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An Interim Commissioner for Nunavut
A Supplementary Report of the
Nunavut Implementation Commission

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I would be pleased to discuss this report with you, or any other work of the Commission, at a convenient time.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Amagoalik', written in a cursive style.

John Amagoalik,
Chairperson

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1. Background

The **Nunavut Act** provides for, but does not compel, the appointment of an Interim Commissioner of Nunavut through federal Order in Council. The statute indicates that any person appointed Interim Commissioner must act in accordance with written directions given by the Minister of DIAND, and that such instructions must be made public. Under the statute, an Interim Commissioner is empowered to do the following:

- * recruit employees for the Government of Nunavut, and prescribe their duties and conditions of employment;
- * establish systems and processes for the Government of Nunavut, including the organization and administration of territorial courts; and,
- * carry out such other functions as may be assigned by federal Order-in-Council.

In addition to these functions, an Interim Commissioner may, with the approval of the Governor in Council, enter into the following kinds of agreements:

- * agreements for the carrying out on behalf of Nunavut of programs previously carried out by the GNWT;
- * funding agreements with the Government of Canada or the GNWT in relation to Nunavut; and,
- * agreements with the GNWT concerning the division of assets and liabilities between Nunavut and the Northwest Territories.

The **Nunavut Act** provides that an Interim Commissioner's ability to bind the Nunavut Government in relation to program delivery and funding will be limited in time.

2. "Footprints in New Snow"

In Chapter 12 of its report, "Footprints in New Snow", the NIC examined a number of practical issues surrounding the role and selection of an Interim Commissioner of Nunavut. This examination resulted in a number of specific recommendations, namely:

"Recommendation #12-1

The NIC recommends that the Governor in Council use the discretion set out in Part IV of the Nunavut Act to appoint an Interim Commissioner of Nunavut prior to April 1, 1999.

Recommendation #12-2

The NIC recommends that the selection of an Interim Commissioner be made in consultation with the GNWT, NTI and the NIC.

Recommendation #12-3

The NIC recommends that an Interim Commissioner of Nunavut take office on or about April 1, 1997.

Recommendation #12-4

The NIC recommends that the written directions given to an Interim Commissioner be developed in consultation with the GNWT, NTI, and the NIC.

Recommendation #12-5

The NIC recommends that an Interim Commissioner exercise powers in consultation with a member of the "Nunavut Caucus" of the NWT Legislative Assembly nominated by members of the Caucus, with the President of NTI, and with the Chairperson of the NIC.

Recommendation #12-6

The NIC recommends that the Office of the Interim Commissioner be located in the community chosen as capital of Nunavut. The Commissioner should have an adequate budget and staff, and the Office of the Commissioner should have a staff presence in Yellowknife and Ottawa. Further work should be undertaken by the NIC, resulting in recommendations at an early date, concerning the relationship between the Office of the Interim Commissioner and the NIC in the period following the appointment of the Interim Commissioner."

In addition to these general recommendations in **"Footprints in New Snow"** concerning the role and selection of an Interim Commissioner, the NIC made a number of recommendations concerning responsibilities of the Interim Commissioner in relation to specific issues, for example:

- * conclusion of a funding agreement concerning the Nunavut Government's first year of operations (Recommendation #11-4);
- * conclusion of an agreement concerning the division of assets and liabilities between Nunavut and the Northwest Territories (Recommendations #11-7 and #11-8); and,
- * communications needs of a Nunavut Government (Recommendation #7-8).

Three inter-related recommendations dealing with the staffing up of the Nunavut Government and the calculation of transitional costs warrant re-stating in their entirety:

"Recommendation #5-12

The NIC recommends that the GNWT complete a comprehensive plan to re-organize itself in preparation for division. This re-organization plan should, to the extent possible, calculate the degree to which positions within the GNWT can be dedicated, entirely or in quantifiable part, to activities within the Nunavut area. The plan should identify those positions that should be re-defined or created within the existing GNWT to assist in the creation of Nunavut; for example, the plan should examine the need to create an assistant deputy minister in relation to preparing human resources for the Nunavut Government. The plan should identify appropriate recruitment and training strategies needed for its implementation. The plan should be completed, at least in preliminary form, and the various implementation measures contemplated in the plan costed out, in time to feed into the federal Cabinet consideration of Nunavut issues that is recommended by NIC for the fall of 1995.

