

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

**Conciliator's  
Final Report**

March 1, 2006

**“The Nunavut Project”**

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March 1, 2006

The Honourable Jim Prentice  
Minister of Indian Affairs and Northern Development  
Parliament Buildings, Ottawa

Dear Mr. Prentice,

**RE: CONCILIATION**

It is now six years on since the creation of Nunavut.

Nunavut today faces a moment of change, a moment of crisis. It is a crisis in Inuit education and employment, a crisis magnified by the advent of global warming in the Arctic and the challenge of Arctic sovereignty.

The Nunavut Land Claims Agreement that led to the creation of Nunavut is by far the largest of the land claims settlements in the modern land claims era. The territory is vast, covering one-fifth of Canada, extending from the 60<sup>th</sup> parallel to the waters off the northern coast of Ellesmere Island. If Nunavut were an independent country it would be the twelfth largest in area in the world.

Canada signed a land claims agreement with the Inuit of the Northwest Territories on May 25, 1993; it included a promise that a new territory, to be known as Nunavut, predominately Inuit, would be established in the Eastern Arctic.<sup>1</sup> Prime Minister Mulroney, speaking at the signing ceremony, said:

“We are forging a new partnership, a real partnership. Not only between the Government of Canada and the future Government of Nunavut but between aboriginal and non-aboriginal Canadians.”

On April 1, 1999 the new territory came into existence. Canada was proud of this achievement, one distinctively Canadian and exemplifying our nation’s ideal of unity in diversity. We took several bows on the international stage. Prime Minister Chretien said:

“Canada is showing the world, once again, how we embrace many peoples and cultures. The new Government of Nunavut will reflect this diversity, incorporating the best of Inuit traditions and a modern system of open and accountable public government.”

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<sup>1</sup> The promise was contained in Article 4 of the Nunavut Land Claims Agreement, 1993.

Nunavut was to be an expression of Inuit self-determination. For the Inuit of Nunavut, it would be their place on the map of our country.<sup>2</sup> They did not seek an Aboriginal government; instead, the Agreement provided for the establishment of a *public* government in Nunavut, with a franchise extending to all residents, together with complete eligibility for all residents to stand for any public office.

The Government of Nunavut is now up and running. There have been two general elections in the territory. The elected government represents all the people of Nunavut.

Nunavut Tunngavik Incorporated (NTI) represents the Inuit of Nunavut, the beneficiaries with respect to the lands and resources they now hold under the Nunavut Land Claims Agreement. It is responsible for the management of the funds received under the settlement on behalf of the Inuit and, along with regional Inuit organizations, for safeguarding Inuit interests regarding implementation of the Agreement. Since 2002, the Government of Canada, the Government of Nunavut and NTI have been engaged in negotiations to renew the Implementation Contract signed in 1993 (at the same time as the Agreement) to cover the second implementation period, 2003 to 2013.

But Canada, Nunavut and the NTI had been unable to agree on the terms of continuing implementation.

On June 1, 2005, I was appointed as Conciliator by your predecessor.<sup>3</sup> My job has been to explore, with the Parties, new approaches to the implementation of the Nunavut Land Claims Agreement.

In Nunavut and in Ottawa, my counsel<sup>4</sup> and I have heard from government officials from the highest levels through to the rank and file in territorial and federal departments. We have spoken with educators, parents, and students from kindergarten to college and university. We have met with Inuit entrepreneurs and artists, with municipal officials and employees, trainee lawyers, nurses and teachers. We have talked with officers of the RCMP and the Canadian Armed Forces, with hunters and trappers, community elders, linguists and historians.

As Conciliator I dealt first with the arrangements for the ongoing funding of the boards and commissions responsible for the management of land and resources in Nunavut. The members of these boards and commissions (known as Institutions of Public Government) are nominated by Canada, NTI and Nunavut. They are mandated to manage the wildlife, wildlife habitat, water, mineral and marine resources of Nunavut. They engage in land use planning and environmental impact assessment. Theirs is an immense task.

I dealt with the question of funding these Institutions of Public Government in my Interim Report of August 31, 2005. On the basis of my recommendations the parties have found

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<sup>2</sup> Prime Minister Chrétien put it this way:

“Fifty years from now schoolchildren will be reading about this day in their text books...when we redraw the map of Canada and helped achieve the long-promised destiny of the people of the Eastern Arctic.”

<sup>3</sup> The Minister of State (Northern Development), the Premier of Nunavut and the President of NTI jointly recommended my appointment.

<sup>4</sup> Craig Jones of Bull, Housser & Tupper LLP has acted as Counsel to the Conciliator. He has worked closely with me throughout, and has conducted meetings and interviews on my behalf, as well as making an invaluable contribution to the preparation of my report.

themselves able to agree to funding for the work of these boards in the sum of \$15 million per year for the balance of the ten year implementation period 2003 – 2013.

In my Final Report, which accompanies this letter,<sup>5</sup> I have had to deal with a subject of even greater import, a subject with profound implications: Article 23 of the Nunavut Land Claims Agreement. Article 23 lies at the heart of the promise of Nunavut.

Article 23 has, as its stated objective, “to increase Inuit participation in government employment in the Nunavut Settlement Area to a representative level.” Moreover, this objective applies to “all occupational groupings and grade levels” within government. It is an objective which is shared by the Government of Canada and the Government Nunavut.

On its face, Article 23 speaks only to employment in the public service. But I have found that it is impossible to consider Article 23 in isolation. Any examination of the objective – representative levels of Inuit employment – inevitably leads to a consideration of a range of issues implicated in the future of Nunavut, especially in the fields of employment and education.

The population of Nunavut is now approaching 30,000, of whom 85% are Inuit. Under Article 23 the Inuit ought to have 85% of the positions in the public service. The fact is, however, that only 45% of the employees of the Government of Nunavut are Inuit. This figure was more or less achieved early on, as Inuit took up mainly lower level (e.g. administrative support) positions in government, and has not been improved upon for the simple reason that only a few Inuit are qualified for the executive, management and professional positions that make up the middle and upper echelons of the public service. The result is that, although most of the elected members of the Government of Nunavut are Inuit, the great majority of the higher level positions in the public service are held by non-Inuit; in fact, these latter constitute a large part of the 15% of residents of Nunavut who are not Inuit.

The problem is not on the demand side of the equation. The Government of Nunavut has strived mightily to provide opportunities for virtually all qualified Inuit. The problem is that the supply of qualified Inuit is exhausted. Only 25% of Inuit children graduate from high school, and by no means all of these graduates go on to post-secondary education. The types of jobs where the need for increased Inuit participation is most acute – such as the executive, management and professional categories – have inescapable educational requirements.

The language spoken by the Inuit is Inuktitut.<sup>6</sup> Indeed, for 75 per cent of the Inuit, Inuktitut is still their first language spoken in the home, and fully 15% of Inuit (mostly living in the smaller communities) have no other language. Given the demographics of the new territory Inuktitut ought, generally speaking, to be the language of the governmental workplace in Nunavut and the language of the delivery of government services. But it is not. The principal language of government in Nunavut is English. So the people of the new territory speak a language which is an impediment to obtaining employment in their own public service.

The Government of Nunavut has 3200 employees. The Inuit say they are entitled to their fair share of employment in the public service. They rely on Article 23; it is an equity clause – an equity clause not for a minority but for a majority.

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<sup>5</sup> In accordance with the arrangement made at the outset by the Parties, I am sending copies of this Final Report, including this letter, to Premier Paul Okalik and Paul Kaludjak, the President of NTI.

<sup>6</sup> By Inuktitut I mean as well Innuinaqtun, the dialect of the Kitikmeot region, which includes Kugluktuk and Cambridge Bay.

The Inuit live today in 27 isolated communities in a vast land until now accessible only for a month or two in summer, except by air.

Until the post-World War II period, they had made their living for centuries by hunting, trapping and fishing. Today the traditional way of life is still of fundamental importance to the Inuit. But the movement away from the land promoted by Canada - over the past 50 years - into the communities, into a world in which government, schools and bureaucracy are paramount, has been inexorable. As Premier Paul Okalik has said, "Inuit are currently in a transition stage from a land-based (traditional hunting) economy to a modern or wage-based economy."

In Nunavut there is no developed wage economy, no industry. Unemployment is high, averaging 30 per cent but reaching 70 per cent in some communities. As well, many of the Inuit are dependent on income support in some form.

Thus the importance to the Inuit of the Government of Nunavut as employer.

In fact, the Government of Nunavut has decentralized its administration to ensure not only that the territorial government is closer to the people but also that the job opportunities it represents are spread around the territory. But such measures in themselves cannot fulfill the objective of Article 23: the Inuit must have the opportunity for an education that will enable them to take these jobs.

Article 23 therefore raises the question: What has to be done to qualify the Inuit for employment in all occupational groupings and grade levels in their own government? There must of course be near-term initiatives to increase the number of Inuit in the public service. I am recommending some of these measures: An expanded program of summer students and internships in the Government of Nunavut itself, career counselling, and scholarships for apprenticeships and for post-secondary studies.<sup>7</sup> But you can't envisage any way of achieving the objective of Article 23 over the long term unless you start by increasing the number of high school graduates. So it all leads back to the schools, to education, for it is Inuit high school graduates and Inuit graduates of university and other post-secondary programs who will enter the public service. There will have to be major changes in the education system in order to vastly increase the number of Inuit high school graduates; in my view a new approach is required, a comprehensive program of bilingual education.

Canada, represented by Indian Affairs, has in the past adopted the position that it has no further obligations under Article 23, that by conducting a labour market survey and developing plans for Inuit employment and pre-employment training, it has done all that it specifically agreed to do under Article 23. It is true that Article 23 does not say anything about the schools, about education. It is quite apparent, however, that Article 23, which deals with employment, cannot be discussed intelligently without discussing education. The schools are supposed to equip students with the skills to obtain employment. But in Nunavut they have not produced an adequate pool of qualified Inuit. The schools are failing. They are not producing graduates truly competent in Inuktitut; moreover, the Inuit of Nunavut have the lowest rate of literacy in English in the country.

At the meetings we have had, it has become obvious that the status quo is unacceptable, that a strong program of bilingual education must be adopted. The Government of Nunavut, with the

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<sup>7</sup> I also recommend expansion of Nunavut Sivivuksavut, a unique post-secondary program for Inuit students, based in Ottawa.

support of NTI, has argued the urgency of such a program. Indian Affairs has made an altogether positive contribution to the Conciliation process and has worked closely with the other parties and with me in developing my recommendations for consideration by you and your colleagues.

The Government of Nunavut in 1999 inherited from the old Northwest Territories a school curriculum which, while ostensibly bilingual, emphasized English at the expense of Inuktitut. The system is not working.

Today in Nunavut, Inuktitut is the language of instruction from kindergarten through Grades 3/4. In Grades 4/5 Inuktitut is abandoned as a language of instruction, and Inuit children are introduced to English as the sole language of instruction. Many of them can converse in English. But they can't write in English, nor are their English skills sufficiently advanced to facilitate instruction in English. In Grade 4, they are starting over, and they find themselves behind. Their comprehension is imperfect; it slips and as it does they fall further behind. By the time they reach Grade 8, Grade 9 and Grade 10, they are failing (not all of them, to be sure, but most of them). This is damaging to their confidence, to their faith in themselves. For them, there has been not only an institutional rejection of their language and culture, but also a demonstration of their personal incapacity. The Inuit children have to catch up, but they are trying to hit a moving target since, as they advance into the higher grades, the curriculum becomes more dependent on reading and books, more dependent on a capacity in English that they simply do not have.

In Nunavut this reinforces the colonial message of inferiority. The Inuit student mentally withdraws, then leaves altogether.

In such a system Inuktitut is being eroded. Of course, language is only one element of identity, but it is a huge one.

The drop out rate is linked to Nunavut's unhappy incidence of crime, drugs and family violence. Ejetsiak Peter chairman of the Cape Dorset District Education Authority, summed it up for me through an interpreter: "The children who drop out have not developed the skills to live off the land, neither do they have employment skills. So they are caught between two worlds." It is clear that out of this situation has emerged the social pathology that bedevil Cape Dorset and other communities.

The schools reflect contemporary life in Nunavut. In 1995, Rodolfo Stavenhagen, the United Nations' Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, in a report to the U.N. Committee on Human Rights, fairly summed up the condition of Nunavut today. He wrote:

"The overall health of Inuit continues to lag far behind that of other Canadians. Life expectancy is ten years lower than the rest of Canada. Many health indicators are getting worse. Arctic research shows that changes in traditional diets lead to increased health problems, particularly of mental health, characterized by increased rates of depression, seasonal affective disorder, anxiety and suicide. Inuit leaders are deeply concerned that the housing, education, health and suicide situation have reached crisis proportions and are not being addressed by the Federal Government."

So it is not only a question of language. Inuit children live in the most overcrowded, overheated houses in Canada, where one-third to one-half of the children, uniquely susceptible as a race to Chronic Otitis Media, suffer from hearing impairment (the teachers in Nunavut have to use microphones in the classroom) and delayed speech development.

Imagine the odds faced by a student attempting to do homework with 12 or 13 other people in the house (on average, half of them children), perhaps sleeping two, three or four to a room. Nunavut's climate dictates that these tiny homes will be shut tight against the weather for possibly 8 months of the year; virtually every home has at least one resident smoker; oil heating may produce carbon monoxide and other pollutants. The fact that even one quarter of Inuit students graduate from high school is, under the circumstances, a testament to the tenacity of those students, their parents, and their communities.

In my judgement the failure of the school system has occurred most of all because the education system is not one that was set up for a people speaking Inuktitut. It is a bilingual system in name only, one that produces young adults who, by and large, cannot function properly in either English (because they never catch up with the English curriculum) or Inuktitut (because they learn only an immature version of their first language before switching to English).

There has been some improvement in Inuit achievement in school in recent years. There is, however, no steady arc of improvement. In fact, there is a danger of a falling back, a danger that Inuktitut will continue to lose ground, and the sense of loss in Nunavut will become pervasive.

You might ask: why not just teach in English, and let Inuktitut fend for itself as an Aboriginal language for only private use? I have considered this alternative but it is impractical and, moreover, unacceptable. First, because experts on language in schools say that the foundations of language during the crucial early years of education are best developed using the child's native tongue as the language of instruction. In other words, if you want children speaking Inuktitut to develop real skills in English, it is better to focus on Inuktitut to provide a firm anchor of learning during those developmental years. The same is true of scholarship generally. Children who speak aboriginal languages will be better students, and will be more likely to stay in school, if they receive more instruction in their first language. Second, because those graduates who go on to positions of responsibility in government, though they will receive their post-secondary training in English, would nevertheless be required to deliver government services in the language of the community. Third, because Inuktitut is the vessel of Inuit culture. The Inuit are determined to retain their language; it is integral to their identity.

I would add one other reason why we cannot move to an English-only school system: we have tried it before, and we know it doesn't work. In the Indian residential schools, it led to tragedy. In Nunavut today, the schools in Kugluktuk and Cambridge Bay have an all-English program and graduation rates are no better than in the other regions of Nunavut, where an all-English system of instruction prevails after Grade 3.

The only solution is to provide a bilingual system that works.

The Government of Nunavut with the support of NTI proposes, and the experts agree, that we must undertake nothing less than a new program of bilingual education starting in the pre-school years, and from kindergarten through Grade 12. Inuktitut would still be the principal language of

instruction from kindergarten to Grade 3, but it would not be effectively abandoned in Grade 4. Both Inuktitut and English would be languages of instruction right through Grade 12.

The exact distribution of subjects may vary. Perhaps Inuit history, traditions, and culture, the geography of Nunavut, the life of the Inuit in early times, contact with European explorers, the fur trade, the long struggle for their land claim the creation of Nunavut, and their present-day achievements in art, sculpture and film, should all be taught in Inuktitut. Crossover subjects such as social studies could be taught in Inuktitut. It may be that English will be the best choice for teaching science and mathematics.

Nunavut is made up of 27 communities and each community must tailor the system to its particular needs and resources. In Kugluktuk and Cambridge Bay, for instance, where Inuktitut is endangered, the choice may well be immersion in Inuktitut.

There is a shortage of Inuit teachers in Nunavut. Only 35 per cent of teachers speak Inuktitut, and their numbers are slipping due to attrition from retirement, the stresses of the job (particularly for women with families) and the temptations of other careers in the territory, since Inuit teachers are the largest cohort of qualified Inuit in any field. The program I am recommending will require that many more teachers be trained. In the meantime other measures can be taken. There are, for instance, middle-aged and adult Inuit in every community who speak Inuktitut well. They would be given a year of teacher training in the community and would teach Inuktitut in the schools. At the same time, local tradespeople, carvers and sculptors would give classes in their specialties. Life on the land would not be forgotten. Survival skills in danger of being lost would be transmitted in the classroom by veteran hunters. All this while more Inuit teachers are formally trained and introduced, year-by-year, into an expanding bilingual curriculum.

Language “nests,” on the New Zealand model, to engage whole families in the use of Inuktitut, would be introduced. School would become the business of the whole community.

The objective would be, over time, to see high school graduation rates in Nunavut conforming to the rest of Canada.

We are not simply discussing the means by which the Inuit may acquire their fair share of government jobs. As the Inuit graduate from high school and go on to achieve the qualifications necessary to enter the middle and upper echelons of the public service, they will at the same time acquire the skills that will enable them to compete for good jobs in the private sector. Premier Paul Okalik has written that “I firmly believe that education is a key to individual development and future opportunities.” It is my firm belief too. The fulfillment of Article 23 is the means by which the Inuit can be enabled to participate not only in their own government but also in private sector employment.

This is not to say that all Inuit children would be destined for graduation. Many would not. Nor is it to say that Nunavut ought to adopt a wholly academic program. If Inuit youth are going to live off the land or go into a trade, there would be a place for them in school.

The aim would be not to preserve Inuktitut as a cultural artifact but to affirm Inuit identity, to improve Inuit educational achievement. The idea is to strengthen the language that is at risk, but at the same time to improve ability in English.

What we have to get into our heads is that the loss of language and educational underachievement are linked. The strengthening of Inuktitut in the school, the home and the community can bring improvement in achievement in both Inuktitut and English.

The Inuit have decided that this is their only choice, and I believe that it is Canada's only choice. The Inuit have looked to the example of Greenland, where a program designed solely to develop competence in Greenlandic (the Inuit language of Greenland) has produced high school graduates who are not competent in Danish or English, foreclosing any post-secondary study except in Greenland.

Nunavut is the heartland of the Inuit of Canada; a majority of Canada's Inuit live in Nunavut. In Kugluktuk and Cambridge Bay, where English has to a great extent supplanted Innuinaqtun even in the home, parents insist it must be taught in the schools and eventually become a language of instruction. They firmly believe, however, like the Inuit throughout Nunavut, that their children must be competent in English also, since it is the language which enables them to speak to Canada and the world. And they understand it will continue to be used in the Government of Nunavut, especially in scientific and technical fields. But it will be replaced, over time as the principal language of government, by Inuktitut.

Why, it may be asked, hasn't the Government of Nunavut gone ahead with such a program? Well, it is a government that was organized only a few years ago. But the main reason is that the Government of Nunavut is not in a position to undertake such a program because *it cannot afford it*.

Such a program and the specific near-term initiatives that I am recommending go well beyond Nunavut's ordinary budget requirements for education and development of human resources. The Government of Nunavut must play its part, but the lion's share of the costs must be borne by the Government of Canada.

Neither in 1993 nor in 1999 was the magnitude of the task apparent. We erected a new government for a people speaking Inuktitut, but who were to be integrated into the life of a predominantly English and French speaking country. It was believed that we could achieve 85 per cent Inuit employment by 2008. All have now agreed that the target date ought to be 2020, but it is a target that can only be reached if we act now.

To establish a program of true bilingual education and to enable the Inuit to gain their fair share of places in the public service will be a major undertaking. But what did we expect? When we agreed to the establishment of Nunavut, it cannot have escaped our notice that the overwhelming majority of the people of the new territory would be Inuit, speaking Inuktitut.

Nunavut is a unique jurisdiction in Canada, a territory whose population speaks a language which is not predominantly English or French. No other province or territory has a majority of Aboriginal people speaking a single language.

In the late 1960s, the Royal Commission on Bilingualism and Biculturalism (the B & B Commission) warned us that French-speaking Canadians had to be given an opportunity to

occupy their fair share of places in the public service of Canada and that their language and their communities should be given an opportunity to flourish throughout Canada.

The B & B Commission found that Francophones did not occupy in the higher echelons of the federal government the places their numbers warranted; that educational opportunities for the francophone minorities in the English-speaking provinces were not commensurate with those provided for the English-speaking minority in Quebec, and that French-speaking Canadians could neither find employment in nor be adequately served in their own language by the federal government.

The resemblance to the situation in Nunavut today is striking.

After the report of the B & B Commission, a series of measures followed, including the *Official Languages Act* of 1969, promotion of bilingualism in the federal public service, and in 1982 the adoption of Section 23 of the *Charter of Rights*, which provides a constitutional guarantee for minority language schooling throughout the country “where numbers warrant.”

The Government of Canada has acknowledged that such expenditures are a federal responsibility.

So much was required for one of Canada’s two founding peoples.<sup>8</sup> No one now disputes the wisdom of the measures taken: Francophones should be, as Prime Minister Pearson argued at the time, “at home” in their own country. So should the Inuit.

Just as there had to be measures to enable Francophones to take their rightful place in the public service of Canada, and to promote and sustain the use of French, so also in Nunavut today there must be measures to enable the Inuit to take their rightful place in the public service of Nunavut and to promote and sustain the use of Inuktitut.

This is not to say that Inuktitut should be one of the official languages of Canada. It is to say, however, that the principle observed, the model adopted as a result of the work of B & B Commission, the type of programs undertaken to promote bilingualism in the federal government and to encourage and sustain French in schools in the English-speaking provinces, ought to be a useful guide to enable us to ensure that Inuktitut, the spoken language and the written language of the Inuit,<sup>9</sup> should be encouraged and sustained in the schools, and in the public service.

The program I am recommending will require funding over and above the subsidy provided to Nunavut under the present Territorial Formula Financing arrangements. The Government of Nunavut has costed the near-term initiatives that I am recommending. As far as costing the proposed comprehensive program of bilingual education is concerned, there will have to be further discussions between Nunavut and Canada.

PricewaterhouseCoopers reported in 2003 that if the Inuit occupied their proportionate share of the posts in the public service, they would enjoy a net gain annually of \$72 million. That is how much would go into their pockets. The same report estimated that government would also save tens of millions of dollars per year in costs such as those associated with the recruitment, hiring,

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<sup>8</sup> There is a small but thriving Francophone community in Iqaluit, the capital of Nunavut. Numbering 400, they have received \$5 million to build a new school in Iqaluit, and \$4 million dollars per year in funding for the promotion of French.

<sup>9</sup> The written form of Inuktitut has existed for a century. It is a system of syllabics, a phonetic system. The Innuinaqtun dialect is written using a Roman orthography.

and training of non-Inuit (mostly imported at considerable further expense from the South) for the same positions.<sup>10</sup> These are substantial sums, amounting together to perhaps \$97 million annually.

A much greater social cost will, however, await as if we do not act now.

The statistics relating to social pathology in Nunavut may seem bloodless on the page, but they represent a social catastrophe in the making, the loss of a whole generation.

All of this is occurring in a suddenly altered Arctic landscape and seascape.

The Arctic is the epicentre of global warming. The shrinking of the Arctic ice represents a threat to polar bears, seals, the whole range of Arctic marine mammals and wildlife - a threat to the traditional Inuit way of life. The evidence of climate change in the Arctic is accumulating day by day. In my travels in the Arctic in 2005 I have seen it. The permafrost is melting. The ice in the rivers goes out earlier, greater snowfall is impeding the migratory routes of the caribou, supply vessels are reaching Iqaluit and other communities measurably earlier. If present warming trends continue, the Arctic landscape could be greatly altered by 2020.

The Northwest Passage and the other passages through the Arctic archipelago may within ten or fifteen years be open to year-round navigation. Or it may be a more distant prospect. But it is coming. In any event with global warming the Arctic and the Arctic Islands are likely to be more accessible to oil and gas exploration and production, intensive development of mining and the establishment of navigation, ports and other infrastructure – all may occur in Nunavut sooner than anyone now reckons.

This makes even more urgent the kind of program I am recommending. Whatever the future climate and economic prospects of Nunavut may be, the Inuit have to be ready to play their part. In education lies that readiness.

From the earliest days the exploration of the Arctic by Europeans was carried on in partnership with the Inuit. They were partners in the whaling industry and the fur trade. The Inuit were then as they are today the permanent inhabitants of the Arctic – the people who were born there and will spend their lives there.

In 1993 the Inuit of Nunavut surrendered their Aboriginal title to Canada. This was of the first importance to Canada. Indeed, Canada acknowledged in 1993, when it signed the Nunavut Land Claims Agreement, “the contributions of Inuit to Canada’s history, identity and sovereignty in the Arctic.” The presence of the Inuit, their occupation of the land since time immemorial, the surrender of their Aboriginal title to Canada, the establishment of Nunavut and today their participation in the Canadian Rangers, keeping watch on our northern fastnesses, have been instrumental in strengthening Canada’s identity and its sovereignty in the Arctic.

