analyse information on the long term state and health of the ecosystemic and socio-economic environment in the Nunavut Settlement Area. Government, in co-operation with the NPC, shall be responsible for developing a general monitoring plan and for directing and co-ordinating general monitoring and data collection. The NPC shall:

- (a) in accordance with the plan, collate information and data provided by industry, government departments and agencies, amongst others;
- (b) in accordance with the plan, report periodically on the ecosystemic and socio-economic environment of the Nunavut Settlement Area; and
- (c) use the information collected under Sub-sections (a) and (b) to fulfill its existing responsibilities under Article 11.

NTI urges that:

As the globe's climate change "barometer," the Arctic provides the environmental case for reduction in emission of greenhouse gases. Effective monitoring is required to generate the data to support this case and to measure and to promote adaptation—hence the international as well as domestic case for full implementation of Article 12.7.6 (general monitoring programme). This programme will enable Canada to participate more effectively in the annual Conferences of the parties to the 1992 UN Framework Convention on Climate Change, and to promote an Arctic amendment to the framework convention adopting the Gleneagles G8 language.

The Planning Commission itself says:

More resources are required to further develop the NGMP across Nunavut and to tie in cumulative environmental effects identification into our conformity system. Without more resources put into the proper development of this system we will not be in a position to properly understand or monitor the changes to the environment as a result of our development activities and climate change.

I have no doubt that there is a pressing need to monitor climate change in the Arctic, and it may be that the NPC is in a good position to carry out this project. But the monitoring work described in Article 12.7.6 is of a very limited type; that Article sees the NPC collecting, collating and passing along data already collected by other bodies. Regardless of who bears the obligation of paying for the work mandated by the NLCA, I cannot see how the considerable work necessary to properly monitor climate change in Nunavut can be made to fit within the Agreement the parties reached in 1993.

I am not suggesting that a full program to monitor climate change in the Arctic isn't necessary – in my view it is. And no doubt various departments of the Government of Canada, the Government of Nunavut, the Inuit, and the other territories and even other countries may wish to collaborate on a comprehensive program to that end. The NPC and other IPGs may play an important role in this program and might require additional funding to perform that role. But this does not make it an implementation issue. A broad and purposive approach to implementation does not mean that we must succumb to the temptation to stretch the Agreement to cover what was not intended, however worthy the objective. And in this case such an approach may prove counterproductive to Nunavut's citizens, as any effort which can be shoehorned into the language of Article 12.7.6 of the NLCA would almost certainly be far short of what is actually required to provide an effective program to monitor climate change in the North.

#### **D. Nunavut Water Board**

The Nunavut Water Board (NWB) decides the regulation, use, and management of water in the Nunavut Settlement Area. With the exception of domestic or emergency use of waters, no person may use water or dispose of waste into water without the approval of the NWB. The NWB's jurisdiction is presently limited to inland freshwater: lakes, rivers, streams, wetlands, etc, but the NWB will be a member of the Nunavut Marine Council which may under the NLCA be formed jointly with the Nunavut Impact Review Board, the Nunavut Planning Commission, and the Nunavut Wildlife Management Board to advise on matters offshore.

Members of the NWB are appointed for a term of three years by the Minister of Indian and Northern Affairs Canada, in the following manner:

- Four members are appointed upon nomination by the Nunavut Tunngavik Incorporated.
- Two members are appointed by the Minister of Indian and Northern Affairs Canada.
- Two members are appointed upon nomination by designated Ministers of the Government of Nunavut.
- The Chairperson is appointed by the Minister of Indian and Northern Affairs Canada.

The main function of the Water Board is to conduct hearings and decide individual applications. It will conduct hearings into most applications for water use, a requirement it may nevertheless waive if there is no public concern expressed over any proposed use. The NWB will not approve an application unless the applicant has obtained the necessary approvals from one of the three regional Inuit associations or NTI or both, and reached a compensation agreement with the concerned regional Inuit organization pursuant to the terms of the Nunavut Land Claims Agreement.

