James Bay and Northern Quebec Agreement : review of the implementation of federal obligations.

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James Bay and Northern Quebec Agreement: Review of the Implementation of Federal Obligations

1. INTRODUCTION

The Grand Council of the Crees (of Quebec) ("the Crees") and the Makivik Corporation ("the Inuit"), which represent respectively the Cree and Inuit signatories to the James Bay and Northern Quebec Agreement ("the Agreement") have recently made various public statements alleging that Canada and Quebec have not fulfilled their legal and moral responsibilities pursuant to the Agreement.

The Crees and Inuit allege that as a result of the failure by Canada to live up to its obligations under the Agreement the native people of James Bay have not enjoyed the degree of social, economic and material progress which they felt would be the natural outcome of the Agreement. The purpose of this paper is to report on the findings of a review made into the allegations against Canada. On the basis of the findings contained in this Review the Government of Canada will be considering actions to be taken to remedy any deficiencies discovered and to ensure that Canada fulfills all its commitments pursuant to the James Bay Agreement.

2. BACKGROUND

On March 26, 1981 the Crees and Inuit appeared before the House of Commons Standing Committee on Indian Affairs and Northern Development. For over eight hours the Standing Committee heard briefs from the native parties and questioned them concerning their grievances. The chief representative of the Inuit was Mr. Charlie Watt, President of Makivik Corporation and the Cree were represented by Grand Chief Billy Diamond of the Cree Regional Authority.

In response to the Statement representations of the Crees and Inuit Mr. Munro announced in the House of Commons that same day that he had discussed the matter with the Honourable Jean Chretien, Minister of Justice and Minister of State for Social Development and that they had agreed to conduct a joint review of the implementation of the Agreement. This paper constitutes the findings of that Review.

As a result of the hearings the Standing Committee took the extraordinary step of drafting a special Statement to the Ministers of Indian Affairs and National Health and Welfare in which they endorsed the claim of the native parties that Canada and Quebec had failed to implement major provisions of the Agreement. The Statement was presented by representatives of the Standing Committee to the Minister of Indian Affairs, the Honourable John C. Munro, on March 31, 1981.

The general terms of reference for the Review were:

a) to determine if Canada has fulfilled, in spirit, letter, and intent, the obligations which it assumed pursuant to the James Bay and Northern Quebec Agreement, the James Bay Native Claims Settlement Act, the Federal letter of undertaking (November 15, 1974) and any other relevant statutes, agreements and undertakings;

b) to determine whether the general structure for implementing the Agreement, both with regard to Canada's specific responsibilities and the Agreement in general, has been adequate;

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

This Review deals with points a) and b).

The Review focused on the specific allegations raised by the native parties in their presentations to the Standing Committee as well as in direct presentations to the Minister of Indian Affairs and the Minister of Health. The Review did not look into the specific allegations made with regard to responsibilities falling within Quebec's jurisdiction except insofar as these relate to the overall coordination of the implementation process.

The overall Review was coordinated by a review team consisting of officials in the Corporate Policy Group and the Indian and Inuit Affairs Program of the Department of Indian Affairs and Northern Development (DIAND) and from the Department of Justice.

The review involved: a detailed study of the Cree and Inuit briefs; a review of DIAND files relating to the negotiation and implementation of the Agreement; interviews with individuals involved in the negotiation and implementation of the Agreement; and discussions with Cree and Inuit representatives.

The major Federal responsibility for implementing the Agreement rests with DIAND but there are several other Departments, most notably National Health and Welfare (NH&W), Transport Canada (TC), and the Canadian Employment and Immigration Commision (CEIC), which have or have had specific responsibilities pursuant to the Agreement. All concerned Federal Departments participated in the Review by reviewing their specific areas of responsibility and their conclusions are reflected in the overall Review.

3. GENERAL OVERVIEW OF THE AGREEMENT

3.1 Provisions of the Agreement

The James Bay and Northern Quebec Agreement is an extremely complex document, which details a comprehensive and unique scheme for the social, political, cultural, economic and environmental management of the Territory. The Agreement provides for several dozen committees, municipal corporations, authorities, boards, and other legal entities through which it was hoped the native people could gain meaningful control over their affairs.

Signed on November 11, 1975 by the Cree and Inuit people of James Bay, Quebec and Canada, the Agreement stipulates that the native people surrender their aboriginal title to the 400,000 square mile James Bay Territory in return for cash compensation; specified land rights; hunting, fishing and trapping rights; hydro development project modifications and remedial measures; future development and environmental considerations; provision for local government authority, continuing federal and provincial benefits; and native development and economic measures. The Agreement, which was necessary to permit Quebec to construct the James Bay Hydro Development Project, resulted in approximately 4,000 Inuit and 6,000 Cree people, living in 13 Inuit and 8 Cree communities, being registered as beneficiaries entitled to all the rights and benefits provided in the Agreement. The Agreement was approved, given effect and declared valid by the Parliament of Canada and the National Assembly of Quebec. The ratifying Federal legislation, the James Bay and Northern Quebec Native Claims Settlement Act (1977, 25-26, Elizabeth II, C.32), was passed on May 4, 1977.