For the Inuit, the advance of the industrial frontier coupled with the possibility of the loss of traditional resources, reveals how compelling it is that the Inuit should be able to equip themselves with education and training for employment. Climate change shows no sign of abating; its impact on the Inuit, their homeland and therefore on Canada will continue; perhaps at an accelerated pace.

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<sup>10</sup> Studies have shown that, on average, locally recruited Inuit employees stay at their jobs almost twice as long as non-Inuit workers recruited in the South.

The program I have laid out here is an ambitious program, and a costly program. The specific initiatives that I am recommending for the near term have been costed at approximately \$20 million per annum. I have no doubt that, once a program of bilingual education is up and running it too will be expensive. But if we treat these measures as an integral part of an Arctic strategy, the costs can at once be placed in perspective. And I cannot see an alternative. If we fail to achieve the objective of Article 23, such failure would represent a fundamental breach of faith.

It must be obvious that the program of bilingual education, conceived by the Government of Nunavut and extending well beyond the subject of land and resources, cannot be shoehorned neatly into Article 23. It cannot be administered under the Nunavut Land Claims Agreement. The funding will have to come from Ottawa. The program will have to be delivered by the Government of Nunavut. There will have to be a performance audit by an independent committee. It must be understood, however, that it will take time to achieve results.

The steps needed to assert Canadian sovereignty in the Arctic will have to be measured over decades as the ice recedes. The establishment of infrastructure and the utilization of resources will be a long-term proposition. A unified Arctic strategy for sovereignty and industrial development must be founded on the long-term interests of the Inuit, which I believe can best be served by the program I am recommending.

Our relationship with the Inuit of Nunavut is still unfolding. Settlement of land claims was the first major step in decolonization. I think the emphasis must now be on education and employment.

The public service of the Government of Nunavut must be representative of the people of the territory. The task of administering and developing the land and resources of this vast area is one in which the Inuit must be qualified to participate.

This is not to say that life on the land will be lost. Inuit children will still learn about their own history in school, survival skills will still be taught. The links to tradition are still there and must not be severed.

The program cannot only be top-down. It must be a project in which all of Nunavut takes part – the Nunavut Project if you will. The Nunavut Project must involve all the people of Nunavut, not just teachers and students. Inuktitut must continue to be spoken in the home and in the communities. It cannot be a language used only in school. The Inuit will be enlisted, many of them, to teach Inuktitut, to bring their own skills into the classroom. There will have to be more Inuit teachers with bachelors' and masters' degrees than ever before. Elders must pass on the language. Parents must make sure the whole family enters the language nests. Parents will have to do more to keep their children in school.

The non-Inuit in Nunavut will, I believe, wholeheartedly support the program. Many do not expect to remain in the territory throughout their lives. But they all believe in the future of the Inuit and of Nunavut. Inspector John Henderson of the RCMP spoke for all of them when he told me that we must not allow this “glorious experiment” to miscarry.

Can it be done? Can Nunavut turn out graduates fluent and literate in Inuktitut and English?

Every Canadian must be aware of Inuit achievements in art and sculpture, in film and performance arts, achievements for which the Inuit have won international renown. The Inuit are a bright tile in the Canadian mosaic. Why not Inuit bilingualism? Why not an Inuit literature?

I believe Canadians will support this project – the Nunavut Project. They realize that no affirmation of Canada's Arctic sovereignty will be complete unless the people of the Arctic – the Inuit – are partners in the task.

Our ideas of human rights, of strength in diversity, of a northern destiny merge in the promise of Nunavut. It is a promise that we must keep.

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  
Conciliator  
Vancouver, March 1<sup>st</sup>, 2006























## I. INTRODUCTION

### A. My Mandate

I was appointed on June 1, 2005 as Conciliator by the Minister of Indian Affairs and Northern Development, pursuant to an agreement reached by the Minister of State (Northern Development), the Premier of Nunavut, and the President of Nunavut Tunngavik Inc. (the representative body of the Inuit of Nunavut, known as "NTI"). My job is to recommend new approaches to the implementation of the Nunavut Land Claims Agreement, signed in 1993.

Every land claims agreement has to be implemented. The parties have to work out how they are going to do the things agreed. In 1993, in accordance with Article 37.2 of the Nunavut Land Claims Agreement, the Parties to the Agreement had developed an implementation plan which, under Article 37.2.3, was consolidated into a contract.<sup>1</sup> This Implementation Contract identified the projects and activities required to implement the Agreement, including the identification of the responsible Party for implementing each of the provisions, time frames for implementation, and required funding levels for, among other things, the Institutions of Public Government (the boards and commissions set up under the Agreement).

Article 37 of the Nunavut Land Claims Agreement required the establishment of a Nunavut Implementation Panel<sup>2</sup> to oversee and provide direction and oversight for the implementation of the Agreement. The Implementation Panel was also required to take the initiative to renew the Implementation Contract.

In accordance with these provisions, in March 2001 the Parties established a working group to develop recommendations to the Implementation Panel on levels of funding for implementation of the Agreement during 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*.

After that, negotiations stalled, resulting in uncertainty as to ongoing implementation, and uncertainty in particular over two issues: funding levels for the Institutions of Public Government established under the Agreement, and Canada's responsibility, if any, for further steps to ensure improvement in the level of Inuit employment in the public service of Nunavut under Article 23 of the Agreement.

In May, 2005, Ethel Blondin-Andrew, the Minister of State (Northern Development), 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.

On May 22, 2005, the Director General, Implementation Branch, Department of Indian Affairs and Northern Development, provided me with a Background Note on the Status of Negotiations

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<sup>1</sup> At the time, the Parties to the Agreement and 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.

<sup>2</sup> Article 37.3.2 provides:

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].

and a memorandum regarding the scope of the Conciliation process. 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.

There was indeed a “current impasse”; in fact, the Parties had opened negotiations in 2002 and at the time of my appointment in 2005 had been unable to agree on a single item.

According to the Background Note, 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.”

Early on in the process, I determined that there were two main areas of dispute between the Government of Nunavut and NTI, on the one side, and the Government of Canada on the other. The first issue concerned the appropriate level of funding to be provided for the Institutions of Public Government established under the Nunavut Land Claims Agreement and funded by Canada. The initial funding levels were established in the Implementation Contract in 1993: the question now was, what ought to be the appropriate levels of funding for the next 10-year period, from 2003 to 2013?

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

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. Another series of meetings were conducted by my Counsel in Cambridge Bay, Arviat, Rankin Inlet and Iqaluit from September 14<sup>th</sup> to 24<sup>th</sup>.<sup>3</sup> I met with Heritage Canada officials in Winnipeg on October 6<sup>th</sup>, and with the Parties again in Ottawa in the week of October 24<sup>th</sup> through 28<sup>th</sup>. I conducted a series of meetings in Cape Dorset and Iqaluit from November 28<sup>th</sup> to December 2<sup>nd</sup>. I then traveled to Kuujuuaq, Nunavik to meet with officials of the Kativik Regional Government and Kativik School Board on January 16 & 17, 2006, and then to Toronto on the 18<sup>th</sup> and 19<sup>th</sup> of that month where I met with Professors Ian Martin of York University and Jim Cummins of the University of Toronto, experts in the field of bilingual education.

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<sup>3</sup> Craig Jones of Bull, Housser & Tupper LLP has acted as Counsel to the Conciliator. He has worked closely with me throughout, and has conducted meetings and interviews on my behalf, as well as making an invaluable contribution to the preparation of my reports.

A simple recitation of the meeting dates does not, I think, adequately describe the full extent of the discussions I have had. In Nunavut and in Ottawa we have heard from government officials from the highest levels through the rank and file in territorial and federal departments. We have spoken with educators, parents, and students from kindergarten through college and university. We have met with Inuit entrepreneurs and artists, with municipal officials and employees, lawyers, nurses and teachers. We have spoken with officers of the RCMP and the Canadian Armed Forces, with hunters and trappers, community elders, linguists and historians.

The materials that I have reviewed are voluminous, covering proposals and counter-proposals exchanged by the Parties between May 2001 and November 14, 2004 as well as extensive briefs presented to me at the meetings held in 2005 and 2006. I have also reviewed much of the published and unpublished literature on the Nunavut Land Claims Agreement and the establishment of Nunavut.

Throughout, all Parties have given me their complete co-operation.

I submitted my Interim Report to the Parties on August 31, 2005. It dealt primarily with the question of the appropriate level of funding for the Institutions of Public Government. I wrote at the time that the question of the implementation of the objective of Article 23, i.e. representative Inuit employment in the public service of Nunavut, would be reserved for my Final Report.

## **B. Progress Since The Interim Report**

Following the issuance of my Interim Report at the end of August, 2005, the Parties resumed discussions on the basis of the recommendations I had made in that Report: they related mainly to funding for the Institutions of Public Government and improving the dispute resolution process. Initially little progress was made, and I became concerned that the process was in danger of slipping back into the earlier pattern of deadlock.

I met with the Parties in early December in Iqaluit, encouraging them to move more swiftly on the issue of funding for the Institutions of Public Government. The Parties then designated representatives to a new Working Group who met throughout that month by teleconference and email. On December 21<sup>st</sup> the Working Group - David Akeeagok for the Government of Nunavut, John Bainbridge for NTI, and Damon Rourke for the Government of Canada – came to a consensus, and sent the Group's recommendations to the Implementation Panel. The members of the Panel, David Akoak for the Government of Nunavut, Charlie Evalik for NTI, and Terry Sewell for the Government of Canada, met on January 24<sup>th</sup> and agreed on a position which was reduced to written form on February 6, 2006. The consensus, which provided for an increase to \$15 million per year for the budgets of the Institutions of Public Government<sup>4</sup> (an increase of approximately \$2 million per year) took into full account the recommendations in my Interim Report.

The resulting report of the Implementation Panel proposes specific adjustments to ongoing implementation funding for the Institutions of Public Government, as well as proposals for moving forward in the following areas: structural reforms of the Implementation Panel itself; implementation funding for the Government of Nunavut; a General Monitoring Plan; a fund to be administered by the Implementation Panel to help address issues such as capacity and

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<sup>4</sup> The increased levels apply only to the remainder of the 2003-2013 implementation period. Funding for the interim 2003-2006 levels (during the time when no agreement had been reached) was based on the latest offer made by Canada prior to the Conciliation.

governance of the Institutions of Public Government; and new approaches for use by the Implementation Panel in resolving outstanding disputes.

I believe the significance of the Working Group's achievement goes well beyond agreement on the figures. The Implementation Panel's proposals are not only consistent with my own in the Interim Report, but they (and the Working Group) went further and developed recommendations for improving the process in the future. Most importantly though, the Parties, through the Working Group and the subsequent Implementation Panel consensus, evidenced a new spirit of cooperation that ought to form the basis of a new relationship.

I endorse the report of the Implementation Panel. I have attached as an Appendix to this Report the letter from the Panel dated February 6, 2006 and the report to which it refers.

The funding issues are of the first importance; as a subject of this Conciliation, they have now been resolved.

This is my Final Report. It contains my recommendations regarding Article 23 of the Nunavut Land Claims Agreement, recommendations relating to the future of employment and education in Nunavut.

## II. OVERVIEW

### A. “Our Land”: The Inuit and the Establishment of the Canadian Arctic

No brief summary can do justice to the history of Nunavut, which means "Our Land" in Inuktitut, the Inuit language.<sup>5</sup> Nevertheless, something must be said about the 400-year relationship between the Inuit and the Crown, so that the context of the present negotiations can be understood and the dimensions of the present crisis appreciated.

Canada's Arctic region consists of the continental territories 'North of 60' and the huge cluster of islands that run from about 70 degrees North toward the Pole. For much of the year, polar ice covers most of the waterways in the far North, forming a solid white landscape from the edge of the continent to the North Pole. In the summer, much of the ice breaks up and the Arctic ice retreats, leaving most of the islands accessible by sea for at least one month of the year. In the last decade, however, we have observed, occurring quite suddenly, climate change that has substantially reduced the Arctic ice cover.

Inuit means "the people" in Inuktitut. In its modern form, the term refers to the Inuvialuit and Copper Inuit of the western Arctic, the Netsilik and Caribou Inuit of the central Arctic, the Iglulik and Baffinland Inuit of the eastern Arctic, the Ungava Inuit of northern Quebec, and the Labrador Inuit. The Canadian Inuit also share cultural and linguistic roots with the Inuit in Greenland, Alaska, and northeastern Siberia.

Prior to European contact, and indeed for most of the 400 years since, the Inuit lived in small nomadic multi-family hunting groups, migrating according to the seasons and the movements of the animals upon which they relied. In summer, the Inuit hunted the herds of caribou and fished in inland rivers and lakes, and put to sea in open boats to harvest whales. In winter, most Inuit lived at water's edge, hunting seals through holes in the ice and often traversing vast areas of the arctic floes in kayaks and open boats. Arctic hare, fox, muskoxen and walrus were also hunted for food and skins, and the Inuit diet was supplemented by eggs, shellfish, seaweed and berries.

The Inuit developed a sophisticated language, Inuktitut, in which they stored their collective knowledge and history. A defining characteristic of their society, which has served them well, is a deeply ingrained ethic of *Ningiqtuq*, or sharing.

The appearance of white people in the North was spearheaded by explorers, then fur traders and whalers. The clergy followed, offering salvation and schooling; then came representatives of government. In this the North resembles the pattern of historical development throughout Canada.

Volumes have been written about the history of the Arctic, especially the period of exploration beginning with Martin Frobisher's 1580 expedition. When you place the history of Western contact with the Inuit in its unique perspective, it is very much a story of a partnership – not always an equal partnership, to be sure – between, on the one hand, explorers, fur traders, and the Crown, and on the other, the Inuit.

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<sup>5</sup> I generally use "Inuktitut", which means "like the Inuit", to encompass not only Inuktitut but also Inuinnaqtun, a variant spoken in the Kitikmeot Region of Nunavut.

The particular skills of the Inuit as hunters, trappers and guides made the Inuit a crucial part of successful exploration expeditions, of the Northern fur trade and, while it lasted, of the whaling industry. The Inuit guided Southern visitors safely on their travels; they hunted, fished and trapped to feed them; they built their snow-houses, they sewed the clothing that permitted their survival. They taught, when their guests were willing to learn. It is not fanciful to suggest that, but for the historical contribution of the Inuit, there would be no Canadian Arctic, and without the Canadian government, there would be no Nunavut. The Canadian adventure in the Arctic was always a joint venture.

The 1920s saw the establishment of a number of Royal Canadian Mounted Police posts in the High Arctic. The RCMP and their Inuit companions undertook extraordinary feats of navigation and endurance, as when the guide Nookapingwa led Inspector A.H. Joy, Constable Taggart and two dog teams 1700 miles from Dundas Harbour to Winter Harbour on Melville Island, then eastward to the Bache Peninsula by way of Loughheed, King Christian, Ellef Ringnes, Cornwall, and Axel Heiberg Islands in 1929. Other Inuit names from the period are equally illustrious: Eetookashoo, Kahdi (Peary's son), Quavigarsuaq, Kahkacho, Inuetuk and Seekeeunguaq were some of the Inuit who traversed thousands of miles with RCMP officers by dogsled and boat in search of the ill-fated Kruger expedition in the 1930s.<sup>6</sup>

In 1944, on the St. Roch's second voyage, Captain Henry Larsen transited the Northwest Passage in one season. Joe Panipakoocho acted as guide, interpreter and hunter for the expedition. In fact the whole Panipakoocho family, eight in all, accompanied the RCMP, living in a tent on the cargo hatch.

Predictably, exploration gave way in many cases to exploitation, and many Inuit (even those who had only very infrequent contact with Southerners) became increasingly dependent on international markets for their economic wellbeing. And yet for the majority of Inuit, well into the twentieth century, life was still traditional, based on the same multi-family, usually nomadic groups which had engaged in harvesting for centuries.

Prior to the Second World War, the intrusion of Canadian authority into the Arctic was a minimalist affair, with a handful of RCMP officers, bureaucrats and Hudson's Bay Company employees manning small outposts in the region. While treaty-making proceeded with the Indians in the Mackenzie Valley and the Western Arctic, no corresponding attempt was made to treat with the Inuit with respect to their own immense lands in the Eastern Arctic. Canada did not set aside reserves for the Inuit, who were nevertheless regarded, if unofficially, to be wards of the federal government but were not brought under the *Indian Act*.<sup>7</sup> In 1936, the Inuit were designated as a responsibility of the new Department of Mines and Resources. In 1939, in *Re Eskimos*,<sup>8</sup> the Supreme Court of Canada held that the Inuit were "Indians" within the meaning of Section 91(24) of the *Constitution Act, 1867*, placing it beyond doubt that under the Constitution they were under the jurisdiction of the federal government.

After World War II, a sea-change occurred in Inuit life which threatened to forever alter the nature of their relationship with Canada, replacing what had been a period of partnership with a period of intensified colonization which threatened the heart of Inuit culture. The reasons for the postwar crisis are many and I need only touch on a few well-known historical events.

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<sup>6</sup> P. Schledermann, "The Muskox Patrol: High Arctic Sovereignty Revisited" (March 2003) 56 *Arctic* 101.

<sup>7</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 pp. 7-10.

<sup>8</sup> [1939] S.C.R. 104.

The end of World War II, and the resulting abundance of skilled and adventurous pilots, flying new and sturdy aircraft equipped as necessary with wheels, skis or floats, made travel to (and supply of) all but the most remote areas a year-round reality. Frobisher Bay airport, originally developed for the supply of Europe by the United States Air Force in World War II, became the main gateway to the Baffin region.

At the same time, the coming of the Cold War meant that the Arctic was suddenly central to strategic planning: the threat to North America of a Soviet attack over the North Pole led to the creation of the Distant Early Warning (DEW) Line of radar installations stretching along the 70<sup>th</sup> Parallel from Alaska to Greenland. Military aircraft patrolled the Arctic airspace, and nuclear submarines were known to cross the North Pole under the ice. The Canadian Armed Forces formed the Canadian Rangers, an Aboriginal-based reservist organization, and instituted a regular program of light infantry patrols to reinforce claims of Canadian sovereignty over the Arctic. These manoeuvres supplemented the joint RCMP-Inuit dogsled patrols that had been crisscrossing some of the most dangerous terrain for decades. In Nunavut today, sovereignty patrols are mainly conducted by Inuit members of the Canadian Rangers.<sup>9</sup>

Communications, previously limited even in the wireless age, became instantaneous with the advent of the satellite. As the North became accessible, so did its resources: fur traders, fishers and soldiers were followed by prospectors and geologists, although by the close of the 20<sup>th</sup> century their efforts had not in the Eastern Arctic led to the same enthusiasm for oil, gas and mineral exploration and development that has characterized much of the Western Arctic.<sup>10</sup>

For the Inuit, the postwar period was marked by a series of events which brought economic and social distress. In 1949, the Arctic fox fur market collapsed, depriving many of the Inuit, who had used their hunting and survival skills to good effect as trappers, of their main source of income. In the 1980s, the European Community's ban on the import of Canadian seal pelts delivered a devastating financial blow to Inuit who had relied on sealing.

Regular contact between the Inuit and Southerners in the postwar period increased the incidence of epidemic disease. Influenza, tuberculosis, typhus and polio became at times widespread, and the ravaging of the population (and the federal government's apparent inaction) became the subject of outrage in Canada. Soon, the efficient provision of medical services became a primary goal of the official Canadian presence in the North. This, together with the introduction of formal schooling, facilitated Canada's policy of encouraging the Inuit to move away from traditional life on the land into the settlements.

A host of social and economic problems followed the shock of these changes. In *The Road to Nunavut*, R. Quinn Duffy wrote in 1988:

The chapters that follow chronicle the last 40 years of cultural near-extinction of the Inuit, from the years of the Second World War to the 1980s. During those 40 years the Inuit have sunk as low as any people could in dirt, degradation, disease and dependence.<sup>11</sup>

<sup>9</sup> For an account of one such patrol, see Chris Nuttall-Smith, "Ice Warriors: Why Canada's puny force of Inuit rangers just might prevent the world's superpowers from controlling the Arctic", *Toro*, Oct. 2005 at pp. 44 to 52.

<sup>10</sup> It should be noted that recently there has been greatly increased interest in mining properties in Nunavut and, in particular, a proposal for a port for shipment of ore at Grays Bay, 175 kilometres East of Kugluktuk.

<sup>11</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).

The postwar history of colonization of the Inuit, which followed a path that many contemporary commentators saw as one of inexorable cultural decline, highlights the remarkable character of the Inuit achievement in recent decades. Duffy's account goes on to describe the second characteristic change of the period he was chronicling: the emergence of the Inuit as a people. He continued:

But with that tenacity of spirit that sustained them through thousands of years in the harshest environment on earth, they are fighting to regain their cultural independence, their self-respect, their identity as a unique people in the Canadian mosaic. And they are winning.

In a single generation, the Inuit forged a political cohesiveness previously unimagined. Where once the Inuit were dispersed in small, isolated and nomadic groups, advances in travel and communications and the gathering of the people into the settlements led to the development of what has been referred to, not inaccurately, as a sense of "Inuit nationalism".<sup>12</sup>

It was this political cohesiveness and increasing confidence that enabled the Inuit, between 1976 and 1993, to negotiate a new partnership with Canada, a comprehensive settlement of land claims that is unique in North America.

## **B. The Nunavut Land Claim**

The Nunavut Land Claims Agreement signed in 1993 is by far the largest of the four land claims agreements reached between Canadian governments and the Inuit.<sup>13</sup> It covers one-fifth of the Canadian land mass, an area twice the size of Ontario. 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 and subsurface rights 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 in negotiations. In 1990, the Tungavik Federation of Nunavut, the Government of Canada and the Government of the Northwest Territories 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, and the Tungavik Federation of Nunavut was succeeded by the Nunavut Tunngavik Incorporated.<sup>14</sup>

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<sup>12</sup> Marybelle Mitchell, *From Talking Chiefs to a Native Corporate Elite: The Birth of Class and Nationalism among Canadian Inuit* (Montréal: McGill Queen's University Press, 1996).

<sup>13</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, Canada and Quebec. At the same time, the Grand Council of the Cree signed a companion land claims agreement with Canada and Quebec. 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 Canada and Newfoundland & Labrador, finalized the Labrador Inuit Land Claim Agreement, which was signed on January 22, 2005, and came into force on December 1, 2005.

<sup>14</sup> Nunavut Tunngavik Incorporated is a federal not-for-profit company. As successor to the Tungavik Federation of Nunavut, it has the responsibility of representing the Inuit as a Party to the Nunavut Land Claims Agreement. Its mandate is to ensure that the rights of the Inuit of Nunavut, as derived from the Agreement and other sources, are respected. NTI also pursues a variety of policy and program initiatives aimed at improving the economic, social and cultural conditions of Inuit. NTI is a member of Inuit Tapiriit Kanatami, the national Inuit organization.

The Nunavut Land Claims Agreement for the first time explicitly recognized “the contributions of Inuit to Canada's history, identity and sovereignty in the Arctic”. The Preamble to the Agreement states four objectives shared by the Parties to the Agreement:

to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore;

to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting;

to provide Inuit with financial compensation and means of participating in economic opportunities; [and]

to encourage self-reliance and the cultural and social well-being of Inuit[.]

Hicks & White summarize the Agreement as follows:

At the heart of the Nunavut Land Claims Agreement is a fundamental exchange between the Inuit of Nunavut and the federal Crown. For their part, the Nunavut Inuit agreed to surrender "any claims, rights, title and interests based on their assertion of an aboriginal title" anywhere in Canada (including the Nunavut Settlement Area - the area to which the terms of the land claim apply). In return, the Agreement set out an array of constitutionally protected rights and benefits that the Inuit of Nunavut will exercise and enjoy in perpetuity.<sup>15</sup>

The terms of the Agreement are set out in 41 articles. The Agreement recognizes the 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. The Inuit have priority rights to harvest wildlife for domestic, sport and commercial purposes throughout all the lands and waters covered by the Agreement. The Inuit (through NTI) also received financial compensation in the form of capital transfer payments of \$1.148 billion payable over a 14-year period. There is no provision for distribution of this fund to individual Inuit. It is held in trust to be used for programs for the benefit of Inuit beneficiaries.

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NTI has a principal office in Iqaluit and other offices in Rankin Inlet, Cambridge Bay and Ottawa. The executive officers of NTI are elected directly by Inuit voters. Other members of its Board of Directors are made up of elected leaders of the three regional Inuit organizations in Nunavut, the Kitikmeot Inuit Association, the Kivalliq Inuit Association and the Qikiqtani Inuit Association. The three regional Inuit organizations carry out important implementation responsibilities under the Agreement and are also democratically constituted with accountability to Inuit communities and voters.

Some of NTI's programs and initiatives since 1993 have included: the operation of a support program for hunters; income support for elders; scholarships; financial contributions to economic development agencies; the setting up of the \$50 million Atuqtuarvik corporation to provide Inuit with business loans and equity investments; assistance in the financing of new regional health facilities; the co-management, with regional Inuit organizations, of Inuit owned lands; and the legal defence of Inuit hunting rights in the application of federal firearms legislation.

<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: International Work Group for Indigenous Affairs, 2000) at p. 33.