Because its primary role is to determine the fate of applications for water use, the work of the Board is project-driven. There has been a steady increase in applications and renewals.

The budget for public hearings by the NWB this year is \$16 million. This amount though, as I mentioned earlier, is the subject of a separate submission to treasury Board and there is no complaint that the funding for hearings is inadequate.

The real issue with the Water Board, as with the SRT and NIRB, is the concern that, with burgeoning development, its core functions and activities may inevitably have to be expanded and more money will be required. NTI is concerned that, without advance provision for such a contingency, the government might refuse to provide assistance. I think, as I've said earlier, that we ought to presume that all parties will work together in good faith to resolve such difficulties. It seems unlikely that Canada would ever consider it to be in the nation's interest to permit the economic development of Nunavut to be stalled by a bottleneck in any of the boards owing to a lack of funding necessary to carry out its functions.

There is another issue related to meetings. Canada's last proposal in 2004 was \$1,876,000. This included an amount to provide for four full meetings of the Board in any given year. The Board, and the other parties, suggest that six meetings are required.

Obviously, there is a need for regular meetings of the Board. In any other part of Canada, with jurisdiction over an area only a fraction of the size, there would be regular meetings. If the oral tradition of the Inuit is to be meaningful, and if the business of the Board is to be conducted in an effective and professional manner, there have to be regular meetings. No one argues otherwise.

I think that negotiators should bear this in mind. Canada has costed out in some detail the activities of the Board members in coming up with its proposal. The other parties have not engaged Canada in a discussion of the adequacy of the budget proposed in any detailed way; the reaction tends to be simply to insist on a higher number. But, for instance, with the Water Board, if the objection is that the 20 days of full face-to-face meetings of the Board is insufficient, how many should there be? More days in fewer trips, or vice versa? If more face-to-face meetings are proposed, what about the 80 half-day teleconferences in Canada's budget: could this number be reduced and reallocated to face to face meetings? If this is done, will more money nevertheless need to be allocated to travel?

These are questions I cannot answer. The Board and the parties know more about them than I do and I leave it to them to work it out together, perhaps using Canada's last proposal as the basis for their discussion.

### **E. Nunavut Impact Review Board**

The NIRB was established in 1996 under Article 12 of the NLCA as the institution of public government responsible for the environmental assessment of project proposals in the Nunavut Settlement Area. The NIRB's authority is over Inuit Owned Lands, and to land and marine areas within the Nunavut Settlement Area and the Outer Land Fast Ice Zone.

NIRB is composed of nine members, one of whom acts as chairperson. Members are appointed as follows:

- Four members are appointed by the federal Minister responsible for Northern Affairs, upon nomination by Designated Inuit Organizations.
- Two members are appointed by one or more Ministers of the Government of Canada.
- Two members are appointed by one or more Ministers of the Territorial Government; at least one of whom shall be appointed by the Minister Responsible for Renewable Resources.
- The chairperson is appointed by the federal Minister responsible for Northern Affairs in consultation with the Territorial Government, from nominations agreed to and provided by Board members

This board exercises the jurisdiction that in other parts of Canada falls under the *Canadian Environmental Assessment Act*, S.C. 1992 c. 37. Unlike CEAA panels, the NIRB is not *ad hoc*, but a permanent standing tribunal. Indeed, it is the NIRB that issues the project certificate.

The NIRB coordinates the review of project proposals with the Nunavut Planning Commission and the Nunavut Water Board to ensure that project proposals are dealt with promptly. In particular, the NIRB's impact review process may be coordinated with that of the Water Board.

The main functions of the NIRB are to screen project proposals in order to determine whether or not a review is required, and to arrange and conduct hearings where necessary. The purpose of the review is to determine the extent of the ecosystemic and socio-economic impacts a project will have on regions or communities or both, and to determine whether the project should proceed. If it is decided that it should, the NIRB may monitor the project to determine the ongoing and long-term impact on the ecosystem.