Recommendation #5-13

The NIC recommends that the Interim Commissioner for Nunavut be recognized to play a key role with regards to a number of aspects of phasing, including (1) the offering of employment security to a number of individuals who may be willing to step into senior "Nunavut oriented" GNWT jobs as described in a GNWT re-organization plan, (2) the entering into on behalf of the Nunavut Government with the GNWT of agreements governing the operation of any public sector organizations that are "shared" by the two jurisdictions for at least an initial period following April 1, 1999, and (3) the entering into of

any legal agreements that might be required to adapt to circumstances at variance from assumptions as to phasing that were built into the federal Cabinet review for the fall of 1995.

Recommendation #11-3

The NIC recommends that formula funding arrangements entered into by the GNWT not purport to deal with costs associated with the setting up of the Nunavut Government or with the costs of running the Nunavut Government after April 1, 1999. Costs incurred by the GNWT prior to April 1, 1999, and associated with the setting up of the Nunavut Government should be reimbursed by the Government of Canada through a special purpose agreement (a "Preparations for Nunavut Agreement") separate and apart from the formula funding agreement between the GNWT and the Government of Canada. A Preparations for Nunavut Agreement should have a term that expires 60 days after the appointment of an Interim Commissioner for Nunavut. At that point, the Agreement should be replaced with a tri-partite agreement signed by the Interim Commissioner on behalf of the Nunavut Government, as well as by appropriate signatories of the federal government and GNWT."

The relationships among these recommendations, and their combined implications, are discussed below.

3. Developments Since "Footprints in New Snow"

Since submission of "Footprints in New Snow", the Government of Canada, the GNWT and NTI have had an opportunity to assess its contents, both through inter-party discussions and through internal review. The NIC, at the Commissioners' and officials' levels, has been apprised of some of those inter-party discussions. In addition, the NIC has had bi-lateral contacts with each of the parties.

With respect to the issues associated with an Interim Commissioner, NTI has made its views known through a Board of Directors Resolution (B95-06) adopted in relation to the NIC's report at a meeting in Sanikiluaq, June 19 - 23, 1995. In that resolution, the following position was set out concerning an Interim Commissioner

- " - NTI supports the recommendations of NIC with respect to the appointment of an Interim Commissioner subject to the following conditions:
 - an Inuk be appointed as an Interim Commissioner;
 - the appointment be viewed as a highly administrative apolitical position; and,
 - the appointment be subject to the consent of NTI".

Neither the Government of Canada, nor the GNWT, has expressed its views in relation to an Interim Commissioner as clearly as has NTI. All parties, however, would appear to share a desire to see an Interim Commissioner appointed at least as early as April 1, 1997. While some interest has been expressed in considering an appointment earlier than that date, concern has also been expressed about the potential of an Interim Commissioner to detract from the political responsibilities of the GNWT in the period up to April 1, 1999.

The GNWT is currently in the process of completing its own in-house review of how best to re-organize itself to accommodate creation of Nunavut. This exercise, consistent with the suggestion of the NIC in Recommendation #11-3 of "Footprints in New Snow", is anticipated to be completed by the end of this summer, thereby allowing GNWT re-organizational planning to be factored into the anticipated federal Cabinet reference. The unavailability of the GNWT review at the time of the development of this report means that some of the Commission's thinking concerning the recruitment activities of an Interim Commissioner must, as revealed below, remain speculative.

4. Nature of Interim Commissioner's Work

It is obvious that an Interim Commissioner of Nunavut will be occupying a position that is extremely important.