Under the Agreement the Inuit share in royalties collected by Canada 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 Agreement provides for the establishment of Institutions of Public Government (Article 10.1.1(b)) and through these same institutions for co-management by the 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 whose members are nominated by NTI, the Government of Canada and the Government of Nunavut. The Nunavut Surface Rights Tribunal, although not a co-management board,<sup>16</sup> is created pursuant to the Agreement (Article 21), with jurisdiction mainly with respect to disputes over access to lands and related matters, including compensation payable for access and consequent environmental harm.

Under the Agreement an Arbitration Board was 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 for Nunavut. 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 mainly non-Inuit) Western Arctic. Nor, however, did they seek an Aboriginal 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 Northwest Territories 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.

### **C. Nunavut Today**

The population of Nunavut is today approaching 30,000, of whom 85 percent are Inuit. Even this figure, however, does not do justice to the dominance of the Inuit presence in the Territory: outside the larger centres of Iqaluit, Rankin Inlet and Cambridge Bay, the percentage of Inuit approaches 95 per cent. Approximately half the population of Nunavut resides in the Baffin region, with roughly 30 per cent in the Kivalliq (Keewatin) region and 20 per cent in the Kitikmeot region.

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<sup>16</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 the members of any panel dealing with a case involving Inuit Owned Lands, be residents of the Nunavut Settlement Area.

The Inuit, owing in part to their historical isolation and regional dominance, have retained their language to a degree that is quite exceptional among indigenous populations in North America, with fully 80 percent of Inuit in Nunavut reporting in the 2001 Census that they spoke Inuktitut. Thirty-five hundred Nunavut Inuit – 15 percent – are recorded in the same Census as speaking only Inuktitut.

Inuit communities are isolated from one another by lack of easy transportation but increasingly connected by telephone, satellite technology and the Internet. Only a handful of the communities have a population over 1,000, and the largest, Iqaluit, the capital, has a population of less than 7,000 residents.

Canadians are aware of the impact of European society on smaller Aboriginal societies. This is no less true of Nunavut.

For a great many Inuit the loss of a way of life, without securing a sure foothold in the new dispensation, can bring with it individual and collective desolation. Alcohol and other substance-abuse problems are prevalent in many communities; family cohesiveness has suffered; crime, violence and suicide affect every community. Although improved access to health care has greatly increased life expectancy in recent decades, Inuit life expectancy is still ten years below the national average.

Owing to the high cost of construction materials, housing is expensive (construction costs per square foot are roughly three times the Canadian average) and in short supply. Living quarters are cramped: while the average number of occupants in the average Canadian dwelling is 2.39, in Nunavut it is 3.27, and in some communities much higher still. According to Statistics Canada, 54 percent of Nunavut residents live in “crowded” conditions, compared to a Canadian average of 7 percent. Over half of Nunavut’s Inuit - 14,225 – live in public housing, with 1,000 families on the waiting list.

Even these figures do not do justice to the problem of overcrowding in Nunavut. As I have seen for myself, the cost of materials and the expense of heating dictates that houses in Nunavut are generally very small. Overcrowding of such small buildings, which for a substantial part of the year are closed virtually airtight to conserve heat, exacerbates the transmission of disease and contributes to persistent health problems such as Chronic Otitis Media (COM), a cause of hearing loss which afflicts one-third to one-half of Inuit children.

Universal education has been available to the Inuit for only the past 35 years. Opportunities for higher education have been sharply limited. Many young Inuit have nevertheless successfully completed high school, and some have gained a university degree or advanced professional qualification. But levels of educational achievement remain well below the national average; seventy-five percent of the Inuit labour force do not have a high school diploma. Even today, only one in four Inuit children entering the education system is expected to graduate from high school.

Economically, the Inuit face persistent challenges. Although the price of most goods is high owing to transportation costs to Northern communities, Nunavut’s per capita income is 27 percent lower than in the rest of the country. There is no agricultural or manufacturing base. There have been mines opened in the past but they are now closed.

Hunting, fishing and trapping, once the mainstay of the economy of the North and a principal source of employment, now provide full time support for a relative handful of Inuit. These

traditional activities, however, remain central to Inuit culture and identity, and most Inuit families, even in the larger settlements, continue to hunt and fish, using both traditional and modern technologies. The production of Inuit art, sculpture and clothing is another cultural mainstay, with more than 2,000 families reportedly deriving some of their income from this source.<sup>17</sup>

Unemployment among the Inuit is very high, between 30 and 70 percent depending on the measure used and the community in question. As might be expected, unemployment is highest in the smaller and more isolated communities.

In 2005 Rodolfo Stavenhagen, the United Nations' Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, reported to the United Nations Committee on Human Rights:

38. In Nunavut, the existing social housing units are among the oldest, smallest and most crowded in Canada. There is a severe housing shortage in Nunavut that adversely affects the health of Inuit, in particular of children, and it is estimated that 3,500 new units are needed over the next five years.

39. The overall health of Inuit continues to lag far behind that of other Canadians. Life expectancy is ten years lower than the rest of Canada. Many health indicators are getting worse. Arctic research shows that changes in traditional diets lead to increased health problems, particularly of mental health, characterized by increased rates of depression, seasonal affective disorder, anxiety and suicide. Inuit leaders are deeply concerned that the housing, education, health and suicide situation have reached crisis proportions and are not being addressed by the Federal Government.<sup>18</sup>

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<sup>17</sup> In the single community of Cape Dorset, which is well known for its printmaking and sculpture, fully 22% of residents report participating in the arts and crafts industries.

<sup>18</sup> *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, on his mission to Canada* (21 May to 4 June 2004) (New York: United Nations, 2005) E/CN.4/2005/88/Add.3 at paras. 38-9.

### III. ARTICLE 23 AND THE FUTURE OF NUNAVUT

#### A. The Creation of Nunavut

Nunavut came about in fulfillment of a promise made by Canada when the Inuit of what is now Nunavut settled their land claim in 1993.<sup>19</sup>

Two prime ministers were in a sense present at the creation of Nunavut. When the Nunavut Land Claims Agreement was signed on May 25, 1993, Prime Minister Brian Mulroney spoke:

We are forging a new partnership, a real partnership. Not only between the Government of Canada and the future Government of Nunavut but between aboriginal and non-aboriginal Canadians.

In 1999, with the establishment of the new Territory, Prime Minister Jean Chrétien spoke:

...Canada is showing the world, once again, how we embrace many peoples and cultures. The new Government of Nunavut will reflect this diversity; incorporating the best of Inuit traditions and a modern system of open and accountable public government.

The Nunavut Land Claims Agreement provided for the creation of the new Territory. Its government was not to be an Aboriginal government, but a public government for the whole territory, where both Inuit and non-Inuit would have the right to vote and run for office.

John Amagoalik, often called the father of Nunavut, described the vision of Nunavut as

a public government with a democratically elected Legislative Assembly [which] will respect individual and collective rights as defined in the *Canadian Charter of Rights and Freedoms*. It will be a government that respects and reflects Canada's political traditions and institutions, and it will be a territory that remains firmly entrenched within the bounds of Canadian confederation.<sup>20</sup>

Moreover, it was provided in Article 23 that the public service would be representative of the people of the territory. The full implications of this promise are only now becoming apparent.

The world took note of this extraordinary development in the Canadian Arctic. The *Manchester Guardian*, for example, wrote:

The emergence of Nunavut is unequivocally good news. While large tracts of the world are mired in war and insurgency, an ethnic minority has quietly negotiated an equitable deal with a central government that gives them the freedom to run their own affairs.<sup>21</sup>

<sup>19</sup> Article 4.1.1. of the Nunavut Land Claims Agreement said:

The Government of Canada will recommend to Parliament, as a government measure, legislation to establish, within a defined time period, a new Nunavut Territory, with its own Legislative Assembly and public government, separate from the Government of the remainder of the Northwest Territories.

<sup>20</sup> John Amagoalik, speech to Japanese parliamentarians visiting Iqaluit, September 1 1995, quoted in Hicks & White, *supra* note 15 at p. 64.

<sup>21</sup> John Ryle, "What country are we in?" *Manchester Guardian*, February 22, 1999, quoted in Hicks & White, *supra* note 15 at p. 78.

*TIME Magazine* reported:

Canada's first experiment with de facto Native self – government – and only the second of its kind in the world. [It is] a socio-political experiment on an epic scale.<sup>22</sup>

The *Globe and Mail* proclaimed:

Canada had done something of huge symbolic value... Nunavut is a powerful and worthy experiment [which] deserves to succeed.<sup>23</sup>

Nunavut is a remarkable achievement. Three well-known scholars of the North described it as:

...the winning back by a numerically small and scattered hunter-gatherer population of their ancient territory under modern European constitutional and legal systems.<sup>24</sup>

The Government of Nunavut was to be a public government, one that, in the best democratic tradition, would be a government of the people, by the people, and for the people. In Nunavut, "the people" are overwhelmingly Inuit.

The Inuit would be able to elect their own to the Legislative Assembly. What about the public service? This is addressed in Article 23.

Article 23.2.1 sets out the objective: "to increase Inuit participation in government employment ... to a representative level." Under Article 23.1.1 this means a representative level of Inuit employment "within all occupational groupings and grade levels".

In Nunavut employment in the public service, if it is to be employment at a representative level, must therefore be 85 per cent Inuit employment "within all occupational groupings and grade levels".

Article 23 may bear a resemblance to a conventional equity clause of a type well known. Employment equity is not obviously a land and resources issue, to be included in a land claims agreement. But neither is a provision to establish a new Territory. If the one were included in the Nunavut Land Claims Agreement the other had to follow. It is in fact an equity clause for a majority.

## **B. A Unique Jurisdiction in Canada**

Nunavut was to be a jurisdiction unique in Canada. Its population would consist mainly of Inuit, speaking their own language, Inuktitut. It would not be predominately English-speaking or French-speaking, but would have an overwhelming majority consisting of an Aboriginal people speaking a single Aboriginal language. There is no other such province or territory.

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<sup>22</sup> Andrew Purvis, "Nunavut gets ready: The hoopla is about to start for the launch of Canada's huge, largely Inuit-run, self-governing Arctic territory. But how prepared is everyone?", *TIME*, March 29, 1999, quoted in Hicks & White, *Ibid.*

<sup>23</sup> "Charting new territory" (editorial), *Globe and Mail*, April 3, 1999, quoted in Hicks & White, *Ibid.*

<sup>24</sup> Jens Dahl, Jack Hicks and Peter Jull, "Introduction" in Dahl, Hicks and Jull, Eds., *Nunavut: Inuit Regain Control of Their Lands and Their Lives* (Copenhagen: International Work Group for Indigenous Affairs, 2000) at p. 15.

Over the last twenty years, Nunavut's population has seen the fastest rate of growth in Canada, a rate of growth that is still twice the national average. Nunavut's population has doubled in a single generation, from 15,000 in 1981 to almost 30,000 today. It is the youngest population in Canada, with approximately 60 per cent of residents under 25 years of age, 92 per cent of whom are Inuit.

The need for educational and career opportunities for the Inuit is pressing. The prevalence of Inuktitut as a first language of most Inuit, and the fact that 15 percent of Inuit have no other language, limits Inuit opportunities for jobs in government, and the ability of government (a great many in the public service speak only English) to serve the needs of the population of the territory.

Canada has said that, in terms of governmental arrangements, Nunavut "mirrors" the Northwest Territories and the Yukon. This is true as far as it goes, in that all three territories are constitutionally the creatures of Parliament and the bulk of territorial government funding is provided by the federal government.

Ninety-two per cent of the Government of Nunavut's revenue comes from Ottawa; in the Northwest Territories and the Yukon the figures are approximately 80 and 70 per cent respectively. In 2002 Newfoundland, the province most dependent on federal transfers, received 45 per cent of its revenue from Ottawa. In that year, the average among 'have-not' provinces was 34 per cent; for all provinces it was 29 per cent.<sup>25</sup> Hicks & White, writing in 2002, pointed out:

... Canadians will need to be reminded that in their early days many parts of the country enjoyed massive federal government infrastructure spending on railways, canals and other facilities necessary for economic development [the CNR, the St. Lawrence Seaway]. In contrast, the money Nunavut gets from Ottawa covers only costs of running the government; Nunavut has yet to see anything like the massive federal spending on economic development that many provinces enjoyed for decades.<sup>26</sup>

But the demographics of the three territories are quite a different matter. In this respect Nunavut does not mirror the Northwest Territories and the Yukon.

Until 1999 (when Nunavut was carved out of the Eastern Arctic) the Northwest Territories had a majority Aboriginal population (61 percent) but no single Aboriginal group constituted a majority of the territory's (then) 65,000 residents. The Inuit and the Inuvialuit (the Inuit of the Western Arctic) were together around 37 percent of the population. There were five Dene peoples, whose languages are related to each other but are by no means identical, who constituted about 17 percent of the population; the Métis making up about 7 percent. English-speakers constituted almost all of the remaining 39 percent.<sup>27</sup>

In the Northwest Territories today Aboriginal people may constitute around 45 percent of the population. The Dene peoples and the Inuvialuit are moving to develop their own Aboriginal governments within the framework of the Territory.

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<sup>25</sup> Hicks & White, *supra* note 15 at p. 88, citing Finance Canada data.

<sup>26</sup> *Ibid.* at p. 87.

<sup>27</sup> There were a number of Francophones in Fort Smith and Iqaluit, perhaps 1 per cent of the population.

In the Yukon the First Nations constitute about 25 percent of the population. There, too, the First Nations are engaged in establishing Aboriginal governments.

The point is that in neither the Northwest Territories or the Yukon is there a majority, let alone an overwhelming majority, of Aboriginal people speaking a single Aboriginal language.

Nunavut remains, in terms of the reality on the ground, a jurisdiction where the first language of the vast majority of the population is Inuktitut. Achieving the objective of Article 23 means that the Inuit must over time occupy 85 per cent of the positions in all occupational groupings and at all grade levels in the public service, and this necessarily implies that Inuktitut must be the principal language of the workplace and that government services must be provided in Inuktitut.

Mary Simon, Canada's Ambassador to the Circumpolar Arctic, speaking at Queen's University said:

...the very scale of the Nunavut undertaking means it cannot be overlooked...For the first time in Canadian history, with the partial exception of the creation of Manitoba in 1870, a member of the federal-provincial-territorial club is being admitted for the precise purpose of supplying a specific Aboriginal people with an enhanced opportunity for self-determination. This is ground-breaking stuff.<sup>28</sup>

I have said that Nunavut is unique. It is true that in 1870, when Manitoba entered Confederation as the "postage stamp" province, 10,000 of its population of 12,000 were Métis, the majority of them French-speaking.

The *Manitoba Act* of 1870 erected a new province. It provided that the official languages of the new province were to be English and French. There were guarantees for public funding for Roman Catholic schools, where instruction had always been in French. The *Manitoba Act* contained as well provisions to protect existing Métis lands and to establish a Métis land base.

Within a decade a wave of settlement completely altered the demographics of the new province. The Métis became a minority. The promises of the *Manitoba Act* relating to French as an official language and public funding for Catholic schools were soon thereafter abandoned by the provincial legislature, and Ottawa was not prepared to take steps effectively to enforce these rights. They were resolved by litigation. In the 1890s supporters of public funding for Catholic schools in Manitoba won their case in the Supreme Court of Canada but lost it in the Privy Council.<sup>29</sup> It was not until the 1970s and 1980s that the place of French as an official language of the province was upheld by the Supreme Court of Canada.<sup>30</sup>

The *Manitoba Act* contained no provision resembling Article 23. Manitoba's was to be a public government. Even had the Métis remained a majority of the provincial electorate, they had no claim under the *Manitoba Act* to a majority of places in the public service. In any event, the government of Manitoba was not conceived to be the new province's principal employer. Manitoba was not the Arctic. Manitoba was at the time confined to its "postage stamp" borders (there were changes in its boundaries, but not until 1912 did the province extend to the 60<sup>th</sup> parallel). Agriculture, not government, was to be the occupation of Manitobans.

<sup>28</sup> Hicks & White, *supra* note 15 at p. 91.

<sup>29</sup> *Barrett v. City of Winnipeg* (1892) 19 S.C.R. 374, [1892] A.C. 445 (P.C.); see also *Brophy v. A.G. Manitoba* (1893) 22 S.C.R. 577, [1895] A.C. 202 (P.C.).

<sup>30</sup> *A.G. Manitoba v. Forest* [1979] 2 S.C.R. 1032; *Reference re Manitoba Language Rights* [1985] 1 S.C.R. 212.

Nunavut is unique today in Canada. It has no foreseeable counterpart.

### **C. The Extent of Inuit Representation in the Public Service of Nunavut**

Since government is the principal employer in Nunavut, opening up opportunities for Inuit employment in the public service is of paramount importance to the Inuit. Under Article 23 of the Nunavut Land Claims Agreement 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.

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.

"Representative level" meant, in 1993 as it does today, approximately 85 percent. The objective is therefore to increase the level of Inuit employment in the public service to match the proportion of Inuit in the population.

The fact is that the objective of Article 23 has not nearly been realized. Although the figures can fluctuate almost daily, it seems uncontroversial that Inuit representation calculated as a percentage of employment has stalled at around 45 per cent.<sup>31</sup> The shortfall is especially apparent in the executive, management, professional and para-professional positions.

The question of responsibility for implementing Article 23, that is, for achieving the objective of representative Inuit employment in the public service, is still outstanding. Moreover, assuming the issue of where responsibility lies for achieving the objective of Article 23 were to be resolved, the question of how to do it has only recently been squarely addressed by all the Parties.

Currently the Government of Nunavut has 3200 employees and Canada has 300 employees in the territory. In Nunavut government is, by far, not only the largest employer, but also represents the largest employment sector. This is so throughout the Arctic and sub-Arctic: in Nunavut, the NWT, the Yukon, Alaska and Greenland. These territories lie for the most part well beyond the agricultural frontier.

Villagers in the Arctic and sub-Arctic depend on employment provided by government activities; even the private sector in these villages is often the indirect product of government expenditures. This is typical of remote Inuit communities throughout Arctic and sub-Arctic regions from Alaska to Greenland. Industrial development may have arrived at some places in the Arctic and sub-Arctic, but not as yet in Nunavut. Thus the paramount importance in all these jurisdictions of government as an employer, but especially in Nunavut.

In Nunavut a policy of decentralization has actually been followed not only so that government will be responsive to local concerns but also to spread the government payroll across as much of the territory as possible.

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<sup>31</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: PriceWaterhouseCoopers, *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), at pp. 26-27.

Iqaluit is the capital. The Premier and members of the Cabinet are located there; it is where the Legislative Assembly sits. But government departments are distributed around the territory, located in eight intermediate – sized communities to ensure that government employment and the opportunities it represents are not confined to the capital.<sup>32</sup>

The erection of the Government of Nunavut is not however, a “make work” proposition. The government of this vast territory is responsible for the welfare of almost 30,000 people in 27 scattered communities.

There are, as I say, 3200 jobs in the Government of Nunavut. The Inuit today occupy 45 percent of those positions. Nobody wants to parse employment to each occupational group down to the last percentile. But, however you calculate the matter today, there is an Inuit shortfall. Today the Inuit have only 45 percent of the 3200 jobs, or 1440 jobs instead of the 2720 they would have at 85 percent representation. The shortfall amounts to 1280 jobs. Similar calculations could be made for the federal government, where the shortfall would be over 150 positions. Overall, the numbers tell us that there are in the vicinity of 1500 jobs that could be claimed by Inuit had they the necessary skills.

It is, on one level, remarkable to have 45 percent Inuit employment in the Government of Nunavut after only six years. But the figure of 45 percent Inuit employment across the board is misleading. The Inuit are well represented in the administrative support categories. It is the shortfall in the executive, management, professional and para-professional areas that represents the most significant failure, as the following figures demonstrate:

Inuit Employment within the Territorial Government (Dec. 2003)

Executive	48 %	Senior Management	24 %
Middle Management	20 %	Professional	25 %
Paraprofessional	59 %	Administrative Support	84 %

Statistics of the number of Inuit working within the federal government in Nunavut reveal a similar deficit, with the majority of Inuit employed in administrative support.

The figures support the conclusion that, by and large, the problem is one of supply, not demand. In 2001, of the Inuit between the ages of 20 and 45 who were unemployed or not in the labour force, 83 percent had not completed high school. By contrast, of the Inuit who had some university education, fully 92 percent were employed. Clearly education is the key to moving toward fulfillment of the objective of Article 23.

The Nunavut Implementation Commission recommended that 50 per cent of jobs at all levels of the Government of Nunavut be filled by Inuit at start-up in 1999, with representative levels to be achieved by 2008. The original goal was very nearly met, but the situation has improved little since then, and the ultimate goal – 85 percent Inuit employment – has been extended by both the federal and territorial governments to 2020. In other words, the initial goals were unrealistic.

<sup>32</sup> According to Hicks & White, *supra* note 15 at p. 65-66:

For some it was important that the Government of Nunavut be decentralized so that as many communities as possible could share in the economic benefits arising from the stable, well-paid jobs that would come with the new government. Others believed that locating middle management and professional positions in communities would encourage Inuit participation in the bureaucracy. Still others saw a decentralized government as better suited to traditional Inuit political culture.

They could not possibly have been met. My concern is that we adopt measures that will actually enable full Inuit representation in their own public service by the new target date of 2020.

#### **D. The Scope of Article 23**

This brings me to the dispute about the meaning of Article 23, and who is responsible to see that its objective is attained. That objective is set out in Article 23.2.1:

The objective of this Article is to increase Inuit participation in government employment in the Nunavut Settlement Area to a representative level. It is recognized that the achievement of this objective will require initiatives by Inuit and by Government.

Article 23.1.1 defines "government employment" as employment in both the federal and territorial governments in Nunavut. As for the "initiatives" to be taken, Article 1.1.1 of the Agreement says:

‘Government’ means the Government of Canada or the Territorial Government or both, as the context requires, depending on their jurisdiction and the subject matter referred to, or as determined pursuant to Section 1.1.6. [emphasis added]

Given the central place of Article 23 in the future success of Nunavut, “Government” must, for purposes of achieving representative Inuit employment, refer to both the Government of Canada and the Government of Nunavut. The "context", if you will, requires it. Both governments are implicated in the achievement of the objective of Article 23. It is a shared objective.

But the Agreement itself sets out only a few explicit obligations of the federal government toward the objective of full Inuit employment. Under Article 23, Canada agreed to three things: conducting a labour force analysis (Article 23.3), developing Inuit employment plans (Article 23.4) and pre-employment training plans (Article 23.5).

Canada has in the past said that, insofar as it has any obligations under Article 23, they have been fulfilled: the labour force analysis has been completed, Inuit employment plans have been completed, and pre-employment training plans for Inuit have been completed.

Canada has a point. But I have been asked to consider new approaches to implementation; I believe that a new approach requires a greater regard for objectives and less for the fine print of obligations.

I said in my Interim Report that treaty making and treaty implementation are distinct but not strictly isolated concepts.<sup>33</sup> I am of the view that the implementation process must be approached broadly with a view to achieving the purposes of the Nunavut Land Claims Agreement.

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<sup>33</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 Nunavut Land Claims Agreement 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 is an expression that encompasses land claims agreements.

The Nunavut Land Claims Agreement consists mainly of specific provisions for the management of the land and resources of Nunavut. But unusually it included a promise to establish a government for Nunavut, a government which would be representative of the people of Nunavut. It is true that it was agreed that Article 4 was not to be entrenched in the Constitution. But Article 23 *is* entrenched in the Constitution. It is there and remains unfulfilled. It is always speaking; it will continue to speak until it is fulfilled.

My approach to implementation of the Agreement is premised on three underlying considerations: the status of the Nunavut Land Claims Agreement as a constitutional document; the principle that the honour of the Crown must be observed in all its dealings with the Inuit, including throughout the implementation process;<sup>34</sup> and the terms set out in the Agreement itself. It is also based on the observation (and indeed the consensus of all of those who participated in our discussions) that a new approach is needed because the old approach has certainly not worked to anyone's satisfaction.

I believe the only approach to Article 23 consistent with the honour of the Crown is to look beyond the specific obligations listed in Article 23. Moreover, it is the only approach likely to succeed.

It is simply not in keeping with the immense task of building a country to haggle over the meaning of words that were never adequate to the subject. I am not engaged in winking out the meaning of language used by the Parties when it must be obvious they did not appreciate the true dimensions of what would be required to fulfill the shared objective of Article 23.

It is now plain that the objective of Article 23 cannot be met through a focus on the 'demand-side' of Inuit employment. The governmental workplace, in other words, has absorbed all available qualified Inuit and the figures show that we are nowhere near meeting the target. Until the emphasis is placed on increasing the *supply* of qualified Inuit, the objective of Article 23 will elude us.

A country's education system is expected to equip its people with the skills, particularly the language skills, necessary to take up gainful employment. You can't speak of employment without speaking of education.

The Nunavut Land Claims Agreement says nothing about improving the primary and secondary education provided to the Inuit or about achievement in the schools. Nor does Article 23 say anything about language (apart from instruction in Inuktitut as a part of pre-employment training for Inuit) and certainly nothing about Inuktitut as a language of the workplace and as a language

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<sup>34</sup> Since my Interim Report, yet another decision of the Supreme Court of Canada has emphasized this point. In *Mikisew Cree First Nation v. Canada* 2005 SCC 69, Justice Binnie, writing for all nine judges, described the signing of a treaty as the beginning of a process, not a freezing in time of a fixed set of obligations. Binnie J. wrote at para. 27:

Thus none of the parties in 1899 expected that Treaty 8 constituted a finished land use blueprint. Treaty 8 signaled the advancing dawn of a period of transition. [emphasis added]

He continued at para. 33:

Both the historical context and the inevitable tensions underlying implementation of Treaty demand a "process" by which lands may be transferred from the one category (where the First Nations retain rights to hunt, fish and trap) to the other category (where they do not). The content of the process is dictated by the duty of the Crown to act honourably.