Like the NWB and the SRT, the NIRB's workload is externally driven, having to consider social, economic and environmental impact as each case is brought before it. NIRB has increased its staff from 9 to 12 since 2003. Its rent has doubled. It is strapped - its members have limited their honoraria to \$100 a day when meetings are held by teleconference.

The only dispute in the case of the NIRB is dollars and cents; all agree the Board is doing what it should be doing. It seems to me that parties are very close, and, given my thoughts earlier on flexibility of funding for such externally-driven boards, they should be able to agree on a figure for core funding.

## **F. Nunavut Surface Rights Tribunal**

The Nunavut Surface Rights Tribunal was established in 1996. The main role of the NSRT is to settle disputes over access to lands, compensation payable to the surface titleholders for access, wildlife compensation claims (for instance where a development harms Inuit wildlife harvesting) and rights to carving stone or specified substances in the Nunavut settlement area.

Under the NLCA, the Inuit hold title to approximately 350,000 square kilometres of surface land in Nunavut. The title to this land is vested in the Regional Inuit Associations on behalf of their Inuit beneficiaries. The Crown retains title to the subsurface rights in most (90%) of this land, but, of course, in order to access the subsurface, it is necessary first to obtain access through the surface titleholder.

In cases where the parties cannot come to an agreement, either party may submit an application to the Nunavut Surface Rights Tribunal to decide the matter. Cases may also come to the Tribunal as the result of environmental harm done; Article 6, Part 3 of the Agreement sets out a regime of absolute liability on developers for damage suffered by wildlife harvesters as a result of development activity in Nunavut.

The Tribunal is a quasi-judicial body. Its membership is determined by Ministerial appointment. There is no fixed number of members (in April of this year there were five including the Chair); however, at least two members must reside in Nunavut, as must at least half of the members selected to hear any case dealing with Inuit Owned Lands within Nunavut.

So far, there has been no dispute submitted to the Tribunal. This may be because the level of development in the Territory that was expected in 1993 did not materialize; it may also be fortuitous. It is, of course, possible that this situation will soon change and the increasing exploitation of Nunavut's resources will lead to disputes within the Tribunal's jurisdiction.

Regardless of its use to this point, the NSRT is established pursuant to the NLCA and, according to the Implementation Guidelines in the Implementation Contract, the Inuit have "a right to require Government to establish and maintain" the Tribunal. The parties have expressed no desire to do away with the Tribunal, but it seems difficult to justify an increase over a modest adjustment until and unless, as I indicated earlier, it becomes apparent that the SRT's level of activity is about to sharply increase.

## **IV. DISPUTE RESOLUTION**

### **A. Nunavut Arbitration Board**

The Nunavut Arbitration Board was created under Article 38 of the Nunavut Final Agreement to resolve disputes arising in the interpretation, application and implementation of the Agreement. The Arbitration Board resembles the IPGs in that it is a stand-alone tribunal established under the NLCA. It is funded by Canada, and therefore makes submissions together with the other IPGs when sufficiency of funding is being discussed.

But the most serious issues surrounding the Arbitration Board are related to its role in the implementation process, not the level of its funding or the scope of its activities.

The two main types of disputes that the Arbitration Board is authorized to adjudicate are set out in Article 38. These are:

1. Any matter concerning the interpretation, application or implementation of the Agreement where the Designated Inuit Organization (DIO) and Government agree to be bound by the decision (Article 38.2.1), and
2. Matters specifically designated in other Articles, which include disputes between:
  - a DIO and Government over the location and terms and conditions of an easement on Inuit Owned Lands (IOL) - (Article 19.6.2, 19.6.3);
  - a DIO and Government over exchange of IOL for Crown lands with significant deposits of carving stone - (Article 19.9.3);
  - a DIO and Government over procedures and compensation for Government access to IOL - (Article 21.5.5, 21.5.9);
  - a DIO and anyone seeking access to IOL for commercial purposes -(Article 21.7.15);
  - a DIO and an expropriating authority over compensation - (Art 21.9.4, 21.9.5 and 21.9.8);
  - the Inuit Heritage Trust and a Designated Agency of Government over long-term alienation of any archeological specimen - (Art 33.7.5).