The Interim Commissioner will be empowered to make a number of key commitments on behalf of the Nunavut Government, most notably in relation to the hiring of senior staff, the striking of inter-governmental funding arrangements to govern initial operations, and the sorting out of assets and liabilities between Nunavut and the Northwest Territories. While some of the powers of the Interim Commissioner will be time limited, the Interim Commissioner's capacity to make binding commitments will be sufficiently extensive to make it everyone's interests that the Interim Commissioner "gets things right".

It is also obvious that an Interim Commissioner of Nunavut will be occupying a position that is an extremely sensitive one.

An Interim Commissioner will be formally appointed by the Governor in Council and subject to written direction received from the Minister of DIAND. As such, an Interim Commissioner could be seen as a "federal agent". Viewing the position purely in that light would, however, fail to capture the subtleties associated with the job.

In the period leading up to April 1, 1999, an Interim Commissioner of Nunavut will be the only public official in Canada with statutory executive responsibilities focused exclusively on Nunavut. While exercise of such executive responsibilities will be shaped by both the broad features of the **Nunavut Act** and any specific directions supplied by the Minister of DIAND, an Interim Commissioner will nonetheless dispose of significant discretionary authority. In using this discretionary authority, an Interim Commissioner will need sound leadership and interpersonal skills and a keen sense of judgement.

While no one would benefit from an Interim Commissioner approaching issues in an overtly politicized or narrowly partisan way, it is inevitable that an Interim Commissioner will need to make some decisions that are unpopular in some quarters. This is particularly so in relation to such things as the division of assets and liabilities, where an agreement must be made between a new Nunavut Government and an on-going GNWT which will exist both before and after April 1, 1999. Accordingly, it would be a mistake to imagine that the role of an Interim Commissioner can be reduced to some set of symbolic, mechanical tasks.

Ideally, an Interim Commissioner of Nunavut would possess the following qualifications and aptitudes:

- * extensive management experience at a senior level, with demonstrated organizational and financial administration skills (preferably, obtained, at least in part, in Nunavut or elsewhere in the North);
- * good negotiating skills;
- * good diplomatic abilities;
- * good communications abilities;
- * knowledge of government design and operations; and,
- * a thorough understanding of national, northern and Nunavut issues.

As in any work involving a high level of innovation and time pressure, a sense of humour might also help.

Since the beginning of its work, Commissioners have, from time to time, heard concerns expressed about "who speaks for Nunavut?". Such concerns have been expressed in relation to a number of circumstances, including the role of an Interim Commissioner. It has been suggested that an Interim Commissioner might somehow undercut the responsibilities of incumbent political leaders and senior public officials in the NWT, either by being some kind of federal "Trojan horse", or by arrogating some kind of public profile that would eclipse all other organizations and individuals working on Nunavut.

From the NIC's perspective, it is unwise to reduce matters of political and administrative legitimacy to zero-sum games. In a federal state such as Canada, the public readily accepts that political authority can be vested simultaneously in a number of places; the allocation of total authority exists only in totalitarian states. In the period leading up to April 1, 1999, as in the process of political development that has taken us to where we are today, progress on Nunavut will require the combined efforts of a number of organizations and individuals with a variety of overlapping and interwoven responsibilities: the Parliament of Canada, the Minister of DIAND and other federal Ministers; an Interim Commissioner; the NWT Legislative Assembly, the GNWT Government Leader and other GNWT Ministers; government officials; NTI and other Inuit organizations; and so on. Elected leaders and officials sharing responsibilities in relation to Nunavut will need to concentrate efforts on achieving a high level of agreement on practical measures to assist in launching Nunavut as successfully as possible, rather than be sidetracked by theoretical fine points as to relative rank or privilege.