The Agreement provides for cash compensation of $225,000,000 divided proportionally between the Crees and Inuit and paid out over a period of 21 years according to schedules specified in the Agreement. Canada's share of the compensation payments is $32,750,000 and is proportional to that area of the Territory over which Canada had a legal responsibility to settle aboriginal claims.

In conjunction with the signing of the James Bay Agreement in Principle on November 15, 1974, letters of understanding signed on behalf of Canada, by the then Minister of Indian Affairs, the Honourable Judd Buchanan, were delivered to the Cree and Inuit leaders. These letters of understanding set out agreements reached between Canada and the native parties with regard to matters such as airstrip construction and which, although relating to the Agreement, were of primary concern only to Canada and the native parties. These letters are not part of the Agreement and

have no formal legal status. They were, however, negotiated word by word by the negotiators for Canada and the native parties and they were clearly intended as a statement of Canada's policy and intentions.

Mr. Buchanan sent a second letter to the native leaders in conjunction with the signing of the Final Agreement on November 11, 1975. These letters, which clarify some of the matters dealt with in the letters of 1974, in light of the provisions of the Final Agreement, were not negotiated and represent Canada's views rather than an understanding reached between Canada and the native parties.

3.2 The process of negotiation

The Agreement was negotiated under very severe time constraints resulting from the Quebec position that the Hydro Project had to go forward on an urgent basis and from the resulting Cree position that they would resume their court actions to stop the project if a final agreement was not reached within one year of the signing of the Agreement in Principle on November 15, 1974. Some of the most important provisions of the Agreement, especially those involving Canada, were only finalized during almost non-stop negotiating sessions during the last two weeks preceding the signing on November 11, 1975.

The pressure under which the Agreement was negotiated, the inherent complexity of its provisions, and the fact that negotiating is by definition a process of compromise, resulted in a document which in many respects is vague and ambiguous and open to widely varying interpretations. It was generally understood during the negotiations that the precise details of the various programs, rights and benefits would be worked out over a lengthy process of implementation which would be carried out through the various entities established pursuant to the Agreement.

In considering Canada's role in the negotiation and implementation of the James Bay Agreement, it is important to keep in mind the relatively minor role that Canada had in the settlement of the Cree and Inuit land claim. Under the terms of 1898 and 1912 Federal legislation extending the boundaries of Quebec, the Government of Quebec was given primary responsibility for settling the question of aboriginal title in its new Northern territories. Quebec's failure in taking action to extinguish title was the basis of the suit launched by the Crees to halt construction of the James Bay Hydro Electric Project sponsored by Quebec. Canada had some responsibility for compensating the natives for the extinguishment of title, as is reflected in Canada's contribution to the compensation payments, and for passing the legislation

required to extinguish title, but Canada's main involvement resulted primarily from its historic and constitutional "special responsibility" regarding "Indians and lands reserved for Indians" pursuant to which services and programs had been provided to the native people of James Bay for many years.

During the actual negotiations of both the Agreement in Principle and the Final Agreement, Canada did not become heavily involved until the later stages of negotiation. This is reflected in the fact that, in general, Quebec has more obligations under the Agreement and has a much greater economic stake in its successful conclusion.

The factors noted above do not, of course, diminish Canada's responsibility to fulfill its obligations. They do, however, illustrate the multi-party nature of the Agreement and Canada's overall role within the framework of the Agreement.

3.3 Agreement Implementation

All parties agree that in several significant areas of the Agreement, notably the Hunting, Fishing and Trapping Regime and the Income Security Program, implementation has been successful and the native people are enjoying the benefits which they negotiated. Both Quebec and Canada have passed, or are contemplating, legislation which recognizes, protects, and enhances the various rights and benefits accruing under the Agreement. All compensation funds have been paid on schedule and the native corporations established to manage these funds are using them for the general benefit and welfare of the native people. This review does not focus on the acknowledged successes of the Agreement but rather on the areas where the native parties contend there have been significant problems.

The Crees and Inuit both still believe in the basic soundness of the Agreement. In their judgement the current difficulties are a result of the failure of the non-native signatories to properly fulfill their obligations. The Crees emphasized this point in their brief to the Standing Committee on Indian Affairs.

> "While the Agreement was and is a good agreement in its terms, the implementation of important parts of the Agreement has been a failure. Although it cannot be denied that other parts of the Agreement have been successfully implemented, the disputes and tensions caused by the parts which are not working are threatening the remainder of the Agreement." (Underlining in the original).

The Inuit maintain that the failure of Canada and Quebec to properly implement the Agreement stems from underlying negative attitudes some of which they cite in their brief:

"a) a prevailing distrust of Inuit intentions on any given point.

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

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

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

In discussing their expectation of Canada, both native parties place particular emphasis on Canada's "special responsibility" for the Crees and Inuit which is specifically noted in the preamble to the James Bay and Northern Quebec Native Claims Settlement Act:

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

This review has found that there have been substantial difficulties in implementing several important sections of the Agreement and the Federal letters of undertaking these difficulties are discussed in detail below.