The Implementation Contract, in Part 7, tracks Article 38.2.1:

Where a dispute arises between two parties, or among all parties, on any matter concerning the interpretation, application or implementation of the Contract, and the parties agree to be bound by the decision of an Arbitration Panel, a party may refer the matter to the Arbitration Board.

Nothing in Section 7.1 is intended to prevent or inhibit a party:

- a) from seeking and securing an alternate legal remedy that is available; or
- b) from referring the dispute to the Implementation Panel for resolution in accordance with Sub-section 37.3.3(e) of the Nunavut Final Agreement.

In disputes under Article 38.2.1 of the NLCA, there is no general submission of the parties to arbitration; they decide on a case by case basis whether to go to arbitration. This is in contrast with the other provisions of the Agreement conferring jurisdiction on the Arbitration Board (i.e. 19, 21, and 33), where there is no need for the consent of the parties. But thus far no disputes have come to the Board under these latter provisions, that is, there has been no occasion for the exercise of the Board's jurisdiction under the provisions of the Agreement where arbitration is mandatory.

Thus far it is only disputes under Article 38.2.1 which have arisen. And these disputes cannot go to arbitration unless all the parties agree to be bound. As of today, no case has come before the Board owing to Canada's refusal to agree to arbitrate when such requests have been made.

Given this state of affairs, there is no avenue of recourse by NTI if the members of the Implementation Panel cannot agree to submit a dispute to arbitration. If there is no such recourse, Canada effectively has the last word; negotiations in such cases are not between equals. Of course, NTI too has a veto on arbitration, but it is unlikely ever to use it, since recourse to arbitration will usually be sought to enforce a claim against Canada. Canada has thus far refused in every case to agree to arbitration on the ground that it would interfere with Parliament's exclusive authority regarding appropriation of money.<sup>32</sup> Such an approach does not possess the hallmarks of a true negotiation because one of the parties has no remedy if negotiations break down. Canada can say "No" and that is the end.

NTI has suggested the NAB is a waste of money as long as Canada will not agree to submit to its jurisdiction. But this state of affairs stems from the provisions of the NLCA. Under Article 38.2.1, no party has to submit to arbitration concerning the interpretation, application or implementation of the Agreement. This is what the parties agreed to in 1993. It is not for me to recommend amendments to the NLCA. My mandate is to recommend new approaches.

In any event the NAB should be kept in being, and the appointment of members made current, since it has jurisdiction over disputes under Articles 19, 21, and 33, of the NLCA – jurisdiction that does not depend on unanimous agreement to arbitration by the Implementation Panel.

Given all this, it would seem that substantial decisions regarding funding for the Board can and should wait until its future in the dispute-resolution continuum of the implementation process is settled. Currently, Canada is funding the NAB at a minimal level, but nevertheless a level 100% higher than in 2002/03. NTI accepts that this level of funding is appropriate. NTI has requested, however, that \$250,000 be added to permit a review of the role of the NAB in a possibly more effective ADR regime. Because I view such a review as one of the tasks before me in this conciliation process, such an initiative no longer seems necessary.

## **B. A More Effective Dispute Resolution Model**

### **(1) A Renewed Commitment to Arbitration**

Is it true that it was agreed, under Article 38 of the NLCA, that each party should have a veto on whether any issue should go to arbitration.

At the same time it was surely not contemplated that no issue would ever go to arbitration. It is likely that almost every dispute about "the interpretation, application or implementation of the Agreement" will have financial or funding implications. As long as Canada maintains its position, this provision will remain a dead letter. The Auditor General wrote in her 2003 Report:

8.42 Furthermore, federal officials told Nunavut Tunngavik Incorporated that the federal government will not be bound by decisions of the arbitration panel on financial matters and funding levels. They stated that Canada cannot agree to be bound by a funding decision of a third party that could affect appropriations of the Parliament of Canada.