5. Selection and Direction of Interim Commissioner

The "Nunavut Political Accord" was concluded on October 30, 1992 by representatives of the Government of Canada, the GNWT and the Tungavik Federation of Nunavut (now NTI) to provide a common set of principles and work agenda for fulfilment of the commitment to create Nunavut set out in Article 4 of the Nunavut Agreement (the Accord is reproduced in Appendix 5 of "**Footprints in New Snow**"). The tri-partite nature of the Accord reflected an awareness that the creation of Nunavut turns on application of the combined energies of the two senior levels of public government in the Northwest Territories and the organization seized with implementing and enforcing Inuit rights under the Nunavut Agreement.

The tri-partite, consensual basis of the "Nunavut Political Accord" provides a useful precedent for resolving how best to go about selecting an Interim Commissioner and supplying direction to him or her. In keeping with that precedent, the NIC recommends as follows:

1. a tri-partite Government of Canada, GNWT and NTI committee should be constituted, as soon as practicable, to begin the process of nominating a person or persons as Interim Commissioner of Nunavut (formal appointment would need to be made by federal Order in Council); and,
2. the same tri-partite Government of Canada, GNWT and NTI committee should be requested to draft written directions to be supplied to an Interim Commissioner of Nunavut by the Minister of DIAND under subsection 71(2) of the **Nunavut Act**.

In "**Footprints in New Snow**", the NIC recommended that an Interim Commissioner be appointed effective April 1, 1997. This means that, in order to find the best candidate, the recruitment process would have to begin by the first part of 1996 (a good argument can be made that, if the best candidate were available --- and perhaps only available --- at some date before April 1, 1997, an appointment effective prior to that date would be preferable). Assuming an Interim Commissioner were to be appointed effective April 1, 1997, a committee developing draft directions for the Commissioner might want to direct the Interim Commissioner to pursue the following tasks and timetables:

- * to consult closely with persons designated by the Government of Canada, the GNWT, and NTI (this might include a member of the "Nunavut Caucus" of the NWT Legislative Assembly nominated by members of the Caucus, a member of the Board of Directors of NTI, and an NIC Commissioner; designated contact persons at a staff level might also be advantageous);

- * to establish and maintain good working relations with relevant officials of the Government of Canada, the GNWT and NTI;
- * to advise the Government of Canada, the GNWT and NTI of any agreements entered into by the Interim Commissioner resulting in binding commitments on behalf of the Nunavut Government, and to supply them with copies;
- * to inform the public as much as practicable as to the work of the Office of the Interim Commissioner and, more specifically, all commitments being made on behalf of the Nunavut Government;
- * on behalf of the Nunavut Government, to negotiate with the Government of Canada and the GNWT with respect to special purpose financial arrangements concerning preparations for the creation of Nunavut, and to seek to conclude an agreement with respect to that matter (this might be a new agreement or an amended version of an earlier bi-lateral agreement between the federal and territorial governments) as soon as practicable following the Interim Commissioner taking office;
- * on behalf of the Nunavut Government, to negotiate with the GNWT with respect to the division of assets and liabilities between Nunavut and the Northwest Territories, and to seek to conclude an agreement with respect to that matter by April 1, 1998; specific portions of that agreement, or separate subsidiary agreements, would deal with the NWT Power Corporation and the NWT Workers' Compensation Board;
- * on behalf of the Nunavut Government, to negotiate with the GNWT with respect to an agreement between the GNWT and the Nunavut Government governing the delivery of any services to the Nunavut Government by the GNWT in the period following April 1, 1999, and to seek to conclude such an agreement by June 30, 1998;
- * on behalf of the Nunavut Government, to negotiate with relevant provincial governments and agencies with respect to agreements governing the delivery of any services to the Nunavut Government by them in the period following April 1, 1999, and to seek to conclude such agreements by June 30, 1998;
- * on behalf of the Nunavut Government, to negotiate with the Government of Canada with respect to a funding agreement between the Government of Canada and the Nunavut Government dealing with the first six months operations of the Nunavut Agreement, and to seek to conclude an agreement with respect to that matter by September 30, 1998;