4. LEGAL OVERVIEW OF THE AGREEMENT

A legal review of the Agreement was carried out by the Department of Justice and the legal opinions expressed in this review reflect the findings reached by that Department.

One of the major problems identified in the legal review is the difficulty of attaching precise legal meaning to obligations assumed under the Agreement. Many provisions of the Agreement are not specific enough to commit Canada to specific levels of service or funding, or to commit the government to achieve goals by a defined date, rather, many provisions indicate that services and funding should be in line with that available to other Canadians, Inuit or Indians and that obligations should be achieved within the limits of funding authority approved by Parliament.

Although Canada may not be in strict legal breach of the Agreement, the question remains as to whether Canada has a political or moral responsibility to provide services, benefits or rights which, although not specified or quantified in the Agreement, the native parties believe they are entitled to by virtue of the general spirit and intent of the Agreement as well as the overall spirit in which it was negotiated, and on the basis of which basic understandings were achieved.

5. REVIEW FINDINGS: SPECIFIC PROBLEMS

The Agreement has had its ups and downs. In the early years of the Agreement Canada's responsibilities were carried out relatively smoothly. More recently major problems have arisen.

The purpose of this Review is not to analyze in detail where the Agreement has failed and why, but rather to determine where Canada is today in relationship to fulfilling its obligations. One of the primary objects of the Review is to the lay the ground work of understanding necessary to allow the Agreement to evolve and develop as it was intended. Problems of implementation and differences of opinion will continue but, hopefully, with the proper understanding of the nature of the Agreement, and the proper attitudes on behalf of all parties, it will be possible to solve these problems with much less acrimony.

From Canada's perspective, the major problems in implementing the Agreement do not relate to fulfilling specific and clear obligations but rather to fulfilling the spirit and intent of the Agreement. Provisions of the Agreement which are clearly specified, such as the payment of compensation funds, have been implemented successfully. It is in less specific areas of the Agreement, where interpretation must be based on the intent of the negotiators, on understandings reached during negotiations, or on the general spirit of the Agreement that implementation has been much mde problematic.

The general problem of interpreting the Agreement is illustrated by the dilemma faced by the review team, in trying to reach a consensus on the meaning of Sections 28.1.1 and 28.1.2 which outline preliminary provisions with respect to Section 28: Economic and Social Development - Crees. Similar preliminary provisions, Section 29.0.2 and 29.0.3, in Section 29: Inuit Economic and Social Development pose, the same problem of interprettion.

Sections 28.1.1 and 28.1.2 read as follows:

28.1.1 "Programs, funding and technical assistance presently provided by Canada and Québec, and the obligations of the said governments with respect to such programs and funding

shall continue to apply to the James Bay Crees on the same basis as to other Indians of Canada in the case of federal programs, and to other Indians in Québec in the case of provincial programs, subject to the criteria established from time to time for the application of such programs, and to general parliamentary approval of such programs and funding.

The foregoing terms, conditions, obligations and cirteria will apply to all federal programs referred to in this Section."

28.1.2 "Subject to paragraph 28.1.1, Canada and Québec shall continue to assist and promote the efforts of the James Bay Crees and more specifically undertake, within the terms of such programs and services as are established and in operation from time to time, to assist the James Bay Crees in pursuing the objectives set forth herein in Sub-Sections 28.4 to 28.16.

Sections 28.5 to 28.16 referred to at the end of Section 28.1.2 set out provisions for a wide range of economic and social development initiatives such as: the establishment of Cree associtions for Trapping, Outfitting, and Arts and Crafts; the provision of community services; Cree participation in employment and contracts; assistance to Cree entrepreneurs; and other similar provisions.

Section 28.1.1 and 28.1.2 appear from a legal perspective to qualify all the succeeding provisions of Section28. Thus, according to one possible intepretation, although certain sections in 28 may appear to place specific and special obligations on Canada, Canada's responsibility to carry out these special obligations is restricted by the extent to which these obligations ~~is restricted by the extent to which these obligations~~ can be fitted within the existing range of programs and services available to all Indians.

The interpretation is supported by the position adopted by Canada's negotiatoprs that "programs were not negotiable". In their view the preliminary provisions of Section 28 were specifically included to make it clear to the native parties that all the provisions of Section 28 would have to be fitted within existing programs and services. According to this view the specific provisions of Section 28 were specifically included to make it clear to the native parties that all the provisions of Section 28 would have to be fitted within existing programs and services. According to this view the specific provisions of Section 28 were included only at the insistence of the Crees and in order to illustrate their particular program and service needs.

The Review team found great difficulty in reconciling this interpretation with the specific provisions of Section 28. For

example, Section 28.11.1 dealing with community services appears to commit Canada to fund specific facilities.