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<sup>32</sup> There seems to be some disagreement regarding whether this refusal has been a *policy* of Canada's, or whether the proposals to arbitrate have been weighed individually and rejected. In my mind it makes little difference; the effect has been that the Arbitration Board has been moot in the process.



8.43 Our review of the work of the arbitration panels found that no cases had come before them since the claims were settled over 10 years ago. Yet disputes continue to remain unresolved. Furthermore, if it is true that Canada cannot agree to be bound by a decision of a third party on funding matters, then any money dispute can never be resolved through arbitration. Therefore any belief that arbitration is there to resolve money-related disputes, and make the land claims work more effectively, is an illusion.

Parliament enacted the NLCA, including Article 38. It seems disingenuous for Canada to argue that the executive branch can take a position in defence of Parliament's prerogatives when Parliament itself has passed a measure which indicates that it is prepared to submit matters in the very broad category described by Article 38 to arbitration. No exception is specified in Article 38, and it does not appear that an exception based on the policy identified by the Auditor General, if indeed it is a policy, was contemplated by either the parties or Parliament in 1993.

In my view a new approach to arbitration is required. To the extent that Canada has refused its consent on the ground that to agree to arbitrate would usurp Parliament's prerogatives, I think it has acted misguidedly. I recommend that in future a request for arbitration should be allowed to go forward unless it involves a vital question of policy with implications extending beyond the implementation of the NLCA. The mere fact that Canada believes the issue at stake should not be determined by a third party is not a sufficient reason to deny adjudication of important questions, nor is it a reason that is consistent with the spirit of Article 38, whose intent is to settle otherwise intractable disputes through such a process. A veto over arbitration should be an exceptional measure, not the norm.

## **(2) Mediation**

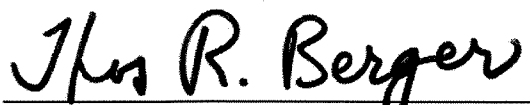
It is my opinion that a meaningful and effective dispute resolution process is crucial to the smooth functioning of the Implementation Panel. At present of course, quite apart from arbitration, the Implementation Panel members can, as issues arise, agree among themselves to any non-binding process that they believe will be helpful; the present conciliation process is an example of this. The parties should be free to turn to non-binding conciliation or mediation.

It is inevitable that the mode of dispute resolution preferred often varies for each party according to the issue. It may be difficult to build a model of dispute resolution that requires consensus on a 'case by case' basis, as, for instance, is provided in other land claims agreements.

It would be preferable, in my view, for the parties to agree *in advance* to immediately refer a matter to non-binding mediation if there is no consensus to arbitrate. Such an agreement could also include a basic set of procedural rules and might also pre-determine a selection of mediators who would be acceptable to all sides. Such an agreement might have two effects: first, it might quickly resolve disputes that would otherwise delay or derail very important programs or funding streams. Secondly, the certainty of a readily available dispute resolution process agreed beforehand might encourage the parties to settle their differences without availing themselves of it. No party could act unreasonably, content in the knowledge that it need never submit the question to an impartial third party.

If the parties are not prepared to go that far, I nevertheless urge that they keep non-binding mediation in mind as an option when they are deadlocked.

The utility of mediation lies in the fact that it is not binding. Canada need not fear the imposition of a third party's judgment on a matter that raises policy implications that it believes should not be determined by a third party. But mediation does offer something badly needed here: a third party, standing outside the present controversy, who can bring independent judgment to bear: in the words of the Background Note that was provided to me when I was engaged as Conciliator, to "make a neutral assessment of the issues and provide the parties with recommendations that may resolve our differences and bring about a mutually acceptable solution."

A handwritten signature in black ink that reads "Thomas R. Berger". The signature is written in a cursive, flowing style.

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Thomas R. Berger, O.C., Q.O.  
Vancouver, August 31, 2005

## **APPENDIX: SUMMARY OF MEETINGS TO DATE**

In the course of the conciliation process I conducted a number of meetings with the three parties and other interested persons.<sup>33</sup> I had indicated beforehand that there would be no opportunity for private submissions – if a meeting with any person or group occurred in the absence of any other, I would be free to impart the details of that discussion to the other parties. The parties agreed to this condition.