- * on behalf of the Nunavut Government, to negotiate with the GNWT, the Government of Canada (to the extent applicable), and public sector employee representatives with respect to the conditions of employment of employees of the GNWT who are covered by collective agreements with the GNWT and who become employees of the Nunavut Government, with a view to concluding agreements with respect to such matters by September 30, 1997 (it should be noted that section 72 of the **Nunavut Act** obliges the Interim Commissioner to prescribe employment conditions for Nunavut Government employees that are "consistent with the conditions of employment established by the Government of the Northwest Territories for its employees");
- * on behalf of the Nunavut Government, to negotiate with the GNWT and affected individuals with respect to employment conditions of senior managers who are employees of the GNWT and who become employees of the Nunavut Government, with a view to concluding agreements with respect to such matters by April 30, 1998;
- * on behalf of the Nunavut Government, to negotiate with individuals, not employed in the NWT public sector, who would make suitable employees in the Nunavut Government in its inaugural operations, with a view to concluding a large majority of such employment agreements, particularly at the senior management levels, in the period September 30, 1998 to December 31, 1998; and,
- * to establish a principal office at a designated location and other offices at other designated locations.

With regards both the nomination of a person or persons as Interim Commissioner, and the development of draft directions to an Interim Commissioner, the NIC would be happy to play any facilitating role thought advantageous by the Government of Canada, the GNWT and NTI.

6. Office of an Interim Commissioner

Assuming he or she were to be appointed effective April 1, 1997, the Interim Commissioner would need to "hit the floor running". This would require the Interim Commissioner to assemble quickly a core staff commanding the following areas of in-house expertise:

- * inter-governmental relations;
- * government organization in general, and core territorial government program areas in particular (e.g., social services, community government);
- * information systems;
- * public finances;
- * labour relations;
- * employment, education and training issues; and
- * legal matters.

Based in Nunavut, the Office of the Interim Commission would also likely need liaison officers in Yellowknife and Ottawa, a communications officer, and various support staff. All in, the Office of Interim Commissioner would probably require, practically from its inception, a staff complement of some 15 full-time equivalent positions.

It is safe to suggest that the payroll of the Office of the Interim Commissioner would not need to expand appreciably in the first year of the Interim Commissioner's mandate; there is no compelling reason why even the most senior prospective managers within the Nunavut Government work force (even, for example, a highly specialized employee such as the Clerk of the Nunavut Legislative Assembly) would need to begin salaried, preparatory work towards the creation of the Nunavut Government more than a year before that government would get off the ground. Avoiding offers of immediate employment need not, of course, detract from early confirmation of employment commencing closer to the start-up date for the Nunavut Government; indeed, ideally, all the most senior managers of the Nunavut Government would be "lined up" through binding offers and acceptances of employment well in advance of their actively taking up their new positions.

Predicting the number of people employed by the Interim Commissioner in the twelve months leading up to April 1, 1999, is an uncertain exercise.

According to the government design model set out in **"Footprints in New Snow"**, and assuming a minimum amount of phasing in of administrative capacity in Nunavut, there will be a need to have some 600 additional territorial government positions filled on or shortly after April 1, 1999. From a project efficiency point of view, it could be argued that the most appealing way of accommodating this model would be as follows: successful candidates would be lined up for all 600 employment positions, and offers of employment would be made and accepted by them, well in advance of April 1, 1999; and, all new employees would be able and willing to begin work precisely on April 1, 1999. Whatever the appeal of this approach from a project efficiency point of view, there are a number of compelling reasons why reality will unfold in a different, less tidy, more protracted way:

1. some senior personnel will need to assume responsibilities in advance of April 1, 1999, in order to assist in a smooth transition;
2. the best candidates for some positions may not be available to begin work precisely on April 1, 1999;
3. it may not possible to find suitable candidates for all positions by April 1, 1999;
4. it may not be possible to fill all positions by April 1, 1999, and, at the same time, secure an acceptable ratio of Inuit and non-Inuit employees;
5. an unduly compressed staffing up period might compromise the possibility of transitional arrangements involving orderly reductions in GNWT headquarters employment levels in Yellowknife that would be mutually advantageous to the GNWT and the Nunavut Government;
6. unpredictable developments with respect to the supply of new housing, office space, and other forms of infrastructure may require some adjustments in the start-up dates for some employees; and,
7. the re-organization activities within the GNWT preparatory to division will significantly affect the extent to which an Interim Commissioner has to engage individuals directly in the lead up to the creation of the Nunavut Government.