28.11.1 "Subject to the extent of financial participation possible by Canada, Québec and the Cree communities and to the priorities actually agreed to by the interested parties at the time annual budgets are discussed and prepared, Quebec and Canada shall provide funding and technical assistance for:

a) the construction or provision of a community centre in each Cree community;

b) essential sanitation services in each Cree community;

c) fire protection including the training of Crees, the purchase of equipment and, when necessary, the construction of facilities in each Cree community.

If this section is qualified by the preliminary provisions it becomes very difficult to understand what, if anything, this section actually entitles the Crees to. This type of problem of interpretation appears throughout the Agreement, and short of a court decision or agreement to amend the Agreement, it is unlikely that the real meaning of the Agreement will every be clearly defined.

In interpretating the Agreement the Review team has adopted the view that Sections like 28.11, although they may not constitute a legal commitment, seem to at least imply an intention by Canada to make its best efforts to try and accomplish the goals outlined in the Agreement. It also seems reasonable to assume that the existence of the Agreement itself, which is a legal contract, implies that Canada's obligations in this regard can be legitimately viewed as "special" or unique and should be treated as such.

The grievances raisd by the native parties appear to fall into two broad categories:

a) problems relating to the Federal provision of specific programs, benefits or services;

b) and problems relating to the overall implementation of the Agreement.

The specific grievances falling in these two categories are detailed below. However, before discussing the specific problems it is worthwhile to note two major findings of the Review which seem to impact on virtually all the grievances.

Firstly, it is clear that the climate of Federal budgetary restraints over the past several years has played a major role in delaying or limiting the achievement of goals which in 1975 it was generally assumed could be quickly accomplished.

Secondly, although provisions were made for Federal implementation of Agreement responsibilities the implementation system was sometimes ineffective and inconsistent and this lead to a breakdown in the cooperative working relationship and environment of trust necessary for successful implementation.

Two issues of particular concern to the Inuit, but which are beyond the terms of this Review, and consequently are not discussed below, are the question of the extinguishment of aboriginal title and the need for Inuit political representation. The Inuit believe that it was not necessary to "extinguish" aboriginal title in order to achieve the aims of the James Bay Agreement. They claim that extinguishment is "abhorent to native peoples and inherently unacceptable to them." In support of their position the Inuit cite Section 33(1) of the proposed Canada Act.

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

In discussing this issue with the Inuit, the review team, while recognizing its importance to them, suggested that it might be more appropriately and effectively dealt with within the context of the current discussions on the constitution and Canada's native peoples. The Inuit agreed with this point of view, and the study team undertook to make sure that this issue was brought forward for discussion in the constitutional forum. The question of political representation, specifically the creation of a Federal Inuit constituency was also discussed and with regard to this issue, also, it was agreed that the matter could be more effectively dealt with on the political or constitutional level.

5.1. FEDERAL PROGRAMS, SERVICES AND BENEFITS

The native parties contend that with respect to both the delivery of general ongoing Federal programs, servies and benefits and the specific or "special" obligations under the Agreement Canada has not fulfilled its responsibilities. Following is an analysis of the general and specific grievances put forward by the native parties.

5.1.1 General Federal Programs, Services and Benefits

A. Issue

The Cree and Inuit claim that Canada has violated the Agreement by failing to provide, eliminating, or reducing

ongoing Federal programs, services and benefits which, pursuant to the Agreement and the Federal letters of undertaking, were to continue to apply to the native parties. The native parties also argue that the "special" programs, services and benefits established under the Agreement have been interpreted and applied very narrowly and in a way which has hampered or prevented the native parties from enjoying the benefits to which they are entitled.

B. Provisions of the Agreement

Sections 2.11 and 2.12 of the Agreement state:

2.11 "Nothing contained in this Agreement shall prejudice the rights of the Native people as Canadian citizens of Québec, and they shall continue to be entitled to all of the rights and benefits of all other citizens as well as those resulting from the Indian Act (as applicable) and from any other legislation applicable to them from time to time.

2.12 "Federal and provincial programs and funding, and the obligations of the Federal and Provincial Governments, shall continue to apply to the James Bay Cree and the Inuit of Québec on the same basis as to the other Indians and Inuit of Canada in the case of federal programs, and of Québec in the case of provincial programs, subject to the criteria established from time to time for the application of such programs.

This principle is reiterated in the James Bay and Northern Quebec Native Claims Settlement Act Section 3(3):

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

Sections 6 and 7 of the Agreement in Principle (November 15, 1974) also makes reference to ongoing programs:

6. "Citizens rights:

Nothing contained in the Final Agreement shall prejudice the rights of the Native people as Canadian citizens of Quebec, and they shall accordingly be entitled to all of the rights and benefits available to all other citizens, subject to the Indian Act (as applicable) and to any other legislation applicable to them.

7. Federal and Provincial Programs

Federal and provincial programs and funding, and the obligations of the Federal and Provincial Governments, shall continue to apply to the James Bay Crees and the Inuit of Quebec on the same basis as to the other Indians and Inuit of Canada in the case of federal programs, and of Quebec in the case of provincial programs, subject to the criteria established from time to time for the application of such programs."