### **Ottawa, June 8<sup>th</sup> and 9<sup>th</sup>**

Our first meeting was an informal but very useful session in Ottawa on June 8<sup>th</sup> and 9<sup>th</sup>, 2005. The representatives of Canada, Nunavut and the Inuit gave me an overview of both the issues and a history of the process so far.

### **Baffin Island, July 8<sup>th</sup> to 16<sup>th</sup>**

Next were a series of meetings held during my week long visit to Baffin Island, from July 8<sup>th</sup> to 16<sup>th</sup>, 2005.

Throughout this visit, I had formal and informal meetings and discussions with many officials of the government of Nunavut, including the Premier, Paul Okalik; his Principal Secretary Peter Ma; the Honourable Ed Picco, Minister of Education; Letia Cousins, Director of Aboriginal and Circumpolar Affairs; Bill MacKay, legal advisor; and David Akeeagok, who is Deputy Minister of Culture, Language, Elders and Youth, as well as Nunavut's chief negotiator. I also met at various times with a number of members of the Legislative Assembly including Peter Kilabuk, James Arreak, and Hunter Tootoo. On the question of Article 23 I heard presentations by Kathy Okpik, Deputy Minister, Human Resources; Pam Hine, Deputy Minister, Education; and Richard Paton, from the government of Nunavut's Inuit Employment Plan. At another meeting I heard presentations by Jane Cooper, Assistant Deputy Minister and David Monteith, Director, Parks & Conservation Areas, of the Department of Environment; Shawn Maley, Assistant Deputy Minister, and Les Hickey, Manager of Account Operations, of the Department of Community & Government Services; Markus Weber, Deputy Minister and Margaret Hollis, Director, Legal & Constitutional Law, of the Department of Justice.

I met formally and informally with representatives of the NTI, including the President, Paul Kaludjak, Charlie Evalik, Chief Negotiator, Bruce Uviluq, Implementation Project Officer, John Merritt, senior constitutional and legal advisor, and Leslie Cousins, his assistant.

Canada's delegation on this trip was headed by Damon Roarke, Senior Implementation Negotiator, and Brenda Casella, who serves as Implementation Manager for Nunavut.

On July 11 and 12<sup>th</sup> I traveled, along with a delegation of representatives of the parties and Moe Keenaiknak of the Qikiqtaaluk Wildlife Board (a Regional Wildlife Organization or RWO), to the smaller communities of Pangnirtung and Clyde River on the east coast of Baffin Island. In Pangnirtung, I met with Chair Moses Qappik, Manager Leona Nakasuk, and members of the Pangnirtung Hunters & Trappers Organization. In Clyde River, I met with Chair James Qillaq and other members of the Clyde River Hunters & Trappers Organization. I also met with Tommy Enuaraq of the Clyde River Local Housing Authority and John Corkett, who serves both

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<sup>33</sup> While I have tried to keep complete notes, I have no doubt left out the names of a number of people with whom I met during the process. I hope they will forgive me any such oversight.

as manager of the Housing Association and Coroner in Clyde River. Finally, I had a meeting with Her Worship Ika Hainnu, Mayor of Clyde River, Stephen Ipeelie, the Hamlet's Senior Administrative Officer, and members of Council.

On July 13<sup>th</sup> and 14<sup>th</sup>, I had a series of meetings with representatives of the Institutions of Public Government, where I heard presentations by: Joe Tigullaraq, Chairperson, Jim Noble, CEO, and Michael d'Eça, Legal Advisor, all of the Nunavut Wildlife Management Board; Rachel Mark of the Nunavut Surface Rights Tribunal; David McCann, Interim Chair of the Nunavut Arbitration Board (by teleconference), Albert Ehaloak, Chairperson, Stephanie Briscoe, Executive Director, and Bill Tilleman, Legal counsel, from the Nunavut Impact Review Board; Bob Lyall, Chairperson, and Luke Coady, Exec Director, of the Nunavut Planning Commission; and Philippe di Pizzo, Executive Director of the Nunavut Water Board.