He expanded on the Court's view of the honour of the Crown as it relates to treaties at para. 51:

The honour of the Crown is itself a fundamental concept governing treaty interpretation and application...

And at para. 57:

...the honour of the Crown infuses every treaty and the performance of every treaty obligation.

in which the people of Nunavut are entitled to receive government services. Yet if we are to achieve the objective of Article 23, both employment and education are implicated.

My point is that Articles 23.3, 23.4 and 23.5 cannot be treated as exhaustive of Canada's obligations any more than they are exhaustive of the obligations of the Inuit. More needs to be done, all agree, and if not the Parties, who will do it?

In 1993 the ramifications of Article 23 and the extent of the measures that would be required to implement the objective of that provision were not apparent. What was apparent to all at that time was the importance of the objective of representative Inuit employment.

Canada has understood all along that issues broader than the labour force analysis, Inuit employment plans and pre-employment plans had to be addressed in order to achieve the objective of Article 23. On May 28, 2003 Alain Jolicoeur, Deputy Minister of Indian Affairs and Northern Development, wrote to NTI regarding, among other subjects, Article 23. He proposed:

Article 23 - The parties would work on a two-part approach: 1) agreement on specific commitments (including a specified financial commitment) by Canada, with respect to labour force survey, employment plans, pre-employment training and support measures referenced in Article 23 of the Nunavut Land Claims Agreement (NLCA); and 2) agreement to establish a process and plan for Canada, [the Government of Nunavut] and NTI to cooperatively address the broader issues of education attainment, language of work and social issues which are impacting on the availability and ability of Inuit to qualify for public sector employment. [emphasis added]

Mr. Jolicoeur was segregating what he perceived to be Canada's specific obligations under Article 23 from "broader issues of education attainment, language of work and social issues which are impacting on the availability and ability of Inuit to qualify for public sector employment." I don't wish to attribute any legal significance to the Jolicoeur letter; it is simply a demonstration that all Parties have recognized the obvious: that achieving the objective of representative Inuit employment requires addressing the "broader issues" that lie beyond the specific measures set out in the Agreement itself.

This is where we are today. If land claims implementation in Nunavut is to be anything more than a barren search for avoidance of responsibility, the "broader issues" must be addressed, not only by Nunavut, but by Canada. They necessarily arise out of Article 23, because it is impossible to have an intelligent conversation about the objective of Article 23 without discussing them.<sup>35</sup> It is only by addressing the "broader issues" that we can breathe life into Article 23.

It will be my recommendation that the only way in which we can fulfill the objective of Article 23 is by adopting specific measures in the near term which will increase Inuit representation in the

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<sup>35</sup> There has been, over the years, much discussion about the 1992 Memorandum of Understanding (MOU). This document, signed by Canada, the Government of the Northwest Territories and NTI set out the 'guiding principles' for financing the Institutions of Public Government and incremental funding for the Government of Nunavut. Although NTI participated in the negotiations regarding the Institutions of Public Government, the "increments" were negotiated solely between Canada and GNWT; the Government of Nunavut fell heir to the MOU.

The Inuit were not a party to the MOU, and it forms no part of the framework of obligations set out in the Nunavut Land Claims Agreement. It cannot, in other words, be of help in interpreting Article 23.

public service and, for the long term, establishing in Nunavut a comprehensive program of bilingual education in Inuktitut and English.

## **IV. BILINGUAL EDUCATION**

### **A. The Importance of English**

It may seem strange to begin a consideration of bilingual education with a discussion about education in English. It is necessary, though, to understand that when I emphasize the importance of producing bilingual high school graduates, it is not only their skills in Inuktitut that matter.

Most of the positions in government for which few Inuit qualify are those which require some sort of post-secondary or professional qualification. Nunavut has a population in the vicinity of 30,000 souls, about the size of a medium-sized town, and it is spread across 27 isolated communities. While extraordinary efforts have been made – often successfully – to provide post-secondary courses in Nunavut (the nursing and teacher training programs, and the Akitsiraq Law Program, for instance), it is simply not possible to provide the full spectrum of required courses in place. Even where it is possible to bring courses to the communities, advanced education is of necessity in English. Nunavut needs a generation of executives and managers, computer software designers, architects, audiologists, nurses, doctors, lawyers, accountants,<sup>36</sup> x-ray technicians, RCMP members and, of course, teachers. It is likely that few of them will receive their post-secondary education in Inuktitut.

It is the objective of the Government of Nunavut to make Inuktitut the principal language of the workplace. In fact, in many departments it will be the principal language of the workplace. Nevertheless, in those departments where scientific and technical knowledge are essential, and where regular contact with the outside world is important, it is English that will be the principal language of the workplace.

A central objective of the Nunavut education system, therefore, must be to produce high school graduates whose ability to function in English enables them to enter colleges and universities in southern Canada and to achieve success in their chosen programs, so that they can qualify for responsible positions in their own public service.

Given the importance of English to the Inuit, it may be asked, why not simply educate children in that language only? Is there any reason to preserve Inuktitut in the schools, let alone dramatically increase its use, as I am recommending?

### **B. The Importance of Inuktitut**

There are a number of reasons why English-only education is not the answer in Nunavut.

First and most obviously, the population of Nunavut is, in varying degrees, a bilingual population. Inuktitut, despite an advanced stage of erosion in the Inuinnaqtun communities and continued endangerment elsewhere, continues to be the first-acquired language of Inuit children and for most children remains the most-used language in the home. It is an effective base from which to build advanced language skills when the children progress through the

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<sup>36</sup> The Auditor General's *2005 Report to the Legislative Assembly of Nunavut* notes the shortage of trained accountants, particularly in the smaller communities, and recommends that the Government of Nunavut undertake a program, based on the example of the Akitsiraq Law School, to produce Inuit accountants.

school system. It is clear from the academic literature that loss of first language skills, while often not an apparent handicap, nevertheless can significantly retard academic progress:

In situations of face-to-face peer interaction, conversation concerning familiar topics, where the situational context coincides with the topic, the [aboriginal] child will be able to express him or herself fluently and understand messages in a way that does not distinguish him or her from other native speakers of [English].

However, aside from the erosion of the indigenous language itself, the issue that concerns teachers and parents is the possible effect of language loss on the student's ability to perform in academic situations, to be able to use language for the higher-order, literacy-related school tasks that with each grade become more and more challenging. For many bilingual children who undergo subtractive language loss, this very process may affect their ability to fully develop these kinds of literacy-related language skills, the broad category of discourse competencies that Cummins and Swain (1987) have termed Cognitive Academic Language Proficiency.<sup>37</sup>

Also, paradoxically, it has been demonstrated that effective academic use of a child's second language (in Nunavut, this means English) is enhanced through the promotion of the first, indigenous language. Francis and Reyhner conclude a review of the literature on the subject with the following:

[A]voiding the negative consequences of subtractive bilingualism and promoting dual language proficiency in children will not only contribute to the historical continuity of the community's language, but will provide for children the most favorable conditions for success in school. Among these favorable conditions are those that provide for effective learning of a second language and for using it as a tool for cognitively demanding, higher-order thinking.<sup>38</sup>

The second reason to avoid this "subtractive" unilingual education is that, because Inuktitut is the first language of most, and the *only* language of a significant minority (15 percent) of Inuit in Nunavut, Inuktitut is, and must continue to be, the language of delivery of government services in the communities. You need only visit the smaller communities, as I have, to understand how absurd would be a government operating there in English only. Bringing up a new generation of English-only public servants would effectively deny or severely limit access to government for many, if not most, of the citizens the government is meant to serve.

Third, Inuktitut is the vessel of Inuit culture. It grows out of a particular worldview. The Inuit want to remain true to their past; in Pascal's phrase, they want to become what they are. Inuktitut is an integral part of Inuit identity. Of course, collective and individual identity may be nourished by other means. But where a people's language thrives, their identity is more likely to be secure. In *Ford v. Quebec (A.G.)* [1988] 2 S.C.R. 712 at 748-9 the Supreme Court of Canada wrote:

Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited

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<sup>37</sup> Norbert Francis and Jon Reyhner, *Language and Literacy Teaching for Indigenous Education[:] A Bilingual Approach* (Clevedon, England, and Toronto: Multilingual Matters Inc., 2002) at p. 70-71

<sup>38</sup> *Ibid.* at 73.

from using the language of one's choice. Language is not merely a means or medium of expression, it colours the content and means of expression. It is... a means by which a people may express its cultural identity. It is also the means by which the individual expresses his or her personal identity and sense of individuality.

But the main reason why English cannot be the single language of instruction is that the Inuit do not want it to be. In the 2001 Census fully 87 percent of Inuit responded that "the Inuit language is very important to learn, re-learn or maintain." The Inuit are a majority in Nunavut but it is a majority besieged by the onslaught of English, which is pervasive, in books, magazines, newspapers, television, radio, and popular music. The prevalence of English threatens to crowd out their own language.

There is an almost universal desire among the Inuit to avoid loss or extinguishment of their language. This is so among not only Inuktitut speakers but also even stronger among those who speak Innuinaqtun, the most seriously endangered variant of the Inuit language in Nunavut.

English is, in many ways, the language of colonialism. But when it is mastered by the Inuit it is also the language they use to speak to Canadians and the world. It can be an enormous asset to them. For Inuktitut to survive, it has to counteract the competitive dominance of English. Yet the Inuit understand that they must speak English too; they want their children to be competent in both languages.

There is one thing to add about educating Aboriginal children in English only. We have tried it and it doesn't work. The Indian residential schools were established in order to detach Aboriginal children from their own culture, and the principal means was to deny them the right to use their own languages and require them to use only English. It led to tragedy.

In Nunavut today, the schools in Kugluktuk and Cambridge Bay have an all-English program and graduation rates there are no better than in the other regions of Nunavut, where an all-English system of instruction prevails after Grade 3.

Loss of language and educational underachievement are linked. The strengthening of Inuktitut in the school, the home and the community can bring improvement in achievement in both Inuktitut and English.

### **C. The Current State of the Inuktitut Language in Nunavut**

Inuktitut is still the dominant language of Nunavut. It has three times as many speakers as English. The situation is reversed in the Yukon and the Northwest Territories; there English is the dominant language by far. The extent of Inuktitut usage in Nunavut is described by Hicks & White:

According to Statistics Canada's 1991 Aboriginal Peoples Survey, 96 per cent of adult (defined as age 15 and over) Inuit in Nunavut speak Inuktitut. In the 1996 Census 71 per cent of people living in Nunavut reported Inuktitut as their 'mother tongue', and 60 per cent reported Inuktitut as their 'home language'. English is the 'home language' of 35 per cent of all residents and the territory also has a small but vibrant Francophone community – most of which resides in Iqaluit. 15 per cent of the population speaks neither English nor French.

The language spoken by Inuit of Nunavut consists of seven dialects, which are essentially variations on a single language. Six of these dialects are collectively referred to as Inuktitut, and are written using a Syllabic writing system. The dialect spoken by the residents of the communities of Kugluktuk and Cambridge Bay, in the western part of the Kitikmeot region, is called Inuinnaqtun – and is written in Roman orthography. (By contrast, the Dene of the Yukon and Northwest Territories comprise several different peoples each speaking a distinctive language.)<sup>39</sup>

More recent Census data bear out the prevalence of Inuktitut among the Inuit of Nunavut. 2001 figures showed 99 percent understand the language “well or relatively well”; 94 percent report speaking it to that same standard, and 71 percent report using “Inuit language at home all or much of the time.”

For thousands of years, Inuktitut was an oral language. In the 19<sup>th</sup> Century, two systems of writing were developed. One uses Roman orthography – that is, the familiar letters of the English alphabet – to spell out the words. A second, known as Syllabics, uses symbols to represent the syllables of the spoken language. In Nunavut, except for the Kitikmeot region, the written language is rendered in Syllabics. In Kitikmeot, Inuinnaqtun is rendered in a Roman orthography. In the Western Arctic, the Inuvialuit use a Roman orthography; so also the Inuit of Labrador.

In the Inuit heartland of Canada, in Nunavut and Nunavik (the home of the Inuit of northern Quebec), however, Syllabics prevails. Nunavut historian Kenn Harper writes:

In the eastern Canadian Arctic, excluding Labrador, Inuit use a Syllabic writing system. This non-alphabetic system was developed first for the Cree by a missionary, James Evans. It was adapted to the Inuit language by two missionaries, John Hordern and E.A. Watkins, but the major work in promoting its use among Inuit was done by the Anglican, Rev. Edmund James Peck, still remembered by his Inuktitut name, Uqammak. He worked first in Arctic Quebec for almost two decades before establishing a mission in Baffin in 1894. His efforts, and those of the Inuit catechists he trained, notably Luke Kidlapik, Joseph Pudloo and Peter Tooloogakjuak, resulted in Syllabics being used by Inuit of the Baffin and Keewatin; when the Roman Catholic church established its first missions in the Keewatin region, they too used Syllabics.<sup>40</sup>

Harper continues:

Before the advent of modern computer technology, Syllabics was a costly system to maintain. Today, however, there is probably little, if any, cost premium to publishing in Syllabics. No matter what orthography is used translation costs will remain constant.<sup>41</sup>

Inuktitut still prospers in Nunavut, but it faces serious challenges. The depth of language –that unique facility of expression that improves with age – must be fostered. Inuktitut must not only

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<sup>39</sup> Hicks & White, *supra* note 15 at p. 100, fn. 48.

<sup>40</sup> Kenn Harper, “Inuit Writing Systems in Nunavut” in Dahl, Hicks and Jull, Eds., *Nunavut: Inuit Regain Control of Their Lands and Their Lives* (Copenhagen: International Work Group for Indigenous Affairs, 2000) at p. 155.

<sup>41</sup> *Ibid.* at p. 163.

be preserved, it must grow and adapt: vocabulary has to be developed to permit communication of modern ideas. Things must have names in order for the language to be one truly suitable for all aspects of daily work in government and the private sector.

The loss of their language among children, exposed as they are to English in ever-broadening areas of media and in their social lives, is of particular concern. Francis and Reyhner write:

[S]ubtractive bilingualism involves the loss, sometimes gradual, of the child's first, or primary, language. If the indigenous language community has made the decision to work toward the revitalization of their ancestral language, its widespread and early erosion among children represents a clear danger signal. If not reversed, the permanent and irreversible loss of the language is simply a matter [of] time.<sup>42</sup>

The Inuit of Nunavut are faced with the erosion of Inuit language, knowledge and culture. Unless serious measures are taken, there will over time be a gradual extinction of Inuktitut, or at best its retention as a curiosity, imperfectly preserved and irrelevant to the daily life of its speakers.<sup>43</sup>

#### **D. The Need for Effective Bilingual Education Has Long Been Recognized**

In 2000 the Government of Nunavut published the Bathurst Mandate, expressing the goal of seeing Nunavut become by 2020 "a fully functioning bilingual society, in Inuktitut and English". Also in that year, the Government of Nunavut commissioned a study into the Language of Instruction for Nunavut Schools. Canadian Heritage provided funding for the research. The purpose of the research was to lay the foundation for the design of a system of education that would result in bilingual graduates in Nunavut, consistent with the goal set out in the Bathurst Mandate and with the federal *Nunavut Act*.<sup>44</sup>

In the result, Professor Ian Martin of York University produced *Ajjiigatigiingniq*, a discussion paper that presents a 20-year plan for the development of a strong bilingual program for the Nunavut educational system. Dr. Martin observed that the "long-term threat to Inuit language from English is found everywhere, and current school language policies and practices on language are contributing to that threat." He stated that the current model, inherited from the NWT, forces Inuit students to become English speakers if they wish to continue education beyond the Grade 4/5 transition point and thus "replaces the child's first language with an imperfectly learned second language and...too often neither language develops to its full potential."

It is apparent from Professor Martin's report and the literature in the field that virtually all who have studied the subject have concluded that a program of strong bilingual education is called for. The original NWT policy document on bilingual education, published in 1981 after a year long research project into bilingual education around the world, called for 90 percent instruction

<sup>42</sup> Francis and Reyhner, *supra* note 37 at p. 70.

<sup>43</sup> There are a number of recent works on the topic of endangered languages. See for instance Mark Abley, *Spoken Here: Travels among Threatened Languages* (Toronto: Vintage, 2004); David Crystal, *Language Death* (Cambridge: Cambridge University Press, 2000); Joshua A. Fishman, *Can Threatened Languages be Saved?* (Clevedon: Multilingual Matters, 2001).

<sup>44</sup> That Act provides, in s. 23. (1)(n): "[The Nunavut] Legislature may make laws in relation to ... the preservation, use and promotion of the Inuktitut language, to the extent that the laws do not diminish the legal status of, or any rights in respect of, the English and French languages[.]"

in Inuktitut in Grades K-3, 70 percent Inuktitut in Grades 4-6, and an even 50-50 percent split in Grades 7-12. Professor Martin cites other early efforts, from the 1982 *Learning Tradition and Change* report, chaired by Tagak Curley to the 1985 document *Bilingual Programming in the Keewatin - An Educational Model* by Katherine Zozula and Simon Ford. Zozula and Ford developed what Professor Martin called "a very well thought out plan which, had it been followed 15 years ago, could have changed the linguistic landscape considerably."<sup>45</sup>

Without solid linguistic skills, few Inuit struggle through to graduation. Employers complain that many students who leave school in grades 10, 11, or 12 to work do not have sufficient literacy skills in either language to be effective employees. In his 2000 report, Professor Martin called the present system "fundamentally flawed", one that "does not help students learn either language, English or Inuktitut, at a high level of bilingualism and biliteracy."<sup>46</sup>

Professor Connie Heimbecker of Lakehead University, reviewing Arlene Stairs' research in Nunavik (in Northern Quebec) on the relationship between early Inuktitut fluency and literacy and later English fluency and literacy, noted this same phenomenon:

[Stairs'] study was conducted with grade 3 and 4 children who had experienced Inuktitut language programs in the early grades. Stairs found that children's English writing was related to the fluency of their earlier Inuktitut writing, and their current Inuktitut fluency... Communities with greater grade3-4 Inuktitut writing proficiency, also displayed greater proficiency in English writing and speaking. Communities which had spent less time with Inuktitut and more time with English in the lower grades, displayed a lower level of Inuktitut and only a similar level of English. As Cummins states "These community results show that the positive relationship between English and Inuktitut writing skills is not based only on the intelligence or general language aptitude of the individual students" [.]<sup>47</sup>

Since publishing the Bathurst Mandate in 2000, the Government of Nunavut has established an Inuktitut Living Dictionary. New Inuktitut terminology has been developed for use in government. Language training in Inuktitut is being developed for non-Inuit and for Inuit who are not fluent in their own language. These and other measures lie within its authority and competence. But they will not, in and of themselves, produce the bilingual workforce Nunavut needs. Instead, we need to fundamentally expand the role of Inuktitut in the schools of the territory.

## **E. The Schools Today**

The goal of a bilingual and biliterate society will not be achieved unless the schools of Nunavut produce graduates who are bilingual and biliterate in Inuktitut and in English. This is not happening now.

In fact the present system – an "early exit immersion" model whereby most students are abruptly switched from Inuktitut to English in Grades 4/5 – seems to be producing the opposite. Because it provides students with an insufficient foundation in their first language and too

<sup>45</sup> Ian Martin, *Aajiqatigiingniq: Language of Instruction Research Paper* (Iqaluit: Nunavut Dep't of Education, 2000) at p. 28.

<sup>46</sup> *Ibid.* at p. 6.

<sup>47</sup> Connie Heimbecker, "Bilingual Education for Indigenous Groups in Canada" in Jim Cummins & David Corson (eds) *Bilingual Education*. Volume 5. *Encyclopedia of Language and Education*. (Boston: Kluwer Academic Publishers, 1997).

sudden immersion in the second, it is seen as a significant contributing cause of Nunavut's high dropout rates.

The present “early-exit” bilingual model is inherited from the Northwest Territories. In its time, this model was seen as an improvement over the English-assimilationist residential school system which preceded it. However, while the NWT model called for the use of Inuktitut as a language of instruction from K-12, schools could never achieve this goal owing to the lack of Inuit teachers and Inuktitut curriculum and resources. What resulted was the early-exit model that remains in place in Nunavut schools.

The “early-exit” model works like this: With some exceptions, children in Nunavut enter school speaking Inuktitut. In the early grades, Inuit children all over Nunavut are taught in their first language as the language of instruction, i.e., from kindergarten to Grades 3/4/5. Beginning at Grade 4/5, there is a “transition” from Inuktitut to English as the language of instruction (for students in the Inuinnaqtun communities, English is the only language of instruction from kindergarten to grade 12.). From Grades 4/5, Inuktitut is no longer a language of instruction, but merely a subject like any foreign language.

The result is that just as Inuit children are acquiring the ability to read and write in their own language they are abruptly transitioned into English and required to learn math, social studies and science – and all other subjects in the curriculum – in a second language

Some Nunavut schools teach oral English as a second language in the primary grades, but in many places, the curriculum that Inuit children are introduced to in Grades 4/5, with English as the language of instruction, is their first academic exposure to English. Many of them can converse in English. But they can't write in English. In Grade 4 or 5, they are starting over, well behind. Their comprehension is imperfect; it slips and as it does they fall further behind. By the time they reach Grade 8, Grade 9 and Grade 10, they are failing (not all of them, to be sure, but most of them). This is damaging to their sense of who they are. There has been not only an institutional rejection of their language and culture, but a demonstration of their personal incapacity. The Inuit children are trying to catch up; but they are trying to hit a moving target since, of course, as they advance into the higher grades, the curriculum becomes more complex, more dependent on reading, on books, more dependent on a capacity in English that they don't have.

Instead of adding a second language to a solidly anchored first language that they continue to develop, enriching their language skills by adding the second, the opposite occurs. As they gain more English Inuit children lose more Inuktitut. They lose fluency in their mother tongue; the literacy skills they acquired in the early years atrophy and the space left ‘vacant’ by the loss of Inuktitut is not simply filled up with English. The children's initial threshold of fluency in Inuktitut should be – but isn't allowed to become - a foundation for the attainment of a second threshold of literacy – in Inuktitut. And they are not compensating for the lost Inuit language with new gains in English. Because they are never allowed to develop their Inuktitut initial fluency and literacy into advanced fluency and literacy through engagement with progressively more demanding subjects, and because the English program largely fails to develop higher-order skills, the children's Inuktitut linguistic strengths are never acknowledged. They are forced pay a high price for the early exit from their home language. They end up without fluency or literacy in either language.<sup>48</sup>

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<sup>48</sup> The youth of Nunavut come last in the country on the (English) prose literacy scale, well below the other provinces and territories, according to the *International Adult Literacy and Skills Survey* (IALSS) in 2003. Over 88% of Inuit in

The problem – the gulf between what the current program (inherited from the Northwest Territories) aspired to and what it has been able to deliver – is not likely to improve over time. High attrition rates of Inuit teachers mean that it is questionable whether even the present limited level of bilingual education can be sustained. Resource and curriculum development has continued to be slow owing to ongoing lack of resources. There is a slide, and it is expected to continue, unless something is done to stop it.

#### **F. What Does Effective Bilingual Education Require?**

There are essentially two methods of effectively producing bilingual graduates in Nunavut. One model is that which is common in many European countries, in which students are taught in both languages, typically the standard languages of European nation-states, from the first year to the last. The second model, perhaps more familiar to Canadians, is the immersion model, in which Anglophone or English-dominant students are taught exclusively – or nearly so – in a second language (i.e. French) for a substantial period of their education.

Either model appears to be capable of producing the desired results: students who are not only bilingual but also biliterate – able to read and write at an acceptable level in either language. The difficulty is in the detail: both require a high level of commitment to both languages, together with the resources – skilled teachers, appropriate curriculum materials, and methods for assessment of student progress – in both as well.

In Nunavut these challenges appear to all but foreclose the European "parallel instruction" model. Its adoption would require curriculum materials in Inuktitut to the Grade 12 level, and a cohort of teachers trained to teach a number of high school courses in Inuktitut, neither of which presently exist. If bilingual education is to become a reality in Nunavut within a generation, it must be through the implementation of a system that provides a gradual introduction of English instruction, and a longer retention of Inuktitut, not only as a subject of study, but as a language of instruction.

#### **G. The Proposed System of Bilingual Education**

I am convinced that only a robust and effective system of bilingual education can provide the foundation for the fulfillment of the objective of Article 23.

The objective is to ensure that Nunavut students have first and second language skills by the time they complete their schooling. They will be able to maintain their identity and their culture, and at the same time be equipped to enter governmental or private sector employment.

Nothing quite like this has been undertaken in Canada in the past. There is no template for a jurisdiction-wide bilingual education program for all children.