Canada's responsibilities pursuant to Section 7 were the subject of part of the Federal letter of undertaking which stated:

"With respect to Clause 7 of the said Agreement in Principle, Canada undertakes, in particular, that programs and funding for education, housing and health, will continue to apply to the James Bay Crees and Inuit of Quebec without discrimination to the said Crees and Inuit because of any rights, benefits, or privileges arising from the Final Agreement, all of the foregoing subject to general Parliamentary approval of such programs and funding and the criteria established from time to time for the application of such programs."

C. Position of the Native Parties

a) Sections 2.11 and 2.12

In their brief to the Standing Committee the Crees argue that Canada has not respected its commitments pursuant to Sections 2.11 and 2.12.

The Crees state:

"... the funding, the services and the programs which the Crees would have received had the Agreement not been signed were supposed to continue after the Agreement and in addition the Crees were to receive the rights,

benefits and privileges in their favour specified in the Agreement and in the Federal Undertakings, including the additional programs, services, resources and funding from the Governments mentioned specifically in the Agreement.

This has not occurred."

"Not only have the Crees not obtained additional benefits, services and programs or even the continuation of these, but there has been a consistent attempt on the part of the Federal Government to reduce programs already applicable to them, to give the benefit of such savings to the Department and to use whatever means available in order to force the Crees to use compensation funds." (Underlining in the original)

b) "Special" measures

Regarding the "special" measures provided for in the Agreement the Inuit brief to the Standing Committee states:

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

In other words, in the absence of criteria established for the implementation of such measures through existing programs and in the absence of funds earmarked for such measures, Canada has taken the position that it has no obligation to create special programs or amend existing ones or to seek additional budgetary allocations."

c) Expenditure "savings"

On the basis of a financial analysis they undertook the Crees believe that Canada has realized a "savings" of $20.3 million as a result of the James Bay Agreement and this "saving" is growing by $8.5 million a year. The Crees attribute these "savings" to the following factors:

a) Replacement of Federal Programs with Provincial Programs. For example, Federal welfare payments have

been reduced as a result of the Quebec sponsored Income Security Program for Trappers. The Cree estimated that this resulted in a "saving" in 1976/77 to 1980/81 of $6.3 million.

b) Replacement of Federal programs with Provincially constituted programs funded by Quebec with cost sharing agreements with the Federal Government. For example Quebec assumes 75% of the cost and the Cree School Board and Canada 25%. This has resulted, the Crees say, in Canada saving $12.2 million since 1976-77.

c) Removal of administrative burden and related expenses as a result of transfers of responsibilities. The Crees argue that Cree entities such as the CRA have assumed functions previously carried out by the DIAND. In their estimation this has resulted in a saving of $3.7 million to 1980/81.

Spokesmen for the Crees contend that the spirit, intent, and the letter of Agreement obligates Canada to re-allocate these "savings" to other "ongoing Cree programs and new areas of Cree responsibility". The Crees also argue that even in areas where ongoing programs have continued the Cree have received a reduced level of service and funding.

D. Review of the Issue

a) Sections 2.11 and 2.12

In the view of the people who negotiated the Agreement on behalf of Canada Section 2.11 and 2.12 were included in the Agreement in order to guarantee that the Cree and Inuit would not be cut off from programs and services offered by the Governments. The native parties feared that the Governments might treat them as "rich Indians" or "rich Inuit" after they had received their compensation payments and, on these grounds, cut off programs and services available to them.

A general analysis of program expenditures in the Cree and Inuit communities indicates that ongoing programs are, and have been, applied to the Cree and Inuit on the same basis as to other Indian and Inuit communities. Moreover the Crees and Inuit are subject to the same cut-backs and program improvements applied elsewhere in the country. There is no evidence to suggest that the Crees and Inuit were discriminated against because they had signed the Agreement.

The study team did not discover any specific examples of the Crees or Inuit being deprived of programs and services because they were "rich". There is, however, some evidence of a general misconception as noted in Section 5, above, concerning the general conditions of life of the Crees and Inuit in the post Agreement period. In applying established program criteria, some decisions may have been unduly influenced by a feeling that the needs of Crees and Inuit, because of their compensation funds, was not as great as other Indian and Inuit communities. It is clearly necessary to ensure that civil servants and the public in general are made aware of the fact that compensation funds were intended to compensate the native parties for the damages they sustained and the rights they surrendered. These funds were not intended to pay for programs and services usually provided by government.

Despite the ambiguous wording of some of the relevant provisions, especially the statement in the letter of undertaking, it is the feeling of Canada's negotiators that the commitment to provide ongoing programs was clearly intended and understood to be subject to the provision of special programs in the Final Agreement. It was taken for granted during the negotiations, and seemed to be accepted by the native parties, that in areas such as education, the specific provisions of the Agreement would take precedence over, and replace, the general education program available to the native people. There was no intention to establish a dual system of programs delivery with the native people having a choice between "ongoing programs" and "special programs". In the opinion of the Federal negotiators it was understood during negotiations that ongoing programs would apply where there were no special provisions, thus ensuring that the native people received the whole spectrum of services available to Indian and Inuit people plus the special rights, benefits and programs established under the Agreement.