The first six reasons listed are largely self-evident. The seventh reason warrants further discussion.

Recommendation #5-12 of **"Footprints in New Snow"** urged the GNWT to complete a comprehensive plan to re-organize itself in preparation for division. Such a plan would identify existing and new positions within the GNWT having a primary focus on the Nunavut

area, and establish appropriate recruitment and training strategies associated with those positions. In theory, such a plan could go so far as to result, in the gearing up to April 1, 1999, in a functional division of virtually all GNWT departments and agencies into Nunavut and Mackenzie Valley sections, with senior manager being assigned to each section at the headquarters as well as the regional levels (cost efficiency and other practical considerations would, no doubt, preclude a complete geographic bifurcation of all organizational functions).

A plan along these lines, promptly developed and aggressively implemented, could minimize the need for an Interim Commissioner to engage senior personnel directly. The allocation of legal authority under the **Nunavut Act** means that decisions about who will fill the senior positions within the Nunavut Government must be made by an Interim Commissioner of Nunavut; while respecting legal formalities, however, an Interim Commissioner would be immeasurably better placed to preside over an effective "staffing up" of the Nunavut Government if a comprehensive GNWT re-organization plan generates obvious candidates for senior positions within the Nunavut Government. For example, in the event that, in a re-organized GNWT, a Deputy Minister or Assistant Deputy Minister were to be given the full range of territorial governmental responsibilities for employment and training issues in the Nunavut part of the NWT, the incumbent of that position would be the logical individual to turn to for filling an equivalent position within the Nunavut Government. Emphasizing this approach would lend itself to orderly, timely termination of employment relationships with the GNWT and orderly, timely commencement of employment relationships with the Nunavut Government.

In the event that the GNWT were to take a less ambitious approach to geographic bifurcation of departments and agencies in the run up to Nunavut, it is likely that an Interim Commissioner would need to engage a considerable number of senior managers as temporary employees of the Office of Interim Commissioner, in anticipation of their becoming employees of the Nunavut Government effective April 1, 1999 (the **Nunavut Act** does not foresee an Interim Commissioner administering a payroll directly on behalf of the Nunavut Government).

This report is being written in advance of the NIC obtaining a good sense of the GNWT's views as to re-organization in advance of the creation of Nunavut; this makes it problematic to offer any firm numbers as to the amount of hiring an Interim Commissioner of Nunavut will need to do in the year prior to April 1, 1999. In **"Footprints in New Snow"**, the NIC suggested that an Office an Interim Commissioner might need to employ some 15 full-time equivalent positions in the period April 1, 1997, to March 31, 1998, and an additional 60 additional full-time equivalent positions in the period April 1, 1998, to March 31, 1999 (logic would suggest that the employment aggregated in the form of 60

additional full-time equivalent positions would be concentrated towards the end of the twelve month period). With small variations flowing from the location of the capital of Nunavut, the NIC predicted that the total costs associated with an Office of Interim Commissioner, over a two year period, would be between \$9,589,000 and \$9,758,000 (see pages A-18.22, A-19.22, and A-20.22 of the **"Footprints"** report). At the present time, and in advance of a better sense of the GNWT views as to its own re-organization, the NIC believes these estimates to remain realistic.

Whatever the difficulties and uncertainties associated with an efficient staffing up of the Nunavut Government, every effort should be made to ensuring that --- putting aside such things as organizations that may continue to be "shared" by the Nunavut Government and the GNWT --- the headquarters operations of the Nunavut Government are fully staffed up by the first anniversary of the coming into existence of the Nunavut Government.