So what would a comprehensive program of bilingual education look like in Nunavut? It certainly could not be implemented immediately. Bilingual education was the policy of the Northwest Territories, as it is now, in a more fully-developed way, the policy of the Government

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Nunavut scored below level 3 in prose literacy compared to about a quarter of the non-Inuit, and noticeably worse than Aboriginal people in the Yukon and the NWT. The impact of low literacy levels in English/French is striking. In Nunavut the percentage of the population at Level 2 is 72%, 20 points higher than in any other jurisdiction in Canada.

of Nunavut. The NWT did not have the curriculum, the resources or the teachers to fully implement such a policy.

Neither, at present, does Nunavut. The Territory lacks the funding even to maintain the early-exit model adopted from the Northwest Territories, let alone to improve upon it. It has made a start, however, by assigning \$7.5 million from its current education budget specifically to development of a bilingual curriculum and materials to the expansion of teacher education. But it does not have the resources to meet the demands of a fully bilingual education system.

The Bilingual Education Strategy adopted by the Nunavut government in November 2004 provides a glimpse of what needs to be done to achieve comprehensive bilingual education in the territory. The K-12 curriculum and resource development and implementation plans to achieve the strategy have been initiated. But the challenges should be borne in mind.

There remains a severe shortage of Inuktitut-speaking teachers in the education system such that even the kindergarten-to-Grade-3/4/5 Inuktitut programs will be difficult to maintain at present levels. There is also an almost complete absence of advanced teaching materials in Inuktitut. The plan I propose will require hiring and training teachers, and developing an advanced Inuktitut curriculum, at an unprecedented rate. Even the most optimistic forecasts indicate, however, that bilingual education will develop gradually, year-by-year, school-by-school, over a generation.

Fortunately the most successful model of bilingual education appears to be adaptable to gradual implementation. Francis and Reyhner write:

For Indian children entering school, dominant or monolingual in their Native, indigenous, language, the program model that appears to have produced the most consistently positive results is that described by Krashen and Biber (1988) and Krashen (1991, 1996): the “Gradual exit, variable threshold” approach. ESL students are mainstreamed early in activities where language comprehension is virtually guaranteed because of the complete context support in academically less demanding situations (art, music, and physical education). In school subjects, where context support is high (e.g. primary level mathematics), ESL students receive early immersion in the second language, reserving (in the early grades) the subjects that are more language-dependent and abstract (e.g. reading, language arts, social studies) primarily for the dominant, primary, language.<sup>49</sup>

The model I propose would start with “language nests” (an innovation of the New Zealand Maori) carried out in conjunction with Inuktitut daycare and pre-school programs. It would then carry through the elementary and secondary years, and beyond into adult literacy and basic education programs.

The most critical component of the program will be the development of a strong new generation of Inuit teachers.

Presently, 35 per cent of teachers speak Inuktitut, and their numbers are slipping due to attrition owing to retirement, the stresses of the job (particularly for women with families) and the temptations of other careers in the territory, since Inuit teachers are the largest cohort of

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<sup>49</sup> *Supra* note 37 at p. 74.

qualified Inuit in any field. The program I am recommending will require that many more teachers be trained. In the meantime other measures can be taken. There are, for instance, middle-aged and adult Inuit in every community who speak Inuktitut well. They would be given a year of teacher training in the community and would teach Inuktitut in the schools. At the same time, local tradespeople, carvers and sculptors would give classes in their specialties. Life on the land would not be forgotten. Survival skills in danger of being lost would be transmitted in the classroom by veteran hunters. All this while more Inuit teachers are formally trained and introduced, year-by-year, into an expanding bilingual curriculum.

There is an opportunity for economies of scale by working with other regions where Inuktitut and its variants are spoken. The Inuit population of Nunavut and Nunavik (in northern Quebec) speak the same language and use the same system of Syllabic writing. Together they constitute 90 percent of Canada's Inuit population. It is obvious that the model of bilingual education adopted in Nunavut might over time find a home there too, eventually perhaps in the Western Arctic and Labrador (it is true that Roman orthography is used in both these latter locales, but it is becoming easier to transcribe from one script to the other).

The aim would be to affirm Inuit identity, to improve Inuit educational achievement, to strengthen the language that is at risk, but at the same time to improve ability in English.

Success would mean that, over time, we will see Inuit high school graduation rates in Nunavut achieving parity with students in the rest of Canada. These graduates would be able to take their share of positions in the Government of Nunavut and in the federal government in Nunavut. They would be equipped to take post-secondary training anywhere in Canada. And they would be ready to enter an expanded private sector in Nunavut.

This is not to say that all Inuit children would be destined for graduation. Some would not. Nor is it to say that Nunavut ought to adopt a wholly academic program. Whether Inuit youth are going to live off the land or go into a trade, there would be a place for them in school. But high school graduates are the key.

In this way – and I believe only in this way – can the objective of Article 23 be achieved.

## **H. The Choice**

I see no alternative to a strong program of bilingual education. I believe that under the direction of the Government of Nunavut, with the support of the federal government, and with the full participation of Inuit families, it can succeed. But nothing less than the full involvement of all partners at all levels of the education system will be sufficient.

There are valuable international precedents. Comprehensive attempts in recent decades to reverse the decline of traditional languages in the Basque and Catalonian regions of Spain (which were suppressed under Franco) and in Estonia and other Baltic countries (where under Soviet rule the local languages were used less and less) have met with some success. Describing the program in Catalonia, the Languages Commissioner of Nunavut reported:

There has been measurable and, indeed remarkable success in increasing the status of Catalan within the education system. By 1999, 98.5 percent of teachers in primary schools and 81.2 percent of teachers in secondary schools held a certificate of competence in the Catalan language. This compares with a figure of only 52 percent of pre-school and primary teachers just twenty years earlier. By

2000, 88.9 percent of primary schools and 51.2 percent of secondary schools carried out all their teaching in Catalan (except courses in Spanish and foreign languages), while the remainder carried out most of their teaching in Catalan. By comparison, in 1995-1996, the figures stood at 67.5 percent for primary schools and 25.9 percent for secondary schools.<sup>50</sup>

The secret to these successful recovery programs appears to be based on comprehensive efforts on the demand side (by requiring or encouraging use of the local language in the public service) and on the supply side (by instituting a robust program of bilingual education). Similar programs have been instituted in the Scandinavian countries to reinvigorate the Sami language.

Here I urge adoption of the initiative taken by the Maori of New Zealand in the use of "language nests." By the early 1980s the use of Maori was dying. The Maori people, however, insisted that it had to be revived. And they knew they had to do it themselves. So in schools and community halls the Maori would meet in the evening. Elders would teach their children and their grandchildren their own language; soon the next generation and the generation after that would start to use Maori.

The proliferation of the Maori "language nests" – in 1992 there was only one, by 1998 there were 646 – was nevertheless not on its own enough to re-establish Maori as a language suitable for everyday adult life, and in 1997 the New Zealand government began an intensive effort centred on recruiting and training sufficient numbers of Maori-speaking teachers and developing appropriate materials. The Languages Commissioner of Nunavut reports:

Since then, budgets for producing Maori language teaching and learning materials have been increased substantially (to around \$7 million per year). Various strategies have also been adopted to increase the supply of teachers competent in the Maori language, including scholarships for teacher trainees, face-to-face recruitment campaigns, in-service Maori language training for active teachers, etc.<sup>51</sup>

But the best evidence that an Aboriginal language need not be overwhelmed by a European language is Greenland. In that country in the 1960s the colonial power, Denmark, which had asserted sovereignty over Greenland since 1721, promoted the use of Danish from the first grade. But Greenlanders resisted this.

A renaissance of Greenlandic occurred in the 1970s. In 1979 Home Rule came. The Home Rule government made the preservation of Greenlandic a priority. Today students are taught in Greenlandic throughout primary and secondary school. They have an indigenous Greenlandic literature and they have translated many works of world literature into Greenlandic.

The Greenlandic model, however, has its limitations. It is graduating students unable to use Danish or English; in a real sense they are unqualified for work or study outside Greenland, or even equipped to speak in any European language to the world outside Greenland. Greenland academics now urge the adoption of a more fully bilingual model, urging that English be taught from grade 4 and not from grade 7.

<sup>50</sup> C. Sabourin and J. Bernier, *Government Responses to Language Issues: International Examples* (Iqaluit: Office of the Languages Commissioner of Nunavut, 2001) at p.20.

<sup>51</sup> *Ibid.* at p.50. For an overview of the New Zealand efforts see Stephen May, "Maori-medium Education in Aotearoa/New Zealand", in James Tollefson and Amy Tsui (eds.) *Medium of Instruction Policies: Which Agenda? Whose Agenda?* (Mahwah, NJ: Erlbrum Associates, Inc. 2004).

So the Inuit must be equipped to use English as well as Inuktitut. Thus the bilingual model I am recommending.

### **I. The Nunavut Project**

This is a project for all of Nunavut, not just teachers and students. Inuktitut must be spoken and strengthened in the homes of Nunavut and in all the communities of Nunavut.

Every community should have a Head Start pre-school type of program (as opposed to day cares) and they, like other daycare and early-childhood programs, should all be conducted in Inuktitut.

In Nunavut the Inuit will have to take the initiative in establishing "language nests". Elders must pass on the language. Parents must participate in the nests and make sure the whole family uses Inuktitut. Communities must support the use of Inuktitut in family language camps and literacy activities throughout the year. And parents must do all they can to keep their children in school. Students who have graduated from Nunavut high schools say that two important factors in enabling them to be successful in school are parental support and high expectations.<sup>52</sup>

Nunavut doesn't have enough teachers. They will have to be recruited, and young people will have to volunteer to be teachers, even knowing that more lucrative and possibly less arduous careers are available to them. The invaluable role of Inuit teachers must be recognized and their unique status must be cherished in every community. Men as well as women must come to see teaching as a worthwhile career. All teachers will have to receive the level of support they deserve. The schools must become the hub of community activity, a place where elders and infants are welcome along with students and teachers.

There are impediments. Inuit families do not usually resemble middle-class families in Vancouver or Calgary, accustomed to instilling in their children the virtues of learning through the written word, sending their children off to French immersion. These are families only a generation or two removed from hunting and gathering, who have seen their whole world turned upside down.

My emphasis has been on bilingual education, on the schools and on graduates, because there lies the long-term answer to the problem. But this is not a stand-alone project. It cannot succeed unless the housing and health of the Inuit improve. These things go together.

Housing for Inuit in Nunavut is cramped, to say the least. Students' health is at risk, and sickness and overcrowded homes contribute significantly to Nunavut schools' high absenteeism rates.

One of the biggest surprises you find in Nunavut schools is the presence of amplification systems in the classrooms. It was explained by school officials in Iqaluit that – incredibly – between 30 and 50 percent of Inuit children are believed to suffer from some degree of hearing

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<sup>52</sup>Northern Lights: A Research Study of Successful High School Students Across Nunavut (Christian DaSilva and Cassandra Hallett, 1997).

loss. The reason the figure given is so vague is that there is very little known about the phenomenon. School-wide screening of students has never been instituted.<sup>53</sup>

It appears that the hearing impairment in Inuit children is mainly caused by Chronic Otitis Media (COM), a chronic infection of the ear which is more prevalent among Inuit than any other race in the world. Hearing loss due to COM can cause delayed language and speech development. Students suffering from COM may have difficulty learning and poor academic achievement.<sup>54</sup>

COM is closely associated with, among other things, overcrowding and exposure to tobacco smoke, two risk factors particularly prevalent in Nunavut communities.<sup>55</sup>

Imagine the odds faced by a student attempting to do homework with 12 or 13 other people in the house (on average, half of them children), perhaps sleeping two, three or four to a room. Nunavut's climate dictates that these tiny homes will be shut tight against the weather for possibly eight months of the year; virtually every home has at least one resident smoker, and usually more; oil heating, particularly from poorly-constructed or maintained systems, may produce carbon monoxide and other pollutants. The fact that even one quarter of Inuit children graduate from high school is, under the circumstances, a testament to the tenacity of those students, their parents, and their communities.

I wrote in my Interim Report that the issue of social housing did not come within the Nunavut Land Claims Agreement and ought to be pursued in direct talks with the federal government at the highest levels. I still believe this to be the correct approach.

This does not, however, mean that housing is insignificant to the issues which concern me as Conciliator. Student, staff and government housing programs will be important parts of many of the initiatives I propose. But nor are the more basic issues of social housing irrelevant. In fact, it is no exaggeration to say that very little that I am proposing regarding bilingual education and a representative public service in Nunavut can succeed without a comprehensive social housing program.

## **V. QUESTIONS OF FUNDING**

### **A. The Royal Commission on Bilingualism and Biculturalism**

I have said that if the objective of Article 23 is taken seriously, it implies there should be a program of bilingual education and that, in Nunavut, Inuktitut must be the principal language of the workplace and of the delivery of government services.

This country's language policies have been built on the concept of linguistic duality. But when Nunavut entered Confederation, a jurisdiction was created in which neither English nor French is the majority language.

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<sup>53</sup> An earlier study in Nunavik found that 23 per cent of school-age Inuit children in Kuujuaaraapik had significant hearing loss in one or both ears. In the United States (by way of comparison), only about two per cent of children under 18 have hearing loss.

<sup>54</sup> *Alan D. Bowd*, "Otitis media: its health, social and educational consequences particularly for Canadian Inuit, Métis and First Nations children and adolescents" (Centre of Excellence for Children and Adolescents with Special Needs, Lakehead University, 2002): [www.coespecialneeds.ca/PDF/otitisreport.pdf](http://www.coespecialneeds.ca/PDF/otitisreport.pdf).

<sup>55</sup> The figures on overcrowding appear earlier in this report. As for smoking prevalence, one Indian Affairs survey revealed that 93% of Inuit women in Kugaaruk smoke: [http://www.ainc-inac.gc.ca/ps/nap/air/rep2003/fpm\\_e.html](http://www.ainc-inac.gc.ca/ps/nap/air/rep2003/fpm_e.html). The figures usually cited for Inuit smoking rates are around 70-80%.

In attempting to negotiate a new deal on language, either under the Nunavut Land Claims Agreement or through Heritage Canada, Nunavut has run into a recurring obstacle. Unlike French and English, which are regarded as defining characteristics of Canada, and have been supported by the federal government with comprehensive programs and generous funding, the country's Aboriginal languages, including Inuktitut, are regarded as part of the nation's "heritage." The federal programs and services that support these languages are restricted to the community and the home. Nunavut government departments cannot access this funding for teacher training in Inuktitut or curriculum and resource development.

The Inuit of Nunavut do not want support for Inuktitut to be confined within the limited scope of Aboriginal language policy, but desire a funding partnership based on their unique status as a majority in Nunavut.

The Inuit, though a majority in their own territory, are a minority in the sea of English. In this they resemble the Francophones of Quebec, a majority in their own province, but a minority in North America.

The Government of Canada's own struggle to achieve fair representation for Francophones in its public service provides an illustration of the way in which we can achieve the objectives of Article 23 in Nunavut.

In the late 1960s the Royal Commission on Bilingualism and Biculturalism (the "B&B Commission") pointed out that there had been a failure to recognize the use of French in the federal public service, together with a failure to welcome Francophones into the public service, except in lower-paying categories.

The Commission revealed that in the federal government Francophones did not occupy in the higher echelons the place their numbers warranted; moreover, the Commission pointed out that educational opportunities for the Francophone minorities in the English-speaking provinces were not commensurate with those provided for the Anglophone minority in Quebec, and that French-Canadians could neither find employment in nor be served adequately in their language by the federal government .

The B & B Commission noted that, "there is an acute shortage of Francophones in higher salaried positions throughout the public service."<sup>56</sup>

The B & B Commission wrote:

The problem of providing equal opportunity is universal. Wherever persons of different languages and cultures work with and for each other, patterns of differential participation in the work process develop. The patterns are based on the realities of group differences in types of training and skills. But they also tend to be based on stereotypes that suggest which people are suitable for what work and what social status. To a certain extent the stereotypes merge with the realities of genuine cultural difference and even reinforce them; in this sense they are self confirming. They can colour the whole environment of an organization. A supervisor who looks at subordinates of different cultural and linguistic

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<sup>56</sup> Hugh R. Innis, *Bilingualism & Biculturalism: An Abridged Version of the Royal Commission Report* (Toronto: McClelland & Stewart, 1972) at , p. 101.

backgrounds in terms of stereotypes will decide, on the basis of these stereotypes, whom to encourage and whom to ignore. As a direct result, some will become dynamic and self-confident, and others will become reticent and alienated. The upshot is not simple that people of ability or potential ability are overlooked (though this frequently happens), but that the environment itself partly determines who has ability by giving different labels to different types of people.<sup>57</sup>

The Commission went on:

The cultural ambience of the federal administration is that of a British model adapted to the politics and technology of English-speaking Canada. It is on the whole, an effective adaptation, but its great limitation is its lack of Francophones and, indirectly, French ways of thinking and operating. Everywhere in the Public Service there is great concern for recruiting Francophones, but the desire seems to be for men who will fit easily into the existing structure. The desire for Francophones was rarely complemented by a willingness to provide the intellectual atmosphere and working conditions for the development of their talents. Furthermore, there was apprehension that the Francophones would behave in the federal Public Service as "French Canadians." There was little recognition for the beneficial impact such Francophones might have in broadening departmental orientations. The department of External Affairs, for example, showed a limited interest in French and French-speaking Africa before 1965. The department of Finance has neglected the later developments in econometrics that have come from Francophone economists, both in France and in Quebec, and its libraries lack the leading French-language economic journals. The greatest drawback Francophone public servants must face is the cultural milieu of the federal administration: it is so overwhelmingly "English" that it is difficult for Francophones to identify with its problems or with the style of life, honour, and prestige of its officers. The result is that some Francophones either give up, drained of ambition, or simply become narrowly ambitious. Neither orientation is conducive to a successful or useful career. The Public Service must recognize the necessity of creating work milieu in which the normal language will be French, where Francophones will constitute a majority, and where their experiences will incline them to stay in the Public Service. [emphasis added]<sup>58</sup>

There is a striking similarity between the situation described by the B & B Commission and the situation in Nunavut today. The programs we developed in order to strengthen the French language in Canada can be useful models in Nunavut.

Beginning with the *Official Languages Act* in 1969 the Government of Canada pursued a comprehensive strategy aimed at increasing Francophone representation in the federal public service and supporting education and community development initiatives for Francophone minorities across Canada.

The *Official Languages Act* itself included strong measures to support French as a working language of the public service, a decisive step toward achieving a representative workforce.

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<sup>57</sup> *Ibid.* at p. 100.

<sup>58</sup> *Ibid.* at p. 101-102.

The adoption of the *Charter of Rights*, section 23, in 1982 brought with it the establishment of minority language education rights for French (and English) throughout Canada "where numbers warrant".

All of these measures were intended, as Prime Minister Pearson put it, to ensure that French-speaking Canadians are "at home" in Canada. We must do as much to ensure the Inuit are "at home" in Nunavut.

The *Official Languages Act* is an expression of policy – a policy favouring English and French. But nothing in the Constitution or the *Official Languages Act* prevents Canada, as a matter of policy, from supporting a territorial initiative favouring Inuktitut.

As a result of its dual-language policy, the federal government subsidizes the teaching of French as a second language in schools in the provinces and the territories.

In Nunavut the fruits of this policy can today be observed. There are approximately 400 Francophones in the territory, concentrated in the capital, Iqaluit. With federal funding the local Francophone community has built a \$5 million dollar school, where French is the language of instruction. Class sizes average six students. All of this was made possible under section 23 of the *Charter of Rights*. In addition, the federal government provides \$4 million a year to promote the use of French in Nunavut.

The Inuit receive \$1 million a year to promote the use of their language.

This is not to make invidious comparisons. But it shows what can be done to strengthen a minority language.

The French and the English are the founding peoples of Canada. They are the charter peoples of Confederation. Theirs are our two official languages.<sup>59</sup>

I wish it to be understood that the program I am recommending of federal support for bilingual education in Nunavut would in no way challenge or undermine the paramount place of English and French, as constitutionally protected languages, in Canada or in Nunavut. They would remain the languages in which *federal* government services in Nunavut would be delivered. The right enjoyed by the Francophone minority to have schools, "where numbers warrant," under s.23 of the *Charter* would remain.

Today Francophones hold approximately one-third of positions in Canada's public service. The success of official bilingualism in Canada indicates that it is possible that extraordinary measures can be taken in Nunavut to make Inuktitut a language of the workplace and a language of the delivery of government services to the Inuit.

The B & B Commission cast its report in terms of "language rights," but conceded there was no constitutional mandate for its recommendations. At best, they said, section 133 of the *Constitution Act, 1867*, "represents embryonic concepts of equality".<sup>60</sup>

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<sup>59</sup> So pervasive is this policy that, for instance, Article 2.8.1 of the Nunavut Land Claims Agreement provides:

There shall be Inuktitut, English and French versions of the Agreement. The English and French versions shall be the authoritative versions.

<sup>60</sup> Innis, *supra* note 56 p. 12.

The recommendations of the B & B Commission were made even though there was no constitutional instrument providing that the federal public service should be representative of the Canadian population, no provision in the Constitution similar to Article 23 of the Nunavut Land Claims Agreement. And certainly no provision in the Constitution which implied as a corollary mandating French as a language of the workplace and of service to the public.<sup>61</sup>

But, it will be said, French is a world language, spoken by millions around the world and which has produced a body of great literature. It is a traditional language of diplomacy, a language whose purity is guarded by the Académie française. What reason is there to believe that the same measures that we took with respect to French could succeed in the case of an Aboriginal language?

To start with, it was not at all certain that French would thrive in Canada. In 1763 the population of New France, coming under British rule, numbered only 60,000 (no more than twice the population of Nunavut today). Under the *Quebec Act* of 1774 their laws and their religion were protected.

Nevertheless, in 1839 Lord Durham in his famous *Report on the Affairs of British North America* did not think that the French language could survive in North America. Where was their literature, he asked? Where were their books? He recommended the assimilation of the French Canadians in Quebec. Of course, the idea was rejected by the old Province of Canada.<sup>62</sup>

Well, it is said, there are only 25,000 Inuit in Nunavut. But they are growing in numbers. In fact, since 1980 the Inuit population of Nunavut has almost doubled.

The recognition of the place of the French language in the federal public service and in schools across Canada is now unassailable. In the same way the recognition of Inuktitut in the public service and its place in the schools in Nunavut must bind the Inuit closer to Canada.

## **B. Federal Funding**

Neither in 1993 or in 1999 was there adequate attention given to estimating, and then meeting, the real costs that would be required for the development of a bilingual education system to address the objective of Article 23. They are only now beginning to be appreciated.

Nevertheless, the Parties have always understood the centrality of the objective of Article 23, even if they did not understand the scope and scale of the efforts needed to fulfill it.

If we are to achieve the goal of Article 23, a goal to which Canada has committed itself, can it be left to the Government of Nunavut? I think not. Nunavut does not, under Territorial Formula Financing, have the resources.

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<sup>61</sup> It should be borne in mind that what is proposed for Nunavut is not a template for emulation elsewhere in Canadian Aboriginal communities. No other Aboriginal language can claim that its speakers constitute a majority in any jurisdiction in Canada; there should be no concern that the proposals made here would open the door to a host of minority languages claiming similar status. Nunavut is unique.

<sup>62</sup> An even more startling proposal for assimilation of the Inuit of Nunavut was recently made by Professor Frances Widdowson of the University of New Brunswick. Professor Widdowson recommends "the depopulation of Nunavut" so that the Inuit might "become actual participants in the development of humanity": Frances Widdowson, "The Political Economy of Nunavut: Internal Colony or Rentier Territory?" (Paper prepared for the Annual Meeting of the Canadian Political Science Association, University of Western Ontario, London, Ontario, June 2-4, 2005).

If there ought to be a further commitment by Canada, when does it arise? I think now is the time. The Government of Nunavut is up and running. The initial representation of Inuit in the public service has levelled off. It is apparent that the specific measures contemplated by the Parties when the objective of Article 23 was agreed are not going to be sufficient.

The Government of Nunavut has since 2002 been seeking additional federal funding for a program of bilingual education.

I have set out in Part VI.D of this report the costs of the specific initiatives that I am recommending in the near term. They come to approximately \$20 million per year. This figure does not include the cost of the program of bilingual education that I recommend for the long term.

These recommendations will require substantial investment immediately, particularly for teacher training and curriculum development, and the commitment must be sustained over a generation in order to bear fruit. The Government of Nunavut has come up with some cost estimates, but given that the program must be introduced in stages over years, it is not easy to determine the cost over the whole period of time.

But these costs must be put in perspective. In order to solidify our position in the Arctic, Canada is contemplating the purchase of several heavy naval icebreakers, the construction of a deep-water port at Iqaluit, and an enhanced military presence. These are matters for the Government of Canada to determine. I am simply urging the vital importance of what is truly incontrovertible evidence of our Northern commitment: a successful, thriving population with a well-functioning government, fully integrated into Canada but with a unique and historic Arctic character.

There can be no doubt that what I propose will be costly. Equally there can be no doubt that Canada must provide the lion's share of the funding.

I have discussed with the Parties the question of how such an arrangement should be structured. I think that the Governments of Canada and Nunavut should develop bilateral agreements for the design and implementation of this program. In my view no other approach will work. The Government of Nunavut is in the business of educating Inuit; it has the expertise, it runs the facilities; it trains the teachers; it is involved in the health, housing and general welfare of the students. It has developed plans for bilingual education: the design of a Nunavut-specific curriculum, the training of a new and greatly expanded cohort of Inuit teachers to deliver it, and the involvement of the whole community. It is also accountable to the citizens of Nunavut for the decisions it makes and the priorities it sets.