I also met with a number of graduates of Nunavut Sivuniksavut, (NS) a post-secondary/pre-university and college program based in Ottawa for beneficiaries of the Nunavut Land Claims Agreement.

My final meetings on the trip to Iqaluit were with members of the Nunavut Federal Council and other officials involved in federal initiatives in the Territory. The meeting was chaired by Alex Taylor, the Director of Public Works and Government Services Canada, and included a discussion with: Stephen Traynor, Regional Director General, Hagar Idlout-Sudlovenik, Director of Intergovernmental Affairs and Inuit Relations, and Beverly Foster, Senior Advisor, all from the Department of Indian Affairs and Northern Development; Chief Inspector John Henderson, Commanding Officer of the RCMP in Nunavut; Todd Wilson, Senior Advisor at Industry Canada; Elizabeth Seale, Superintendent of the Nunavut Field Unit, and Nancy Anniniliak, Associate Superintendent, of Parks Canada; Michelle Wheatly, Area Director of the Department of Fisheries and Oceans; Mary-Jane Adamson, Nunavut Director, and Joamie Eegeesiak, Area Director, of the Public Service Commission of Canada; Mark Thompson, the Regional Program Manager of Public Safety and Emergency Preparedness Canada, Nikki Smith, Area Director, Correctional Service Canada; and (by phone) Helen Roos, Manager of Policy & Research at Canadian Heritage.

In addition to these meetings, Craig Jones (my Counsel and assistant in the Conciliation) met separately with Morley Hanson of Nunavut Sivuniksavut. Staff and instructors from NS were unable to be in Nunavut during our visit and so the meeting was held in Ottawa on the morning of June 7<sup>th</sup>.

### **Ottawa July 26<sup>th</sup> to 29<sup>th</sup>**

I took another trip to Ottawa from July 25<sup>th</sup> to 29<sup>th</sup>. On the 25<sup>th</sup>, I met informally with Whit Fraser, who is the Chief Operating Officer of the Inuit Tapiriit Kanatami, the national Inuit association.

From the 26<sup>th</sup> to the 28<sup>th</sup> of July I met with a number of representatives of the federal government. The first meeting was with Bill Austin, Assistant Secretary, Social and Cultural Sector, and Sarah Van Diepen, Analyst, Indian Affairs and Health, of the Treasury Board Secretariat. Later, I had a meeting with Jason Won, Chief, TFF and Northern Policy Development, Finance Canada, Daniel MacDonald, Economist, and Randy Freda, Equalization and Policy Development.

On July 26<sup>th</sup> I met over lunch with Jeff Greenberg (retired), Office of the Auditor General, to discuss his office's work as auditors of the NLCA and of Nunavut.

Later that afternoon I met with Terry Sewell, Director General, Implementation Branch, INAC, and members of his NLCA implementation team: Mavis Dellert, Director, Implementation Management Directorate, Maureen Dawson, Policy Advisor, Nunavut, IMD, Linda Baltuonis, Implementation Negotiator, Implementation Planning and Negotiations Directorate, Nadia Belokopitov, Assistant Negotiator, IPN. I met again with this team on the 28<sup>th</sup>.

On July 27<sup>th</sup>, I met with Joan Atkinson, Assistant Secretary to the Cabinet, and Tina Green, Analyst, both of the Social Development Policy section of the Privy Council Office. I then met with senior officials of Indian and Northern Affairs: Michael Horgan, Deputy Minister, Jim Lahey, Associate Deputy Minister, Mimi Fortier, Director General, Northern Oil and Gas, and Karyne Besso, Director, Northern Political Development.

On July 29<sup>th</sup>, the last day of the second Ottawa trip, I met with a number of representatives of NTI including Joe Kunuk, Charlie Evalik, John Merritt, Terry Fenge and Leslie Cousins. Also in attendance was Bill MacKay, legal advisor for the government of Nunavut.