The Federal negotiators maintained the position that, in general, ongoing programs "were not negotiable". The Crees and Inuit would continue to be entitled to all applicable programs and would be subject to the same criteria and budgetary limitations imposed on other native communities. For example it was not intended that welfare payments would continue even though the criteria of need could no longer be met as a result of the Income Security Program established under the Agreement and funded by Quebec.

b) "Special" Programs

There appear to have been some serious problems with regard to the application of some of the "special" provisions of the Agreement.

Sometimes indifferent attention may have been given to ensuring that programs and services were adopted to the special needs of the Crees and Inuit.

The problems with regard to the implementation of Section 28 and 29 appear to have been particularly acute and these are dealt with in a separate section of the review.

The problems arising from the implementation of the special program responsibilities stipulated in the Agreement are, in part, also a result of the vagueness and ambiguity of some of the provisions. A more critical cause of the problems, however, appears to be the lack of an adequate forum for overseeing the implementation of the Agreement as well as Canada's failure to clearly establish a Federal official responsible for overseeing all aspects of Canada's responsibilities under the Agreement.

c) Expenditure "savings"

It was realized at the time the Agreement was being negotiated that transfers of program responsibility would result in changes in the DIAND's financial and administrative responsibilities and that in certain instances this might result in "savings" to the Department. There is, however, no indication that it was understood, or intended, that such savings would be passed on directly to the Crees and Inuit. The general intention of the various program transfers was to provide a program delivery system that was better suited to the needs and desires of the native communities and to provide funding for these programs in accordance with financial requirements as determined on the basis of the provisions of the Agreement.

In several instances the special programs established under the Agreement have, in fact, resulted in significant increases in Canada's expenditures in the Cree and Inuit communities. For example with regard to education, despite the fact that Canada now pays only 25% of Inuit education costs and 75% of Cree costs

Canada's expenditures on education for both groups have increased significantly.

Other areas of new expenditure resulting from the Agreement are the establishment by the Department of the Environment of a James Bay Office and the establishment by Canada Manpower of several new offices in Northern Quebec.

As Cree and Inuit communities assumed resposibilities previously carried out by the Department there were personnel cut-backs in the district offices serving the Cree and Inuit communities and consequent savings. Such cut-backs are, however, a typical aspect of the application of the Department's policy of transferring program responsibilities to the band level and appears to have been carried out in compliance with the general policies established for such transfers. Moreover, the great emphasis which the Agreement puts on self-government and self-determination necessarily implies a reduced role for DIAND and government in general in the affairs of the native parties.

E. Summary

In general Federal programs, services and benefits of an ongoing native have continued to apply to the native people of James Bay. However, it appears that a luck of proper attitudes and a general appreciation of the Agreement may have resulted in slowing down or comparing the full realization of all the rights and benefits of the native parties.

5.1.2 Catch-Up Programs

A. Issue

The Cree and Inuit maintain that the spirit and letter of the Agreement entitle them to special Federally funded "catch-up programs" to upgrade the housing and infrastructure in their communities.

B. Provisions of the Agreement

The Agreement makes no specific reference to "catch-up programs". Under the terms of the Agreement and particularly the Chisasibi Agreement, a complementary agreement respecting the relocation of Fort George, Canada and Quebec are required to fund and/or provide housing and

infrastructure in some of the communities. There is, however, no provision for a general upgrading program in all the native communities. The Federal letters of undertaking to the Crees also commit Canada to specified housing and infrastructure programs for various Cree communities but makes no reference to a general "catch-up program".

Section 28.11.1 makes reference to the construction of essential sanitation services in the Cree communities.

> "Subject to the extent of financial participation possible by Canada, Québec and the Cree communities and the priorities mutually agreed to by the interested parties at the time annual budgets are discussed and prepared, Québec and Canada shall provide funding and technical assistance for:

a) the construction or provision of a community centre in each Cree community;

b) essential sanitation services in each Cree community;

c) fire protection including the training of Crees, the purchase of equipment and, when necessary, the construction of facilities in each Cree community.

C. Position of Native Parties

The Crees and Inuit contend that at the time the Agreement was being negotiated it was generally agreed that virtually all the native communities required a major program to upgrade housing and infrastructure facilities. The native parties argue that as a result of the fact that aboriginal title in the James Bay Territory was in dispute and that few of the Cree communities were established as reserves Canada did little to provide essential services in these communities and funding by Canada was virtually halted in the 3-4 years immediately preceding the Agreement.

Representatives of the Crees and Inuit who participated in the negotiation of the Agreement, stated in interviews with the review group that during the negotiations it was impossible to determine the specific requirements in terms of housing and infrastructure, or the amount of funds which would be required to provide the needed facilities, and, the Agreement therefore, contains few clear and specific commitments. The difficulty in establishing precise needs made it virtually impossible to negotiate a specific

program for upgrading the communities. Moreover, the native parties argue that the government representatives, while specifically rejecting the notion of a "catch-up program", assured them that the aims of such a program could be accomplished in a reasonable period of time through the application of "ongoing programs" to which the native people would continue to be entitled. Although they understood, and the Agreement specified, that such programs were to be applied on the same basis as "to other Indian and Inuit" and "subject to the criteria established from time to time for the application of such programs" the Cree and Inuit negotiators felt that in view of the fact that the basic criteria for such programs was need, and their need was proven, they would be given priority consideration.