It is therefore, I think, through the Government of Nunavut that the program should be delivered.

In the Clyde River Protocol of 2002 the Government of Nunavut and NTI agreed that "NTI occupies a special place in the affairs of Nunavut with respect to the rights and benefits of Inuit under the Nunavut Agreement" and that "NTI has a mandate to protect and promote the interest of the Inuit as an Aboriginal people."

There can be no doubt that NTI, which in its submissions to me as Conciliator, has time and again expressed its belief in the need for bilingual education as the only means of meeting the objective of Article 23, is uniquely placed to support the Government of Nunavut in its determination to bring such a program to fruition.

I had thought that it might be possible to make Nunavut accountable to Ottawa, to require a financial audit and a performance audit by the federal government. But this would be inconsistent with the grant of authority that has been given to Nunavut to run its own affairs, which quite specifically provides Nunavut with jurisdiction over education. The Government of Nunavut is accountable to its own Legislative Assembly for the money it spends, and the Legislative Assembly is of course accountable to the citizens of the territory.

The federal funding will have to be over and above what Nunavut receives through Territorial Formula Financing. It is funding that, like the federal funds that go to the provinces and territories to fund English and French, will have to be targeted funding, not to be devoted to any other territorial priorities.

The Government of Nunavut is already spending \$7.5 million in curriculum development and teacher education, specifically targeted to these objectives. The balance should come from Canada. Or it may be that a ratio corresponding to that which currently obtains, in the annual budget of Nunavut, between Canada's subvention and Nunavut's own revenue, would be appropriate. These are, of course, matters to be worked out between Canada and Nunavut.

Canada and the Government of Nunavut would develop a joint strategic plan setting out objectives and time frames.

I think there should be an independent panel to review the progress of the program. This should include experts in the field, ideally a blend of academics, teaching professionals and members of the community in Nunavut. The panel would monitor progress and results.

This will be a long-term project. Results will not be apparent at once. We have seen, however, in the case of French, that over time (in the case of French, over three decades) with federal support a minority language program can succeed.

## **C. The Cost of Failure**

### **(1) Dollar Costs**

The objective of Article 23 is to ensure that qualified Inuit occupy 85 percent of the positions in the public service in Nunavut. As long as there is a shortfall, there is continuing cost to the Inuit.

In February, 2003, PricewaterhouseCoopers provided an analysis of these costs in a study for NTI and the Government of Nunavut.<sup>63</sup>

After comparing the present income of the Inuit with what they would be earning if they filled 85 percent of the positions in government in Nunavut, PricewaterhouseCoopers calculated the incremental lost income to the Inuit as \$123 million annually.<sup>64</sup>

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<sup>63</sup> *The Cost of Not Successfully Implementing Article 23: Representative Employment for Inuit within the Government* (PricewaterhouseCoopers, February 17, 2003).

<sup>64</sup> This is not to say that the wages and salaries going to non-Inuit Canadians from the South, who are in Nunavut to do the jobs for which Inuit are not qualified, are somehow lost to Nunavut. Of course they are not. Much of the wages and salaries paid to non-Inuit are spent in Nunavut. Much of the money circulates there. But that was not the objective of Article 23.

Of course, the employed Inuit would have to pay income tax (as they always have) on these additional earnings, and Inuit on social assistance moving to employment would give up their social assistance. If you take these factors into account you get, according to PricewaterhouseCoopers, a *net* figure of \$72 million in lost Inuit salary and wages for the year 2003 attributable to the failure to achieve the goal of Article 23.

Of course, failure to realize full Inuit employment also carries with it costs to the Governments of Nunavut and Canada.

PricewaterhouseCoopers, using data from the Saratoga Institute, went on in its 2003 report to consider the high cost of recruiting, hiring and training new employees, incorporating data indicating recruitment in the South was both more expensive<sup>65</sup> and more frequent<sup>66</sup> than when Inuit were hired. They factored in estimated savings in social assistance payments and the effect of tax revenue flowing back to government.

PricewaterhouseCoopers's conclusion was that the net dollar cost to all the Parties amounts to some \$137 million per year as of 2003.

Such calculations are inherently elastic. But the report is nevertheless an indication of the scale of the costs to the Inuit of doing nothing, or not enough, towards the fulfillment of Article 23's objectives.

Furthermore, there is reason to believe that *actual* costs to all Parties must be higher still when indirect costs are taken into consideration. PricewaterhouseCoopers writes:

The indirect costs associated with not successfully implementing Article 23 are likely to extend well beyond just the direct costs described above. This is due the fact that many of the barriers that limit employment of the Inuit in the Government sector – such as education, housing, day care – also limit employment of the Inuit in the non-Government sector. Moreover, increasing Inuit employment and income is likely to have significant ripple-type effects throughout the whole economy... these costs are real and likely to be sizable in nature.<sup>67</sup>

## **(2) Social Costs**

And then of course there are the social costs. It seems difficult to contest the proposition that a population that is unemployed and marginalized is likely to have a higher rate of social pathology than one that is fully employed, with consequent costs (for treatment of alcohol and drug abuse, health costs, the costs of high incarceration rates, family violence, and suicide).

No one expected that the establishment of Nunavut would eradicate social problems among the Inuit. Indeed, the division of the former Northwest Territories into a wealthier, better-developed Western Arctic (the Northwest Territories today) and the predominantly-Inuit, underdeveloped Eastern Arctic (Nunavut) was expected to spotlight many problems that had long persisted. A former Chief Medical Officer of the Northwest Territories said before Nunavut was established:

<sup>65</sup> In the case of a non-Inuit public employee, there are likely to be additional costs (not included by Saratoga), such as the cost of transportation to Nunavut and returning to the South.

<sup>66</sup> Since the average Inuk stays on the job 6.4 years; the average non-Inuit 3.8 years, the \$80,000 expenditure will be incurred oftener in the case of non-Inuit.

<sup>67</sup> PWC report, *supra* note 63 at p. 49

Division will consolidate not only the Inuit, but also their problems, [statistics on which] now are diluted by the presence of a substantial NWT non-aboriginal population, and to a lesser extent by the non-Inuit aboriginal population, whose health status is better than that of Inuit. Thus, the health status profile for Nunavut may come as a shock to many who may have become inured even to the depressing aspects of the overall NWT profile.<sup>68</sup>

Indeed the statistics for the Territory are bracing. Hicks and White, writing in 2002, synopsise:

When mortality data for Nunavut was first published by Statistics Canada, many Nunavummiut were shocked to learn that the life expectancy at birth for a baby born in Nunavut in 1996 was almost ten years lower than for Canada as a whole... Nunavut's infant mortality rates have been halved over the last fifteen years, but are still more than three times the national rate. Mortality due to lung cancer among women in Nunavut is almost five times the national rate, and women in Nunavut were about seven times more likely to die of respiratory disease than Canadian women as a whole.

To the outside observer it must seem like there is no end to the depressing, statistics: over two-thirds of Nunavut residents 12 years of age and older smoke (compared to less than 30 per cent nationally), almost three-quarters of all Nunavut mothers smoke during their pregnancies, Nunavut's rate of tuberculosis during the 1990s was more than eight times the national average, sexually transmitted disease rates are 15 to 20 times the national rate, and Nunavut's suicide rate is six times the national average.

This latter statistic is perhaps that most disturbing. For the period 1986 to 1996, Nunavut's crude suicide rate was 77.9 per 100,000 – and rising – compared to a national rate of 13.2 per 100,000.

The suicide rate was far higher among those between 15 to 29 years of age, much higher among males than among females, and higher in the Baffin region than in the Kitikmeot or Kivalliq regions.<sup>69</sup>

Hicks & White went on:

[S]uicide rates in the eastern and central Arctic were also rising sharply before the creation of Nunavut in 1999. The suicide rate for the period 1992 to 1996 was almost double what it had been a decade before. And during the first 16 months of Nunavut's existence (April 1999 thru July 2000), at least 34 Nunavummiut took their own lives. Of the 21 suicides which occurred in the Baffin region, all but two were Inuit males. 12 of those 21 were from Iqaluit.<sup>70</sup>

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<sup>68</sup> David Kinloch, "Health and health services in the NWT: A review of policies and programs," unpublished report dated March 21, 1996, p 72, quoted in Hicks & White at p. 89.

<sup>69</sup> Hicks & White, *supra* note 15 at pp. 89-90.

<sup>70</sup> *Ibid.* at pp. 90-91.

Hicks & White summarize the danger (and by implication the costs) of leaving these problems unchecked:

[T]he territory's new government, Inuit organizations and Institutions of Public Government face enormous challenges: a young work force with high levels of unemployment and dependence on social assistance, low (but rising) educational levels, high costs for goods and public services, inadequate public housing, poor health condition, and escalating rates of substance abuse, violence and incarceration.<sup>71</sup>

No one has attempted to put a dollar figure on the costs or consequences of young people growing up uneducated or undereducated, and with little hope for their future. Two things do seem to be clear, though: first, the costs are staggering both in human terms as well as in dollars and cents; and second, the costs are avoidable. We can pay now, or we can pay a lot more later.

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<sup>71</sup> *Ibid.* at p. 92.

## VI. THE NUNAVUT PROJECT

### A. The Challenge

#### (1) The Commitment Required

Today there are about 100 Inuit high school graduates every year. The achievement of Article 23's objective of representative Inuit employment (i.e. 85 percent) would require the addition of something like 1500 Inuit to the workforce, over and above the number required to maintain current levels in the face of retirements and other departures from the public service.

Assuming that all unfilled positions in government require at least a high school education (I think that this is a reasonable assumption given that the most under-representative areas of Inuit employment are those with the highest educational requirements), it would be foolish to think that the present education system could support Article 23's attainment. Even if fully half of each graduating class went into the public service, the fulfillment of the objective of Article 23 would be over 30 years away, and this calculation does not account for attrition in the public service, which could double or even triple in this time period. Moreover, it would not leave any graduates available to enter the private sector.

The number of qualified Inuit is limited. Inuit high school graduates cannot all be expected to enter the public service in order to swell the numbers. Today those with high school and university qualifications are in demand by all three levels of government in Nunavut, and by the private sector. The teachers graduated by the Nunavut Teacher Education Program illustrate the point: many of them are recruited by the Government of Nunavut, by businesses and other organizations.

Fulfilling the objectives of Article 23 means more than developing Inuit hiring initiatives in the public service. Such programs have been in place since before Nunavut was established. They have met with mixed success, but at any rate appear now to have largely exhausted the supply of qualified Inuit.

As these problems are apparent, so is the solution: we must increase the *supply* of qualified Inuit, and shift the focus from demand. With only one in four Inuit children graduating from high school, the inadequacy of supply is plain.

And so are the challenges. Nunavut students need a Nunavut-specific curriculum, and Nunavut needs to develop the supporting materials. We must nurture a legion of Inuit teachers capable of delivering a truly bilingual curriculum, from Kindergarten to Grade 12. Trades, vocational and cultural training programs must be developed; members of the local communities must become engaged in the delivery of these and other programs. Pre-school programs must be enhanced. Better adult literacy and adult education are also required.

If the number of qualified Inuit is expanded there will be a "spillover" effect, that is, Inuit graduates who qualify for government positions will at the same time qualify for positions in the private sector and the non-profit sector.

Joe Adla Kunuk of NTI made this point when he wrote in February, 2004:

While initiatives must be directed to the public sector generally and not simply the Government of Nunavut, it should be recognized that education and training will benefit all employers.

This is a profound task, well beyond the resources of the Government of Nunavut. It will require a commitment by Canada. I think Canadians will embrace Nunavut, as they did in the 1990s, as a worthy national project which must not be abandoned.

The view is widely held that we are at a watershed moment for Nunavut.

If we simply go on as we are, we will be facing an irretrievable loss of Inuit language, culture and tradition. We would run a very real risk of marginalizing a whole people, making them strangers in their own land.

Can it be done? Can Nunavut train enough teachers in time? Can it develop the curriculum materials? Can parents keep their children in school? Can Inuktitut be taught to the children by local elders and middle-aged men and women? Can traditional skills be taught in the schools? Can there be Inuit graduates equipped to fill their fair share of responsible positions in the public service, and equipped to enter the private sector in a rapidly changing Arctic?

I think the Inuit can do it, and, with our help, they will. These, after all, are the people who mastered the art of survival in these cold and distant places, on whose skills we Southerners have relied for four hundred years. They have evolved strength, determination and patience over centuries on the land, water, and ice. They put together the country's largest land claim. They are building a new Territory.

They believe – they are certain – that education is the key to the future of Nunavut.

For me, the spirit of Nunavut – and its future – is exemplified by the students and graduates of the Nunavut Sivivuksavut program. There, in an unremarkable building in Ottawa's Byward Market district, small groups of Inuit students gather to study their history, their culture, and plan their futures. They take courses at local universities, they act as ambassadors for the Inuit of Nunavut. The graduates of NS have for 20 years been going on to become leaders in business, government, education, and the arts. On a shoestring budget, thousands of kilometers from their home communities, they support one another, and they show us what can be done.

## **(2) Eyes on the Prize**

At present, there is a great deal of focus – at the negotiating table, in written submissions, in government at all levels and in Nunavut's political discourse – on “the numbers”, i.e. the percentage of Inuit employed in the various government departments. This is of course natural. The fact that we seem to be stalled in our quest for the fulfillment of Article 23's objectives is established through an examination of Inuit workforce statistics; ultimately, our success too will be measured, in large part, by counting heads. Article 23 is, as NTI rightly points out, at many important levels “a numbers game”.

My concern is that the program I am recommending to fulfill the objectives of Article 23 may, in the short term, mean that the percentage of Inuit employees in the public service will not immediately improve, and might in fact *decrease*.

Let me give an example of how this might occur: A significant expansion of the teacher training program may well, in the short term, require more instructors imported from the South to teach the new teacher candidates. To be sure, in a few years we can expect to have the first of a new cohort of well-trained Inuit teachers. Some years after that cohort begins teaching, we can expect their influence to be felt in increased numbers of Inuit graduates, who will be equipped to go on to further training and take their place in the currently Inuit-poor areas of the public service, but this result could be perhaps a decade away. My point is that the long-term objective must be our focus, even if, in the near term, more rather than less reliance is placed on Southern workers in certain areas.

Failure to address the Inuit teacher shortage and the insufficiency of curriculum materials will quickly render bilingual education, even in its present limited scope, irretrievable. Although exact figures are difficult to come by, it does seem clear that, while the need for more Inuit teachers is even now acute, their numbers are expected to continue to slide at present replacement levels.<sup>72</sup> If this process is left unchecked, it will not be reversible. A generation of Inuit children, perhaps more, will be deprived of an effective education. The sheer cost of this collapse in human lives wasted would be intolerable.

The present crisis opens on a window of opportunity. I am urging that we exploit the window before it closes. All must keep their eyes on the prize – the development of bilingual education and a public service that will truly reflect Inuit culture.

### **(3) The Numbers Game**

Today, the shortage of qualified Inuit, coupled with the existence of the 85 percent target, has resulted in an unfortunate "numbers game" in hiring for the public service in Nunavut.

Article 23 *is* at one level a numbers game – its objective is 85 percent Inuit employment. But we should not lose sight of the fact that the numbers are also a means to other ends, not simply an end in themselves. Article 23 was not designed simply as a device for providing well-paying jobs to Inuit residents of Nunavut. Certainly that was one objective, and given the importance of government employment in the territory, it is an important one. But Article 23 also was designed to ensure that Inuit participated meaningfully in the governance of their Territory, and that government services would be provided in a manner that Inuit employees, combining training and knowledge in professional fields and government with their command of the Inuit language and culture, could uniquely achieve. In other words, it was designed to improve the quality of government in Nunavut for the benefit of the Inuit.

Without a comprehensive strategy for addressing the lack of an adequate supply of educated Inuit, there has been a tendency for government in Nunavut to focus instead on the demand side of the equation. As a result, there is an oft-noted phenomenon of "poaching" to enable one department to augment its Inuit numbers, but at the expense of another department. The problem is exacerbated where there is insufficient support for these employees once they are hired, either because of a lack of resources, or because the required resources are devoted

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<sup>72</sup> This is largely a matter of resources. Many Inuit teachers now reaching retirement age received only two years of postsecondary education; present teacher-training candidates will have four or five years' training. Many of this same generation of teachers own their own houses, and when they retire their replacements will themselves need to find housing. Moreover, increasing the NTEP program to graduate more Inuit students will probably require significant investment in either student support (childcare, housing etc.) or in-community course delivery. My point is that replacing Inuit teachers is at present a very expensive business.

instead to the drive for immediate gratification of Inuit hiring numbers. Program delivery may suffer.

So the drive to achieve 'the numbers' – to hire Inuit employees – may in some cases undermine the other objectives of Article 23: the meaningful participation of Inuit in government, and the delivery of government services in Inuktitut in the communities.

I have discussed the problem of “poaching” with respect to the graduates of teacher education programs in Nunavut, but it is something that has to be considered in a broader context too. The program I propose will require that many new positions be created, that resources be dedicated, with some urgency. It might not be possible to fill all these positions with qualified Inuit in the short or even medium terms. Instead, I would encourage the parties to take the focus off short-term achievement of Inuit employment numbers where doing so will advance Article 23's objective of fuller Inuit employment in the long term.

Of course, no one with whom I have spoken wants to remove the emphasis from Article 23 hiring programs altogether. My point is that for now the only sustainable path is to place a greater emphasis on increasing the supply of qualified Inuit.

## **B. The Plan**

### **(1) Introduction**

I have received the benefit of a great deal of advice from educators, as well as from professionals and academics, students and parents, and many others.

My objective here is to identify what I believe to be the priorities of any effective plan to fulfill the promise of Article 23. It would be a mistake for me to set out, in advance, proposals in great detail. Not only because it would extend beyond my mandate, but also because if I have learned one thing about Nunavut it is that you can never know enough about the territory and its people. Nunavut is a singular place, where government programs effective in the South have foundered like Franklin's ships. The programs that have succeeded best are those that have evolved; things must be tried, some may fail, and then we must be prepared to try again, making use of our experience. The programs must adapt continually to this unique social, linguistic and geographic environment.

In this spirit, the details must be worked out between Canada and the Government of Nunavut: the communities themselves will no doubt play an important part in the design and implementation of the programs.

### **(2) The Core of the Program: Bilingual Education K-12**

Professor Martin in his 2000 report set out the general framework for the use of Inuktitut and English in instruction. He urged that, under the new model, Inuktitut would be the main language of instruction in elementary school and an equal language of instruction in high school. His “strong model” of bilingual education contained four elements:

1. An Inuktitut head start type pre-school program,
2. Grades K-3: 100 percent in Inuktitut with the option of one English as a Second Language (ESL) period per day,

3. Grades 4-8: Inuktitut used for the main academic subjects and English used for two periods per day with a focus on developing conversational skills,
4. Grades 9-12: both Inuktitut and English could be used for academic subjects but students would take a minimum of one-language arts period and one other subject in each language.

Professor Martin proposed variations of this program with respect to the Inuinnaqtun-speaking communities, where he found that profound language loss has already occurred, and a further set of options for the “mixed population” centres of Iqaluit and, possibly, Rankin inlet, where non-Inuit make up a significant minority of the population and perhaps no more than half the Inuit residents speak Inuktitut at home.

The new program must be built on the foundation that now exists. Inuktitut should continue to be the language of instruction from kindergarten through Grade 3/4. It may be valuable, even at this early stage, to introduce English in the earlier years, but whether and to what extent English should be introduced in the primary years as a language of instruction or as a subject of study is something that will have to be the subject of further consultation and research by the Department of Education.

Inuit students would acquire literacy in Inuktitut, but in Grade 4/5 English would be introduced as a language of instruction. This will not, however, lead to the early-exit immersion now current. Instead, during and after the transition Inuktitut will continue to be a language of instruction, alongside English. The exact distribution of subjects and languages may vary. Perhaps Inuit history, traditions, and culture, the geography of Nunavut, the life of the Inuit in early times, contact with European explorers, the fur trade, the long struggle for their land claim, the creation of Nunavut, and their present-day achievements in art, sculpture and film, should all be taught in Inuktitut. Crossover subjects such as social studies could be taught in Inuktitut. It may be that English will be the best choice for teaching science and mathematics.

Within the bilingual program models adopted by the government, which ensure there are at least two periods of Inuktitut through all grades from K-12, each community will need a system adapted to its own situation. In Kugluktuk and Cambridge Bay, where Inuinnaqtun is endangered, the choice may well be immersion in the Inuit language. All surveys show that the Inuit of Nunavut want to preserve their language. This is especially so in Kugluktuk and Cambridge Bay. In Iqaluit, where the largest non Inuktitut-speaking population is found, Inuit children are surrounded by English outside the home, but at Inukshuk High School in Iqaluit the students are unanimous in wanting more Inuktitut introduced in the classroom.

It will be clear that the program I am recommending is modelled on Professor Martin’s proposals, which have to a great extent been adopted by Nunavut’s Department of Education as the basis for their 2004 policy. These proposals are based on the consensus of experts in the field. Moreover, they are tempered by the practical reality of Nunavut. As I have said, I do not think it is useful for me to set out in great detail the program that should be followed, course-by-course. These questions are for the experts, the educators, the parents and the communities.

**(3) The Pillars of Bilingual Education**

**(a) *Inuit Teachers***

**(i) *Recruitment and Training***

The Nunavut Teachers' Education Program (NTEP), which is charged with graduating the next generation of Inuit teachers, faces considerable challenges.

Professor Martin wrote in 2000:

The special difficulty in Nunavut with implementing community-appropriate strong bilingual models lies in its underdeveloped infrastructure. While there have been significant initiatives in curriculum development and learning materials, much remains to be done so that Inuktitut could be the main [language of instruction] to the end of elementary school and an equal [language of instruction] in high school.

He went on to say:

But the most critical constraint of all is the development of a strong new generation of Inuit teachers.

In NTEP teachers presently take a three year course, after which they are qualified to teach grades 1 to 9 for a probationary period of 5 years. In that time they must complete one more year and earn their B.Ed., after which time they are qualified to teach in Nunavut and can teach in most jurisdictions in Canada if they meet additional province-specific requirements. Most, however, presently do four years straight through to earn their B.Ed. Prior to 1978 the program was delivered in Fort Smith. In 1978 it was moved to Iqaluit as the Eastern Arctic Teacher Education Program (EATEP). In 1981 the program became affiliated with McGill University; the program now uses McGill's course outlines and the students graduate with a McGill certificate or degree. Prior to 1981 EATEP was a two-year certificate program; it was then changed to a three year program. In 1986-87 the B.Ed. was introduced, making the full program four years in length. In 2004 a "foundation" year was introduced, mandatory for incoming NTEP students who do not pass the college entrance exams (historically, many of the teachers qualified by EATEP/NTEP had been long term classroom assistants with less than a grade 12 education prior to their teacher training). The purpose of the foundation year is to provide additional preparation for students so that they are better equipped for university-level learning.

The EATEP/NTEP program is said to have graduated 200 Inuit teachers to this date, currently at the rate of 8-12 per year.

This is not nearly enough. A fully bilingual education system would require the recruitment of hundreds more Inuktitut-speaking teachers (and the training of a certain number of non-Inuktitut-speaking teachers in Inuktitut), even without factoring in the present rate of attrition.

The goal of a strong bilingual model as proposed by Professor Martin will require a substantial increase in the number of Inuit teachers. This will not be easy. It is presently very difficult for the NTEP program to recruit candidates for teacher education. A solution to this problem may well require concerted delivery of education programs within the communities, and a much more robust level of support (childcare, housing, etc.) for the teacher education students.

(ii) *Retention*

Of Nunavut's approximately 600 teachers, something like 230 (about 36 percent) are Inuit, and these are almost all in the elementary schools. The number of Inuit teachers in Nunavut is beginning to decline; the education system is not producing graduates at a sufficient rate to replace retirees, particularly because the teachers' education and experience is recognized as valuable in other lines of work. Until the establishment of Nunavut, Inuit teacher retention rates were among the highest in Canada.<sup>73</sup> They have since sharply declined.

Inuit teachers face considerable challenges in their work. Virtually all of them are women, often the sole breadwinners for a family of as many as four children. They may be single mothers. They may be unable to stay at school for meetings or lesson preparation due to their domestic obligations. Absences are common if the teachers' own children become sick or have other demands. There is a good deal of attrition in the ranks of Inuit teachers in the first 1-3 year period of teaching. The nature of the job requires that more support on the job training be provided to improve quality of education and teacher retention rates in these crucial first years of teaching. It was often suggested by officials that "something drastic has to be done" to avert a teacher shortage crisis, particularly an Inuit teacher shortage, in the next few years.

Some complain that many graduates of the NTEP move into positions elsewhere in government. Ooloota Maatiusi, Principal of the Nunavut Teacher Education Program at the Arctic College, when asked how to improve teacher retention, said "Get the Government of Nunavut to stop hiring our graduates." While exact figures are not available, it is clear that many qualified Inuit teachers in Nunavut are working for the Government in non-teaching roles. These are individual life choices. But they illustrate how badly Nunavut is in need of Inuit who have some qualifications.

On my visit to Nunavik in northern Quebec I learned that the Kativik Regional School Board's teacher education program has incorporated a one-year 'job shadowing' practicum *at the beginning* of a teacher's education. That is, prospective teachers are taken into the classroom with an experienced teacher for a full school year. It is a time for teaching students to decide whether teaching is indeed for them, and for the prospective student-teacher to be evaluated, so that the resources necessary to train a teacher can be focused on the most dedicated candidates with the highest prospect of long-term success. The Kativik School Board officials in Nunavik point to a high retention rate for their teachers. The extent to which this high retention rate can be attributed to the introductory practicum is perhaps open to question, but the idea is worthy of further study.

**(b) *The Development of a Nunavut-Specific Curriculum and Materials***

Bilingual education is not possible without bilingual materials. Moreover, students and educators in Nunavut are faced with a further difficulty of *context* – curriculum materials developed in the South are, quite apart from the question of language, often lacking in relevance to students in the territory.

The Government of Nunavut has committed itself to the development of a completely 'made in Nunavut' curriculum by the year 2009. This is a very large undertaking which will require a great deal of resources.

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<sup>73</sup> *The NWT Teacher Education Strategy: Costs of Success – Status of the Goal* (Barbara Guy, 1997).

Here too, there is an opportunity for cooperation with efforts in Nunavik. The Inuit in both jurisdictions use Syllabics. There are 11,000 Inuit in Nunavik, with close linguistic affinity with the 25,000 in Nunavut. The economical production of materials can be considerably assisted by coordinating the efforts of the two jurisdictions, and the sooner and more fully this is undertaken the better off will be the Inuit in both places.

**(c) *The Evolution of Inuktitut Language***

Inuktitut is the vessel in which the traditional knowledge of the Inuit, and their culture, have been preserved through the transition from life on the land to modern community life. It has been the language of hunters, storytellers, navigators, shamans, parents and leaders. However, in order for the Inuit to confirm their place as actors on the national and international stage, the language of the Inuit must now adapt, and become also the language of miners and mariners, lawyers, engineers, educators, linguists, authors and film-makers.

The Government of Nunavut established programs to preserve, update and, to the extent that it is possible, standardize Inuktitut throughout the Territory while fully respecting the community dialects, and is working to craft a pair of important pieces of legislation: a made-in-Nunavut *Official Languages Act*, and an *Inuktitut Protection Act*. They have begun the living dictionary, or *Asuilaak*, an on-line dictionary that is intended to become one of the most comprehensive sources of information on Inuktitut, with over 80,000 words, definitions and English and French translations.

The federal and territorial governments have also hosted terminology workshops for the development of both Inuktitut and Inuinnaqtun. The Government of Nunavut's efforts have focused on developing Inuktitut and Inuinnaqtun terms for finance and statistics and for job titles. The federal government has been developing, along with Eva Arreak, former Nunavut Languages Commissioner, a 'mining-specific' vocabulary to standardize Inuktitut words that have no local equivalent.

**(d) *Testing and Accountability***

It was also suggested that there is a real need for more structured approaches to teaching Inuktitut, with resource materials that formalize the process and make it capable of ongoing assessment. There are methods to measure a student's vocabulary in English at any level; for instance you can say that a child is reading "at a grade 2.4 level". There is no equivalent way of gauging the progress of the Inuktitut stream, and no materials that teach the language in a methodical way. As a result it is impossible to gauge the Inuktitut-speaking students' progress prior to graduation from elementary school into high school; it is also difficult to identify teachers whose students might be having particular difficulty so that problems can be addressed.

**(4) *Supporting Programs***

**(a) *Pre-School Skills Enhancement***

I have earlier described that supplementary pre-school programs will be necessary if Inuktitut is to be preserved and enhanced in the territory. I have suggested that the New Zealand Maoris' "language nests" provide an inspiring model of what can be achieved at the local, grass-roots level. I have also suggested that Head Start programs should be employed wherever possible.

More formal inclusion of Inuktitut in other pre-schools, daycares and recreational activities will also be of great assistance. Programs to train instructors of all these programs must be provided in Inuktitut as well. Such programs too will have to be developed in each community. A long term strategy for the development of these programs, the instructors to work in them, and the learning materials to support them must be developed and costed. But if done in conjunction with the program of bilingual education I here propose, the parents and community leaders who take on these challenges will know that their efforts are not in vain and that they are building an important component of the larger system that is supported at all levels of the community and of government.

The key to success, as in so many other areas of endeavour in Nunavut, will be flexible, community-based approaches based on the models provided. Communities will need to learn about the characteristics of bilingual education programs that are effective. Communities will need to base decisions about their language programs on research into the language status in their community. Communities will need to determine the linguistic assets they have to incorporate in and assist with programs. Communities will need to try out different ideas and identify best -practices. Some will work better than others, and success must be built on success. Communities must share their stories with one another, so that all can benefit from both positive and negative experience.

**(b) *Trades, Vocational and Cultural Instruction in Schools***

Another very common request was for a commitment to trades training. It was said that the governments act as if the only valuable graduate is one who's going on to university, and that this is one reason so many who cannot compete academically, or whose ties to traditional activities (e.g. hunting in summer) make the prospect of many 'southern style' jobs uninteresting, and drop out of school. It was felt that, if an alternative path were available, through shop or cooking classes, many more students would make it through to graduation. Work on high school program options, including trades training must continue and accelerate. Schools need to share best practices in these areas and continue to develop local initiatives that support hands on, experiential, practical project learning of skills and knowledge related to community life – to real life.

Local initiatives by teachers which combine formal school work with culturally-significant projects have been successful. At Chesterfield Inlet, over three years, a teacher, without the usual shop facilities, supervised the construction by students at Victor Sammurtok school of 10 traditional kayaks. The project created widespread community interest and involvement, and significantly, school attendance during the construction was very high. This year the students are planning a trip in the kayaks to a traditional hunting and camping area.

Another noteworthy success has been in Sanikiluaq, where a number of innovations have been implemented. An arts and crafts program of jewelry making, basket weaving, doll and kayak making, and so on has students involved at all stages – from hunting animals to skin preparation through manufacturing the products and eventually marketing and selling them. A carpentry program allowed students to build a house; this year they are building a daycare centre and next year a women's shelter. These programs, coupled with other community initiatives, have brought students back to school, and brought community members in to the school to transmit skills. They have improved the self-esteem of the students and the pride of the parents and the community.

Such ideas depend on the initiative and commitment of community leaders and the full participation of the people.

**(c) *Post-Secondary Initiatives***

I am making a number of suggestions to improve the post-secondary success of Inuit students. But here too there is room for grass-roots innovation.

Students returning to their communities from the South should be invited to share their experiences. When students go away to school they should, in a sense, take the community with them. When they return, they should bring their experiences back. Children struggling in school and their parents need exposure to these role models, and the communities can provide opportunities to bring them together.

There are many opportunities for Inuit students to gain experience with the wider world. I describe the Nunavut Sivinuksavut program in some detail in Part VI.D.(1) below. There has also been the Nunavut Youth Abroad Program, which provides Inuit students with unrivalled opportunities for international travel and work. The students and graduates of these programs are a valuable resource to the generations of Inuit youth following behind.

**(d) *Daycare Programs***

Women and girls in Nunavut tend to become mothers much earlier, on average, than their Southern counterparts. This has important ramifications beyond the immediate strain that it can put on families and communities. It makes it difficult for students to stay in school or return to school. It presents unique challenges for the delivery of education in Nunavut at all levels.

Anyone visiting Inuit communities will also be struck by the devotion of the Inuit to families and communities. Inuit culture promotes closeness, and the reluctance of Inuit to travel to pursue careers or educational opportunities (either in the South or in other Nunavut communities) is an ongoing challenge for the delivery of educational and employment programs. Such programs must be sensitive to this phenomenon, and appropriate childcare arrangements may need to be a feature of any successful program.

**C. For Immediate Action: Specific Near-Term Initiatives**

My main recommendation has to do with bilingual education in the schools. Its purpose is to tackle the drop-out rate, for this is the long-term means of achieving the objective of Article 23. Yet, there are near-term initiatives that can be taken to improve Inuit representation under Article 23. There are six of these. Two of them, programs for summer students and interns, are directly aimed at qualifying for employment under Article 23. Two others, Nunavut Sivinuksavut and improved access to scholarships, are for high school graduates. Improved career and education counseling and adult literacy / mature graduation programs focus on improving Inuit participation in both education and the workforce.

For convenience, I have set out brief summaries of these initiatives below. Fuller versions of the Government of Nunavut's specific proposals, (that is to say, each of the following proposals except the first, which is not a Government of Nunavut initiative), have been developed by the Government of Nunavut and can form the basis for discussions on their implementation.

## D. The Proposals

### (1) Nunavut Sivuniksavut

Since 1985, Nunavut Sivuniksavut (NS) has offered an 8-month program of accredited courses in conjunction with Algonquin College in Ottawa. The idea is to bring Inuit high school graduates to the south, and instruct them on issues topical to their identity as Inuit: they learn of Inuit history, the Nunavut Land Claims Agreement, the structure of the government in Nunavut and the role of Inuit organizations such as Nunavut Tunngavik Inc. They participate in Inuit cultural activities, and learn to make presentations at local schools, colleges and universities in Ottawa and elsewhere about Inuit life and culture. They do it, of course, while living and studying in a city in the South. The program is therefore an academic bridge between the North and the South, and more importantly between adolescent life in the communities and life in the workforce, both public and private.

Even though it has had a remarkable continuity of dedicated staff, NS has been operating on a shoestring since its inception.

It has, however, a remarkable record. A recent NS survey contacted 180 of NS's 230 graduates. Only four were unemployed. Of the remainder, 40 percent were employed in government, 15 percent in Inuit organizations, 19 percent in the private sector, and 19 percent were continuing with post secondary education.

Reading the list of occupations of NS's graduates, it is apparent that virtually all have chosen to return to serve their communities in Nunavut. One owns an aviation company; another is a reporter for CBC Radio in Iqaluit. Three went on to the Akitsiraq Law Program. Even among those pursuing further education, it might be expected that the majority will return. One is learning to be a pilot, another studying geology at the University of Western Ontario, a third taking health sciences at Algonquin in Ottawa. These are only examples plucked at random from a long list. They illustrate what Inuit high school graduates can achieve.

It is not easy to predict exactly what programs will work in the unique environment of Nunavut. NS is teaching Inuit high school graduates about Nunavut and about themselves, *in Ottawa*, far from home. Yet, perhaps counter-intuitively, it works and works very well.

Perhaps the most striking figure is the completion rate: over the past 10 years, between 80 and 85 percent of NS students have graduated, a remarkable figure when the nature of program and its distance from home – geographically and culturally – is considered.

NS is a nonprofit organization and a registered charity, with strong oversight. My sense is that few pennies are wasted, except those that must go to fundraising: since only NTI has committed to long-term funding of NS, the program must go cap-in-hand to other organizations and donors to ensure ongoing support. This is a strain on the minimal administrative resources available.<sup>74</sup>

There are limits to the capacity for expansion of the NS program. It currently has 22 students enrolled, from a pool of 50-60 applicants, of whom perhaps 30-40 are considered to meet the current standards for admission.

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<sup>74</sup> Aside from three full-time instructors, NS has only one full-time and one part-time staff member charged with running the program and providing tutoring and other support for the student body.

No one wants to see NS become altogether institutionalized; its small size and ability to adapt rapidly to the needs of its students has been, all agree, the secret to its success. Nevertheless it appears that these advantages would not be lost if the program were expanded to offer places to all of the 30-40 students who annually would qualify to participate. This would permit core classes to be taught to all the students together, but might also permit smaller, optional classes on some subjects. Public administration, for instance, might be taught as an option to better prepare students for public service in Nunavut.

NS has begun a pilot project for a second year of courses in conjunction with Carleton University, the University of Ottawa, the University of the Arctic,<sup>75</sup> and Algonquin College.

The NS Board has designed a projected budget of approximately \$1.3 million per year to cover the expanded program they propose.

The success of the NS program indicates that, if Inuit children can win through to graduation, they can do very well in any field of work or study.

## **(2) Summer student program**

Summer student programs introduce students to government work, and provide a financial incentive for students to continue their secondary or post-secondary education.

The GN proposal is to double the size of the present summer student program, with an additional cohort of approximately 150 Inuit students (historically about one-quarter to one-third of summer students have been non-Inuit). The plan would ensure that summer students would be present in every Nunavut community. It is believed that no additional infrastructure would be required to support the larger program, and that the cost of the expansion will be approximately \$950,000 per year.

## **(3) Internship Program**

Although expensive, internship programs have proven a successful method of moving Inuit into the middle ranks of government employment. They have the advantage of a level of familiarity in Nunavut and many departments have developed effective internship models that can be readily expanded.

The GN proposal is to increase the number of Sivuliqtiksats from 14 to 24, and to introduce a new internship program (80 positions by 2011) for non-management (intermediate) level positions throughout the government. This will also require 7 administrative positions to coordinate the program.

The five-year total cost of this program is expected to be \$40 million.

## **(4) Community Career Development Officers**

A career development officer would develop personal education/career plans for children, their parents, and adults in each community. The purpose of this initiative is to provide all

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<sup>75</sup> The University of the Arctic is a cooperative network of universities, colleges, and other organizations in a number of Northern Hemisphere countries dedicated to higher education and research in the North. Nunavut Arctic College and several Canadian universities are members.

Nunavummiut with access to career counselling, assessment and career development services to allow them to determine their level of essential skills, to identify possible employment avenues, and to obtain the required training to enter the workforce. By focusing services on the needs of the learner, it will be easier to target specific programs and services where and when they are most needed, and to link career development with available employment opportunities.

There are currently 15 funded Career Development Officers in Nunavut, with modest operating budgets. The intention would be to create a Nunavut-wide service, with Career Development Officers in every community in Nunavut, linked to Nunavut Arctic College, post-secondary schools and community organizations.

The program would also see the implementation of Nunavut Community Skills Information System, including Nunavut-wide employment data base, client module, job matching services, essential skills evaluation. Within the context of the Nunavut Adult Learning Strategy, the Government of Nunavut, with the support of 28 Nunavut-based employment and training organizations, has been designing a series of on-line tools which can be used to create a Community Skills Inventory System, to provide job matching services, and to develop individualized education, training and career planning. Funding is required to implement the System, which will provide detailed data, information on career planning, and will link Nunavummiut with employment and training.

The Government of Nunavut estimates that the program will cost \$3.3 million in the first year, and about \$2.6 million for each year going forward.

#### **(5) Mature Graduation / Returning Student Programs**

Provide Nunavut-wide access to Mature Graduation Diploma programs in all communities in Nunavut which link Literacy/Adult Basic Education Programs.

Nunavut is the only jurisdiction in Canada without a mechanism by which mature students can obtain their high school diploma. This situation was inherited from the NWT in 1999. As a result, literacy and Adult Basic Education (ABE) programs attempt to fill the void, and College and advanced training and education programs must deal with participants who may not have the levels required to succeed.

High school education to Grade 12 was only introduced to Nunavut communities in 1986. In 1999, 43.3 percent of Nunavut's population had less than Grade 8 education, and 75.1 percent had Grade 11 or less. There were significant variations between the educational achievement levels of Inuit and non-Inuit, with non-Inuit more likely to have completed high school, college or university level programs. Thus, the majority of Inuit employees and potential Inuit employees in Nunavut, who represent the majority of the labour force, have less than Grade 11 education. The consequences of this can be seen in the composition of the Nunavut workforce. Seventy-six percent of Nunavut's Inuit population have a high school diploma or less. Although the minimum requirement for recruitment into positions in the Government of Nunavut is technically a Grade 12 certificate, approximately 45 percent of Inuit employees do not have a high school diploma.

Developing a high school graduation diploma for mature students and introducing a dual credit system would allow for the immediate addressing of a serious discontinuity in the existing education system. These initiatives would refocus education programs that are currently developed and run in isolation from each other, and which are not necessarily making the best

use of existing financial resources, and they would allow a segment of the population not now being served to become active in their learning.

The anticipated startup costs for the program as proposed would be \$1.85 million, with the program costing \$5.225 million each year thereafter.

## **(6) Scholarships**

Nunavut students who wish to undertake post-secondary studies face unique barriers. There are no degree-granting post-secondary institutions in Nunavut, nor is there a trade school. The nearest such programs are in large, unfamiliar cities at least 2,000 kilometers from the students' home communities, most of which have no sizeable Inuit community for support. Travel is prohibitively expensive. With approximately 60 percent of Inuit families receiving income support, seeing a family member pursue such an education is for most a distant dream.

The Government of Nunavut has invested its own resources to begin addressing this issue. Nunavut Arctic College has established partnerships with degree granting universities to deliver programs that provides academic excellence in a manner that is sensitive to the culture and distinctive learning needs of Inuit students. The Nunavut Teacher Education Program, the Nunavut Nursing Program and the Akitsiraq Law School are examples of successful partnerships.

Currently students are eligible for financial assistance through Nunavut's Financial Assistance for Nunavut Students (FANS) program; however, this program only addresses basic financial needs such as living expenses, travel and books and does not reflect the increased cost of Post Secondary Education and skills training nor the length of time required to complete post-graduate programs.

Nunavut students are eligible to apply for scholarship programs in Nunavut and across Canada. However, most scholarships are for general support and not occupation-specific.

Government of Nunavut Scholarships would be designed to encourage Inuit students to enter post secondary programs and skills training. The scholarship program would be geared to professional designations in which the Government of Nunavut currently recruits over 90 percent of their hires from outside the Territory, such as teachers, accountants, specialists in hard sciences, health practitioners, engineers and architects, journeyman apprentice tradespeople, and policy professionals.

The Government of Nunavut proposes the awarding of 200 scholarships of \$5,000 each for undergraduate studies, 100 apprenticeship scholarships of \$2,500 per year, and 25 scholarships of \$10,000 per year for masters and doctoral level study. The total cost per year would be \$1.5 million.

**(7) Summary of Costs for Near-Term Initiatives**

The near-term initiatives I describe above can be summarized as follows:

- Expansion of Nunavut Sivuniksavut program: \$1.3 million per year;
- Expansion of summer student program: \$950,000 per year;
- Expansion of internship programs: \$40 million over five years or \$8 million per year;
- Community career counselor program: \$3.3 million in the first year and \$2.6 million each year thereafter;
- Mature graduation/returning student program: \$1.85 million in startup costs and \$5.225 million each year thereafter; and
- Scholarship program: \$1.5 million per year.

This represents a total cost in any given year, once these programs are under way, of about \$20 million.

As I have said earlier, the comprehensive bilingual program I am proposing would be introduced in stages; its cost, which would be additional to those listed above, would have to be the subject of further discussions between Nunavut and Canada.

## **VII. CLIMATE CHANGE, SOVEREIGNTY, AND THE FUTURE OF THE INUIT**

### **A. Nunavut in Canada's Foreign Policy**

The Nunavut Land Claims Agreement is not only of national importance but of international importance: Nunavut is central to Canadian foreign policy, and will only become more so. NTI has put it this way:

Implementation of comprehensive land claims agreements is commonly "ghettoized" in the Department of Indian Affairs and Northern Development, far from the locus of national and international policy debate between central agencies. This is not surprising, perhaps, in light of the small scale and local nature of many comprehensive land claims agreements. This is not, however, the case with the 1993 Nunavut Land Claims Agreement which intersects with Canada's national and international interests and obligations, and foreign policy objectives.

The centrality of the Agreement and of Nunavut to Canadian foreign policy in the Arctic is determined by the sheer size of Nunavut and the length of its coastline. Nearly forty percent of Canada is above the 60th parallel; and the geographic centre of Canada is near Baker Lake, in Nunavut, considerably north of the tree line.

The Arctic basin is no longer remote. The Arctic Ocean is surrounded by the islands and coastal regions of Russia, Alaska, Canada, Greenland and Scandinavia.

Indeed, there is already an international dimension to Canada's stewardship of the Arctic.

Areas designated by the Nunavut Land Claims Agreement as "Inuit Owned Lands" include areas with significant and proven mineral potential, and zones of high biological productivity. Sometimes referred to as "Arctic oases," many high productivity wetlands within Inuit-owned land are nationally and continentally important breeding and staging areas for migratory birds managed, in part, under the Migratory Birds Convention with the United States. Some wetlands in Nunavut (Queen Maud Gulf, Polar Bear Pass, Rasmussen Lowlands, and Dewey Soper) have been designated under the 1971 Ramsar Wetlands Convention and others are pending.

Inuit wildlife harvesting rights to the onshore and offshore include species of international importance and concern including large cetaceans such as bowhead whales, and marine mammals including polar bears. Polar bears are managed under the five-nation Polar Bear Convention, to which Canada is a party. Inuit traditional ecological knowledge, as outlined in articles 8j and 10c of the Convention on Biological Diversity, which Canada has also ratified, is increasingly important in setting harvest quotas by the Nunavut Wildlife Management Board.

Canada appointed its first ambassador for circumpolar affairs in 1990.

In 1996 the Arctic Council was established; its members are Canada, the U.S., Denmark, Norway Sweden, Finland, Iceland and Russia.

In 2001 Canada formally acknowledged the need to develop a "Northern dimension" to Canadian foreign policy.

But now Arctic warming has greatly added to the importance of this Northern dimension.

With Arctic warming, the landscape and seascape may be greatly altered. The Nunavut Settlement Area includes huge offshore waters such as the Northwest Passage and the other passages through the Arctic Islands. Canada asserts full jurisdiction and control over these waters as internal waters. The United States, the United Kingdom and the European Union do not accept Canada's assertion and characterize the waterways instead as international waters. If this contention were to prevail, it would limit Canada's authority to regulate shipping to combat marine pollution in what we claim to be Canadian waters. It might also give rise to disputes over ownership of oil and gas and mineral resources under the sea.

Canada may find that it is fully engaged in the Arctic, that it is as important a subject for the Department of Foreign Affairs as our Atlantic or Pacific coasts.

Experts disagree on whether the retreat of the ice in the Arctic archipelago represents an impending threat to sovereignty, as other countries and shipping firms challenge Canada's claim over Arctic waters, or a law enforcement problem (as "rogue" shippers begin to move through the passage without adequate regulation).<sup>76</sup> Either way, though, all agree that the Inuit are key to demonstrating and maintaining Canada's control over the Arctic. Professor Franklyn Griffiths has written:

We should build a stronger capacity for collective choice in the Canadian Arctic... Inuit know the area best. They are constant in their attachment to it in ways that southerners cannot equal. In partnership with the Federal government, they will insist on an exercise of control which is not remote but sensitive to local conditions, not agitated about a distant place but grounded in that place.<sup>77</sup>

NTI puts it this way:

In short, effective implementation of the [Nunavut Land Claims Agreement] contributes significantly to the objectives of the Government of Canada's 2001 Northern Dimension Foreign Policy. Some foreign governments characterize Nunavut as the "test" by which Canada is evaluated in terms of its treatment of aboriginal peoples and the key measure of its approach to northern development. Certainly Canada has and continues to trumpet Nunavut as an international model of accommodation between an Indigenous people and a nation state in which they reside.

## **B. The Changing Physical Environment and Economic Development**

Although experts disagree over the rapidity of climate change and the extent to which it can be attributed to human activity,<sup>78</sup> there is no question that global climate change is a reality.

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<sup>76</sup> The debate is captured in competing articles by professors Rob Huebert and Franklyn Griffiths: see for instance Rob Heubert, "The Shipping News Part II: How Canada's Arctic Sovereignty is on Thinning Ice" (2003) 58 *International Journal* 295; Franklyn Griffiths, "Pathetic Fallacy: That Canada's Sovereignty is on Thinning Ice", (2004) 11 *Can. Foreign Policy* 1.

<sup>77</sup> Griffiths, *ibid.* at p. 14.

<sup>78</sup> There is substantial agreement that human industrial activity is at least a significant contributing factor. At the Gleneagles summit in Scotland in July, 2005 the G8 leaders subscribed to a document entitled "Climate Change, Clean Energy and Sustainable Development," which states:

"Climate change is a serious and long term challenge that has the potential to affect every part of the globe. We know that increased need and use of energy from fossil fuels, and other human activities, contribute in large part to increases in greenhouse gases associated with the warming of our Earth's surface."

We are accustomed to news of climate change, of the challenge that global warming may represent; nevertheless, for most of us in the temperate zones it is a distant rumble. In the Arctic, however, climate change is not remote. It is already happening.

We are now calling it climate change, but in the Arctic it is the *warming* that is apparent. It can be seen everywhere: Permafrost is melting, storm surges across extended open water are eroding the banks of coastal communities, the ice goes out earlier and forms again later than it did before, shifting patterns of ice and snowfall impede the migration of caribou as well as the seasonal movements of polar bears and seals.

On November 8, 2004 the Arctic Climate Impact Assessment (ACIA) was made public. It was sponsored by eight Arctic countries and carried out by a team of 300 scientists. The report, 1800 pages long, entitled "Impacts of a Warming Arctic", included findings that:

- "The Arctic is warming much more rapidly than previously known at nearly twice the rate as the rest of the globe, and increasing greenhouse gases from human activities are calculated to make it warmer still."
- "In Alaska, Western Canada, and Eastern Russia average winter temperatures have increased as much as 3 to 4 C (4 to 7 F) in the past 50 years, and are projected to rise 4 to 7 (7 to 13 F) over the next 100 years."
- "Arctic summer sea ice is projected to decline by at least 50 per cent by the end of this century with some models showing near-complete disappearance of summer sea ice. This is very likely to have devastating consequences for some arctic animal species, such as ice-living seals and for local people for whom these animals are a primary food source. At the same time, reduced sea ice extent is likely to increase marine access to some of the region's resources."
- "Warming over Greenland is projected to lead to substantial melting of the Greenland Ice Sheet, contributing to global level rise at increasing rates. Over the long term, Greenland contains enough melt water to eventually raise sea levels by about 7 meters (about 23 feet)."