Since government programs and economic activity were expanding, it was assumed that the needs of the native communities could be accommodated within available government programming and funding.

With respect to their most critical infrastructure need, essential sanitation services, the Crees make specific reference to Section 28.11 of the Agreement. They argue that this Section guarantees them a special program for the construction of sanitation services and that this section was specifically included in the Agreement in recognition of the special obligations that Canada and Quebec were assuming.

A major focus of the brief presented by the Crees is the critical role that the lack of proper sanitation has played in the recurrent health problems experienced by the Crees. They make special reference to the 1980 gastro-enteritis epidemic which resulted in the death of several native children and was caused, in part at least, by contaminated water supplies.

The Crees are also extremely dissatisfied with the manner in which Canada has fulfilled its responsibilities pursuant to a five year housing and infrastructure agreement signed by DIAND and the Crees in May 1979. The Crees viewed the 5 year agreement as a "temporary measure to enable the [housing and infrastructure] program to be accelerated". The Crees claim that this goal has not been accomplished and, that in fact, the Crees have been forced to use their own funds to accelerate the program. They are not confident that they will be able to regain these funds from Canada.

The Inuit perspective on the "catch-up" issue differs considerably from the Crees perspective because the Inuit villages are Quebec municipalities under Quebec jurisdiction and eligible for Quebec programs and funding, while the Cree communities are essentially similar to Indian reserves and come under Federal jurisdiction. The Inuit agreed to and accepted Quebec jurisdiction but they contend that the Agreement commits Quebec to provide a level of programs and services, especially housing and infrastructure, geared to the real needs of their communities.

The Inuit, however, also argue that the poor facilities in their communities are the result of the failure of Canada to provide adequate funding for the Inuit communities during the time they were under direct Federal control, and especially during the 1970's while the Agreement was being negotiated. Also the Inuit contend that it was understood during the negotiations that the Inuit communities of Northern Quebec compared very unfavourably in terms of housing and essential facilities to similar Federally controlled communities in the N.W.T.* This inequity appears to have been a consequence of the difficulties that the Department of Indian Affairs encountered in building capital projects on Quebec lands. In the N.W.T. where Canada's jurisdiction was clear there was no difficulty in providing essential facilities. The Inuit maintain it was generally felt but not specified in the Agreement, that one outcome of the Agreement would be to bring the Quebec Inuit communities up to the level of similiar communities in the N.W.T.

The Inuit object strongly to the Northern Quebec Transfer Agreement (February 13, 1981) under which Canada transfered its municipal services responsibilities, including housing, to Quebec. The Inuit maintain that Canada should have required Quebec to maintain specified levels of services and housing construction as a condition of the Transfer. In the opinion of the Inuit, Canada's actions have set back the construction of needed facilities in their communities.

D. Review of the Issue

It is clear from discussions with people involved in the negotiations of the Agreement that the general tone and spirit of the negotiations engendered high expectations about the changes and improvements that th Agreement would bring for the Cree and Inuit. In the area of housing and infrastructure, despite the admitted vagueness of the

Agreement, it was felt that the Agreement would give the native parties and both the governments the impetus to quickly improve conditions. Although there have been significant improvements they have not been as dramatic or quick as many people on both sides of the negotiating table had hoped for in 1975 and much still remains to be done.

a) Housing and Infrastructure Expenditures

In implementing the terms of the Agreement with respect to housing and infrastructure DIAND adopted the position, based on a legal interpretation of Sections 2.11 and 2.12, that the Cree and Inuit communities were entitled to the same programs as those enjoyed by other Indians and Inuit communities in Canada. On the basis of this interpretation and applying the criteria of proven need DIAND expended $26.4 million on housing and infrastructure in the Cree communities in the period 1975/76 - 1980/81 and $14.9 million in the Inuit communities in the period 1975/76 - 1979/80.

Regarding the specific provisions of Section 28.11.1 dealing with essential sanitation DIAND has consistently maintained that this provision is subject to sub-section 28.1.1 which sets out preliminary provisions relating to Section 28:

"Programs, funding and technical assistance presently provided by Canada and Québec, and the obligations of the said governments with respect to such programs and funding shall continue to apply to the James Bay Crees on the same basis as to other Indians of Canada in the case of federal programs, and to other Indians in Québec in the case of provincial programs, subject to the criteria established from time to time for the application of such programs, and to general parliamentary approval of such programs and funding".

"The foregoing terms, conditions, obligations and criteria will apply to all federal programs referred to in this Section."

On this basis the Department carried out the construction of "essential sanitation services" in Cree communities in accordance with existing programs established for that purpose. (Expenditures on "essential sanitation" are included in the figures noted above.) In the view of the Federal officials who negotiated Section 28.11.1 it was intended to give

recognition to the particular needs of the Cree communities but did not constitute a guaranteed level or timeframe for funding.