Moreover, global warming may be accelerating. NASA's study of the Arctic ice, released on September 28, 2005 shows that Arctic ice cover has shrunk by 10 per cent in the last four years. The extent of Arctic sea ice in September last year was 20 percent below the long-term average for September, melting an extra 500,000 square miles.

In the summer of 2005 the Arctic pack ice retreated to its smallest size in recorded history, about 5.5 million square kilometres (in 1979 it was 7.5 million square kilometres). Every year, it is said, the polar ice cap is smaller by an area the size of Lake Superior.

Springtime melting in the Arctic has begun much earlier; in 2005 it started 17 days sooner than expected. In Greenland, across Davis Strait, the past two years were the warmest ever recorded in some of the coastal communities.

Ten years ago the people at Cape Dorset could travel in September or October over the ice of Telluk Inlet to Baffin Island. Last year they couldn't make the journey over the ice until mid-December. In Iqaluit, in December, Inuit were putting to sea in Frobisher Bay in small pleasurecraft; I was told that, even a few years past, they could far more easily have walked across the frozen Bay. Birds such as robins are appearing for the first time. The anecdotes

were universal; no one who has more than a few years' experience in the Arctic doubts that change is upon us.

James Hansen, director of NASA's Goddard Institute for Space Studies, in a presentation to the American Geophysical Union, December 6, 2005, said that:

Earth's climate has neared, but has not passed a tipping point beyond which it will be impossible to avoid climate change with far-ranging undesirable consequences. This includes not only the loss of the Arctic as we know it, with all that implies for wildlife and indigenous peoples, but losses on a much vaster scale due to rising seas.

The increasing warming of the North has obvious ramifications for economic development. The warming of the Arctic will make Nunavut's minerals, its oil and gas more accessible. The opening of the Northwest Passage and the other passages through the Arctic Islands will bring navigation and shipping.

The Inuit have in the Nunavut Land Claims Agreement safeguarded rights of harvesting, so as to ensure the survival of subsistence (hunting, fishing and trapping) activities, the principal means by which people of the Arctic and sub-Arctic have survived in the past. In our own time they still provides a measure of self- sufficiency. Arctic warming, however, may bring accelerated industrial activity. And it may mean the loss of animal species the Inuit have depended on for centuries. Polar bear, walrus, and other marine mammals and birds may over time be at risk of extinction. The hunting and food sharing culture of Inuit may be under significant threat. I know it is said that with global warming species will flourish in the new climate and replace the species that are gone. But no one can predict such things with any confidence.

Global warming could bring not only physical change but also demographic change to Nunavut - the possibility that an altered landscape, greatly increased navigation, mining on a much larger scale, and access to Arctic oil and gas might bring non-Inuit in numbers. I am not suggesting the agricultural frontier would migrate northward to the Arctic. But the number of permanent residents who are non-Inuit could significantly increase. It will be necessary to secure the place of the Inuit in the economic life of Nunavut as well as in their own public service.

Arctic warming may transform Nunavut. Resources that were locked in the snow and ice inaccessible through the frozen waterways may now be opened up.

The coming decades are likely to be a period of uncertainty and yet at the same time one of opportunity in the North; the Inuit must be ready to take their place – not only in the public service but also in the private sector as miners, drillers, mechanics, mariners, geologists and engineers.

This makes the case for the type of bilingual education program I am recommending, one qualifying the Inuit for post-secondary training and for work in the public sector or the private sector all the more compelling.

### **C. The Inuit and Arctic Sovereignty**

The melting of polar ice has brought the world's attention to the fact that the Northwest Passage and the other passages through the Arctic Islands may in the quite foreseeable future be

navigable for substantial periods of each year. Ownership of the resources and authority over the sea routes – in short, sovereignty over the North – is a topic of increasing discussion.

Effective occupation is one of the keys to sovereignty under international law. The immemorial presence of the Inuit in Canada's Arctic, as much as British and Canadian voyages through the Arctic Islands, is fundamental to Canada's claim. For centuries, the Inuit were the sole occupants of the Arctic Islands and most of Canada's Arctic coastline. They lived on the land and on the ice; they harvested the resources of the land and the sea. We used to think of the early explorers of the Arctic and sub-Arctic as if they were tracing their way across some far-off planet. We thought of them as the first cartographers of the Arctic. In Canada we now know, through Aboriginal mapping projects conducted in recent years, that before Europeans came the Arctic was already mapped by the Inuit—traced all over by their hunting patterns.

Canada was established in 1867. It did not then include the vast territory it encompasses today. It consisted of four provinces extending from Nova Scotia to the head of Lake Superior. It did not include northern Ontario or northern Quebec. Its borders did not reach James Bay or Hudson Bay, let alone the Arctic and the Arctic Islands. At Confederation, therefore, Canada did not include the traditional territory of the Inuit.

The United Kingdom formally transferred Rupert's Land and the North-Western Territory to Canada in 1870, and then the Arctic Islands in 1880. The Inuit still held Aboriginal title over much of this area. But more importantly, the Inuit used and occupied their traditional territories in ways that Canada could not. Canada's gradual assertion of control over the Arctic was achieved not through conquest but rather through a remarkable partnership. The joint RCMP and Inuit dogsled patrols and oceanic voyages (such as the famous voyages of the *St. Roch*<sup>79</sup> in 1940-42 and 1944) helped to secure Canadian sovereignty in the High Arctic.

A special reservist unit, the Canadian Rangers, was established in 1947 to provide a permanent Canadian military presence in even the remotest communities.<sup>80</sup> To this day the almost entirely-Inuit Canadian Rangers are the only substantial full-time military presence in Nunavut and they continue the tradition begun by the RCMP/Inuit patrols, but with snowmobiles in place of dog teams. This year, the Inuit Rangers and Canadian Forces will conduct the most ambitious series of patrols yet undertaken: five teams supported by aerial resupply that will traverse disputed waters under the codename Operation Nunavut (meaning "the land is ours").

Canada's desire to establish its sovereignty in the High Arctic also led, at least in part, to the 1953 decision of the federal government to resettle some Inuit families farther North.<sup>81</sup> Seven families from the Inukjuak (Port Harrison) area in northern Quebec and three families from Pond Inlet in what is now Nunavut were resettled in communities at Resolute Bay on Cornwallis Island and at Grise Fiord on Ellesmere Island. Over the next three years, the number of resettled families rose to seventeen. These Inuit communities remain the most northerly Canadian

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<sup>79</sup> At Vancouver's Maritime Museum today you can visit the *St. Roch* and see the quarters provided for Capt. Henry Larsen and his RCMP crew, and the tent on the foredeck occupied by the Panipakoocho family who accompanied Larsen on his 1944 voyage through the Northwest Passage.

<sup>80</sup> At present, the First Canadian Rangers Patrol Group (1 CRPG) has the majority of its patrols in Nunavut, manned almost entirely by Inuit. 1 CRPG conducts 30 sovereignty patrols to remote areas every year. The Rangers also perform security and search-and-rescue functions in the North, and assist in survival training for Canadian Forces and allied personnel.

<sup>81</sup> A similar program begun in the 1930s had been more or less abandoned by the end of World War II. There is still debate regarding the true impetus behind the resettlement; it may have been motivated also by what the federal government believed were greater opportunities for sustained wildlife harvesting in Resolute and Grise Fjord.

presence apart from the military personnel who man a remote listening post at CFS Alert on the northern tip of Ellesmere Island, about 800 km south of the Pole.

The preamble to the Nunavut Land Claims Agreement recites the considerations that impelled the Parties to in 1993 to enter into the Agreement. One of the considerations is stated in this way:

“AND IN RECOGNITION of the contributions of Inuit to Canada’s history, identity and sovereignty in the Arctic.”<sup>82</sup>

This provision is unique in Canadian relations with Aboriginal peoples: No other comprehensive land claims agreement or historic treaty acknowledges the contribution of an Aboriginal people to Canada’s sovereignty in this way.

In signing the 1993 Nunavut Land Claims Agreement, the Inuit formally ceded to Canada their Aboriginal title to Nunavut.<sup>83</sup> In Article 2.7.1 the following appears:

- 2.7.1 In consideration of the rights and benefits provided to Inuit by the Agreement, Inuit hereby:
- (a) cede, release and surrender to Her Majesty The Queen in Right of Canada, all their aboriginal claims, rights, title and interests, if any, in and to lands and waters anywhere within Canada and adjacent offshore areas within the sovereignty or jurisdiction of Canada; and
  - (b) agree, on their behalf, and on behalf of their heirs, descendants and successors not to assert any cause of action, action for a declaration, claim or demand of whatever kind or nature which they ever had, now have or may hereafter have against Her Majesty The Queen in Right of Canada or any province, the government of any territory or any person based on any aboriginal claims, rights, title or interests in and to lands and waters described in Sub-section (a).

Only with this formal cession was Canada's claim to the Arctic and the Arctic Islands complete, unburdened by Aboriginal title. The signing of the Nunavut Land Claims Agreement was thus a vital step in strengthening Canada's claim of sovereignty. For Canada to assert sovereignty over the Arctic and the Arctic Islands while the Aboriginal people who have always inhabited them had not yet freely ceded their title would have been more than an embarrassment; it would have impaired Canada’s claim of sovereignty as against other nations.<sup>84</sup>

Today, because the Inuit still use and occupy the Arctic, they continue to contribute to Canada’s “history, identity and sovereignty in the Arctic.”

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<sup>82</sup> This same acknowledgement is repeated in the Partnership Accord signed in 2004 with the Inuit Tapiriit Kanatami, which represents Inuit from all regions of Canada.

<sup>83</sup> The Nunavut Land Claims Agreement was preceded in 1984 by the Inuvialuit Land Claims Agreement, ceding the Aboriginal title of the Inuvialuit in the Western Arctic to Canada.

<sup>84</sup> To be sure, once sovereignty is asserted by a nation over lands occupied by an Aboriginal people, the courts of that nation must act accordingly, whether Aboriginal title has been surrendered or not. In the international arena, however, in the case of Arctic waters, the issue is not so easily resolved.

In years to come Canada, in asserting its claim, will be dependent on international law. The Inuit presence in the Arctic, their use of the sea and the sea ice, is the surest proof of Canada's claim. As the ice melts and shipping lanes open and resources become accessible, their long-standing occupation of the land and the waterways (every one of Nunavut's 27 communities is on tidewater) will work to Canada's advantage. Canada must see that the opening of the Arctic works to the advantage of the Inuit.

## VIII. EPILOGUE

In the negotiations leading to the signing of the Nunavut Land Claims Agreement in 1993, the Inuit of the Eastern Arctic were faced with a choice. They chose to have their aspirations expressed, not through the establishment of an Aboriginal government dealing directly with Ottawa, but rather through a public government: the Government of Nunavut. In fact they insisted on it. Such a government, they believed, would be close to the people, yes, but it would also be something more: it would permit the Inuit people to express themselves through a political entity that emerged organically within our the federal system, one of unquestioned legitimacy on the national and – as subsequent experience has shown – on the international stage. The new Territory is unique, a jewel in the crown of Canadian federalism.

The success of Nunavut will ultimately be measured by the extent to which Inuit are able to participate in their own government and in the changing economic life of the Arctic.

The recommendations I am making are based on the experience we have had thus far, the goals of the Government of Nunavut, and the work of its Department of Education, considered in the light of academic knowledge. My job has simply been to bring these ideas together in the context of the Nunavut Land Claims Agreement and Canada's own experience and within the context of Arctic policy-making.

Despite our attempts to separate the Inuit from their language, history and culture, their determination to retain their distinctive identity has sustained them. We see the outward signs of cultural loss and decay; we often do not comprehend the persistence of Inuit culture and values. I believe the Inuit are prepared for the challenge.

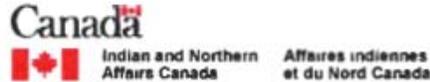
The steps needed to assert Canadian sovereignty in the Arctic will have to be measured over decades as the ice recedes. The establishment of infrastructure and the utilization of resources will be a long-term proposition. A unified Arctic strategy for sovereignty and industrial development must be founded on the long-term interests of the Inuit, which I believe can best be served by the program I am recommending.

John Amagoalik has written, in an essay entitled "We Must Have Dreams":

We must teach our children their mother tongue. We must teach them what they are and where they come from. We must teach them the values which have guided our society over the thousands of years. We must teach them the philosophies which go back beyond the memory of man....

When I talk about the future and try to describe what I would like for my children, some people sometimes say to me that I am only dreaming. What is wrong with dreaming sometimes dreams come true, if only one is determined enough. What kind of world would we live in if people did not have dreams? If people did not strive for what they believe in? We must have dreams. We must have ideals. We must fight for the things we believe in. We must believe in ourselves.

## APPENDIX: LETTER AND REPORT ON IPG FUNDING



February 6, 2006

Thomas Berger  
Berger & Company  
355 Burrard Street, Suite 440  
Vancouver, British Columbia  
V6C 2G8

Dear Mr. Berger:

Following receipt of your Interim Report and at your request, a meeting of the Parties to the Nunavut Implementation Contract (the Contract), a number of recommendations were made to the Nunavut Implementation Panel (the Panel). These recommendations have been somewhat re-worked and consolidated into the attached document entitled *Report on the State of Consensus in the Nunavut Implementation Panel on Some Aspects of Structural Reform and IPG Funding Levels*.

In summary, the attached report proposes specific adjustments to ongoing implementation funding for the IPGs, as well as actions for moving forward in the following areas: structural reforms of the Nunavut Implementation Panel (the Panel); implementation funding for the Government of Nunavut; General Monitoring Plan; a fund to be administered by the Panel to help address issues such as capacity and board governance of the IPGs; and, new and re-invigorated mechanisms for use by the Panel in resolving outstanding disputes.

Although this report is subject to the internal approval processes of all three Parties to the Contract, we are pleased to present this jointly developed and approved report from the Nunavut Implementation Panel.

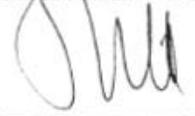
Should you have any questions concerning the above or the attached document, please do not hesitate to contact any Panel member directly.

Thank you for your continuing support.

Sincerely,  
The Nunavut Implementation Panel,

  
\_\_\_\_\_  
David Akoak CHARLIE EVALIK

  
\_\_\_\_\_  
Charlie Evalik DAVID AKOAK

  
\_\_\_\_\_  
John Merritt

  
\_\_\_\_\_  
Terry Sewell

Attachment

**REPORT ON THE STATE OF CONSENSUS IN THE NUNAVUT  
IMPLEMENTATION PANEL ON SOME ASPECTS OF STRUCTURAL REFORM  
AND IPG FUNDING LEVELS,  
JANUARY 25, 2006**

**CONTEXT**

On January 24<sup>th</sup> and 25<sup>th</sup>, 2006, the Nunavut Implementation Panel (NIP) met to discuss the December 21, 2005 *Recommendations to the Nunavut Implementation Panel* which were compiled by a sub-group made up of representatives of the Parties to the *Nunavut Land Claims Agreement* (NLCA) and based on discussions with the Institutions of Public Government (IPGs). The recommendations were developed in response to the *Interim Report* released by Conciliator Thomas Berger on August 31, 2005.

Having reviewed those recommendations, the NIP developed the following assessment to assist Conciliator Berger in the completion of his final report. Part 1 of this Report recommends to the Parties a number of structural and organizational changes that could, pending receipt of broader advice and insights from the Conciliator, the Five Year Review now underway, and other sources, improve the operation of the NIP. Part 2 recommends funding principles and associated levels of funding for the IPGs established under the NLCA over the next implementation planning period. All recommendations are subject to approval of the Parties and their respective internal approval processes.

**PART 1: STRUCTURAL REFORM**

**1.1 General**

- 1.1.1 The Parties acknowledge that structural reform of the machinery of implementation is needed in order to secure better outcomes and reporting for results.
- 1.1.2 In considering options for structural reform, the Parties should consider:
- the first independent review of the NLCA developed by Avery Cooper, Inc;
  - the reports of the Office of the Auditor General of November, 2003 and April, 2005;
  - Terms of Reference of the Implementation Panel;
  - the upcoming independent review of the implementation of the NLCA undertaken by PricewaterhouseCoopers;
  - the Conciliator's Interim Report; and,
  - the Conciliator's Final Report.

- 1.1.3 In addition to participating in the broader review and reform of the machinery of implementation, the NIP should institute a number of other measures aimed at assisting in implementation, particularly with respect to its relationship with IPGs and IPG funding as outlined in sections 1.2, 1.3 and 1.4.

## **1.2 Dispute Resolution**

- 1.2.1 As a fundamental feature of structural reform, the Parties should establish an incremental and viable dispute resolution process built around the NIP, a non-binding mediation process, and a binding Arbitration Board process.
- 1.2.2 The current funding of \$61,677.00 in fiscal year 2005/ 2006, including the use of the Board's unexpended funding balance at March 31, 2006, should be reviewed by the NIP and the Board in the development and implementation of a renewed dispute resolution process.

## **1.3 Relationships with IPGs**

- 1.3.1 The relationship between the NIP and IPGs should be a cooperative and productive one based on full respect for the coordinating responsibilities of the NIP and the institutional independence of the IPGs.
- 1.3.2 The NIP should hold an annual meeting (to be held late summer/early Fall of each fiscal year) between the NIP and the IPGs and the Arbitration Board for the purpose of reviewing the past fiscal year's implementation activities and results and the proposed implementation activities including potential changing circumstances for the years ahead.
- 1.3.3 As an interim measure, the NIP should continue to follow the *Financial Guidelines* (attached) adopted in June 2000 (amended in March 2001) until such time as agreed upon otherwise.
- 1.3.4 The NIP should, with the IPGs, review the terms of the Flexible Transfer Payment (FTP) agreements between the federal government and the IPGs, prior to the renewal, with a view to making such changes as will contribute to higher levels of effectiveness and predictability in financial arrangements and in the development of inter-organizational relationships.

## **1.4 Other Initiatives**

- 1.4.1 A plan for developing the General Monitoring Plan should be initiated jointly by the NPC, Government of Canada (Nunavut Regional Office (NRO) – INAC), Nunavut Tunngavik Inc (NTI) and the Government of Nunavut (GN) as an early

priority and in advance of June 30, 2006.

- 1.4.2 The issue of incremental costs between the Government of Canada and the GN, including consideration of the 1992 Memorandum of Understanding, Bilateral Funding Agreement, and GN Funding Proposals dated February 2002, is an early priority and in advance of June 30, 2006.
- 1.4.3 The NIP should conduct, prior to March 31, 2006, a substantive review of the proposed changes to the *General Provisions* of the Nunavut Implementation Contract last tabled by the GN with a view to incorporating as many constructive reforms as possible into the updated Contract.
- 1.4.4 The Parties will discuss with the IPGs the actions that have been taken and the actions that are proposed to further the objectives of Article 15.4.1 of the NLCA.

## **PART 2: IPG FUNDING PRINCIPLES AND FUNDING LEVELS**

### **2.1 Funding Periods and Funding Transitions**

- 2.1.1 The fiscal year for each IPG should be from April 1st to March 31st.
- 2.1.2 The next planning period should begin July 10, 2003 and end March 31, 2011. Funding will be at the increased levels outlined Part in 2.4 for the next planning period.
- 2.1.3 Funding for the IPGs shall be adjusted to allow them to pay off any accumulated deficits projected for the IPGs as of March 31, 2006.
- 2.1.4 In the event that an IPG forecast shows substantial unexpended funds, the NIP will discuss the implications of such with the IPG.
- 2.1.5 Funding for the period July 10, 2003, to March 31, 2006, shall be acknowledged as being at the levels that have been entered into through funding agreements already in place between IPGs and Government of Canada. Funding arrangements for the balance of the planning period shall be in accordance with the updated funding levels set out herein.

### **2.2 Funding Flexibility and Adaptability**

- 2.2.1 IPGs shall be able to continue to allocate within their overall budgets on a priority basis, consistent with the terms and conditions of the transfer mechanism.

- 2.2.2 It is acknowledged that the amounts referred to in this Report are for core funding to the IPGs and not funding for hearings.
- 2.2.3 It is acknowledged that there may be significant volume driven changes in the activity levels of the IPGs. In the event that an IPG provides the NIP with documentary evidence of these changes, the NIP will review the funding implications accordingly.
- 2.2.4 The federal government agrees to establish a fund, for use by the Parties through the NIP to address changing circumstances and shared organizational responsibilities, which may include, among others:
- (a) training/professional development not funded by other outside sources;
  - (b) board governance/coordination initiative; and
  - (c) costs to the IPGs of the annual meeting with the NIP.

The NIP shall set out the rules of governing access to the fund for the remainder of the planning period by June 30, 2006. Access to the fund shall be based on transparent criteria. The Parties shall determine the amount of the contingency fund prior to June 30, 2006.

- 2.2.5 In light of the additional responsibilities and work that may be created for the Nunavut Planning Commission (NPC) and the Nunavut Impact Review Board (NIRB) through the federal resource management legislation now being developed by the Parties on a consensus basis, the Parties agree to revisit NPC and NIRB funding levels once the shape of the developing draft legislation has secured firm form.

### **2.3 Other Funding Principles and Adjustments**

- 2.3.1 The Parties agree to the principle that housing benefits for the staff of IPGs should not be less favourable to the benefits offered to other federal public sector employees in Nunavut. Based on data available to NIP, this principle currently appears to be met.
- 2.3.2 The honoraria rates for the members of the NPC and the NWMB should be raised to an amount equivalent to that paid to the NIRB and NWB. The NIP will provide support to Indian Affairs and Northern Development in any proposal to increase honoraria it makes to the Government of Canada.
- 2.3.3 Funding levels for the balance of the planning period shall be annually adjusted by the Final Domestic Demand Implicit Price Index (FDDIPI). However, the Parties acknowledge that rising costs in Nunavut may necessitate a review of annual funding adjustments. The NIP will review how budgets are adjusted annually prior to the beginning of the next planning period.

## **2.4 Funding Levels - Specific IPG Commitments**

### **2.4.1 Nunavut Wildlife Management Board (NWMB)**

#### **(a) Core Funding**

- The Parties agree that the NWMB should be provided with sufficient funding to conduct ongoing research in the three program areas identified by the NWMB to accomplish these responsibilities, namely:
  - Nunavut Harvest Surveys;
  - Community-based Research Projects; and
  - Inuit Qaujimagatuqangit (IQ).
- The Parties agree that the NWMB shall retain its unexpended balance of funds as of March 31, 2006, to be available for its use in relation to its research responsibilities.

#### **(b) Hunter and Trapper Organizations (HTO)**

The Parties agree that the 27 community HTOs should be provided with funding of \$120K per organization per year on an ongoing basis and consistent with the Interim and Aarluq Reports.

#### **(c) Regional Wildlife Organizations (RWO)**

The Parties agree that the funding for the three (3) RWOs should be \$690K/year.

### **2.4.2 Nunavut Impact Review Board (NIRB)**

For the duration of the planning period, the Parties agree that NIRB should be provided with an additional \$322,095 per year due to volume of activity increases. This additional amount will be to cover the cost of salaries and benefits for three additional staff. The NIRB should also be provided with an additional \$25,000 to account for increased rent to accommodate the additional staff. (subject to confirmation from NIRB)

### **2.4.3 Nunavut Water Board (NWB)**

For the duration of the planning period, the Parties agree that the NWB should be provided with an additional \$400,000 per year due to volume of activity increases. This additional amount will be to cover the cost of salaries and benefits for three additional staff.

### **2.4.4 Nunavut Planning Commission (NPC)**

- The Parties agree to look at the possibility of setting up an office in Iqaluit, in particular in response to the NIP initiative to develop a plan for General Monitoring, outlined in Section 1.4.1, as well as other operational issues identified in the Independent Auditor's Report/Comments by June 30, 2006.
- The Parties agree that the NPC should be provided with an additional amount of \$120,000 for the purpose of funding map biographies.
- The Parties acknowledge that the federal government's recovery of its overpayment to the NPC must be taken into consideration when determining the adequate funding level provided to the NPC for the planning period(**To be reviewed on January 25**).

#### 2.4.5 Nunavut Surface Rights Tribunal (SRT)

For the duration of the planning period, the Parties agree that the SRT be provided with funding in the amount of \$194,932.

#### SUMMARY OF PROPOSED IPG FUNDING RECOMMENDATIONS:

IPG	CURRENT FUNDING*	PROPOSED INCREASE	TOTAL PROPOSED FUNDING
NWMB	\$5,680,130		\$6,893,130
(a) Core	\$3,680,130	-	
(b) HTO	\$2,000,000	\$1,213,000	
(c) RWO	\$690,000	-	
NIRB	\$2,047,976	\$347,095	\$2,395,071
NWB	\$1,917,026	\$400,000	\$2,317,026
NPC	\$3,370,938	\$120,000	\$3,490,938
SRT	\$194,932	-	\$194,932

E&OE

\*Funding references are in April 1, 2005 constant dollars