Interviews with senior officials of the Quebec Region of DIAND indicate that Regional officials have attempted to treat the Cree and Inuit communities like other communities in the region taking into account proven needs and the overall funding capacity of the Region and Department.

Regional officials admit that the proven needs in the communities far exceed the Department's current funding capacity and that the situation has become particularly severe in the last several years which saw a decrease in the housing and infrastructure funds available to the Region and Department.

The Cree communities represent approximately 20% of the Quebec Region's Indian and Inuit population and the capital expenditures in these communities account for 30% of the overall regional budget. If the budget is adjusted to eliminate the $10,000,000 expenditure for the relocation of Fort George, which the Cree consider to be a special expenditure, their overall proportion of the budget is 21%. The Inuit communities represent approximately 13% of the Quebec Region population and the expenditures in these communities (1975/76 - 1979/80) represent approximately 17.6% of the overall regional budget. These figures would indicate, and discussions with the Quebec Region of DIAND would support the conclusion that the James Bay communities received a fair share of the Region's housing and infrastructure budget. However, the added expense of construction in the North distorts the comparative value of these figures and makes comparisons in terms of positive results difficult.

There is no evidence that funding of capital projects was halted or reduced during the period preceding the negotiations. However, it is true that in some of the Cree communities and in all the Inuit communities, capital construction was hampered by the fact that the communities were located on Quebec land. Quebec was reluctant to allow the Federal government to build Federal projects on Quebec land and this resulted in a generally low level of construction activity in the period preceding the negotiations of the Agreement. It is also true that as a result of the impending transfer

of responsibility from Canada to Quebec, DIAND had difficulties in retaining staff in Artic Quebec and this may have had a detrimental impact on the capital programs in some Inuit communities.

Despite the major capital construction program carried out in the last five years the housing and infrastructure facilities, and especially essential sanitation services, in most of the Cree and Inuit communities are still below acceptable standards. These poor conditions are a major factor in the poor level of health in the communities and can be directly linked to the periodic outbreak of serious diseases such as gastro-enteritis and T.B.

b) Five Year Housing and Infrastructure Agreement

Under the terms of the Five Year Housing and Infrastructure Agreement signed in May 1979 the Cree Housing Corporation assumed, on behalf of the James Bay Crees, responsibility for the planning implementation and construction of housing and infrastructure facilities in the Cree communities. The main object of the Agreement was to enable the Crees to carry out a proposed Cree Community Development Plan at an estimated cost of $61.5 million over 5 years. It is clear to both the Crees and Department officials that there have been serious problems in implementing this Agreement.

The Housing Agreement recognizes the limited capital funds available to the Quebec Region. To accelerate the Development Plan the Agreement provides for the possibility of the Cree Regional Authority advancing additional funds to supplement DIAND's regular allocation during the 5 years construction phase of the program with the Department reimbursing the Crees over the succeeding 5 years. This would in effect result in the Crees utlizing 10 years of Department funding over a 5 year period. During the 5 year construction phase the Department undertook, subject to Parliamentary appeal, to maintain funding:

"at a level which will be approximately equivalent to the share of such funding provided to the Cree communities of Quebec for the 1977-78 and 1978-79 fiscal years and this for the duration of this agreement. If our budgets were to remain the same as at present, this would represent an amount of approximately $3.5 million per year."

On the basis of these provisions the Crees estimated that DIAND would contribute $35.5 million to the $61.5 million program. Another $13.2 million was to be financed by mortgages. This left a short fall of $12.8 million which the Cree expected would be covered, at least in part, by Quebec pursuant to its obligations under Section 28.11.1.

Several important factors have contributed to the difficulties being encountered in achieving the aims of the Five Year Agreement:

a) the capital funds available to the Department have decreased, thus preventing the Department from maintaining the $3.5 million funding level;

b) Quebec has refused to participate in the construction of housing or infrastructure, thus leaving a significant part of the program unfunded; and

c) in some instances there have been significant project cost overruns.

All these factors have resulted in the Crees contributing more of their own money than they had anticipated and has also resulted in the completion date for the Plan being pushed back to 1987. These factors were not anticipated in 1979. In view of the difficulties with this Agreement, there may be reason to review its terms.

To complete the housing and infrastructure program by 1987, and taking into account projects completed since 1979, the Crees have projected expenditures of approximately $52 million. Taking into account current funding levels of the Department (and assuming no further cuts), CMHC loans, and other sources of funding including the use of the Crees' own funds, they estimate a major deficit, possibly around $7 million, in their housing and infrastructure program. In addition the Crees estimate they have already spent $9 million dollars of their own money on projects which, in their view, should have been funded by Canada and/or Quebec. There are other expenditures, of an unspecified, but significant amount the Crees have made on their own for which they feel Canada should refund them, but in this respect they agree Canada's obligations are vague.

Although the Crees' expenditure estimates may be high it is generally recognized by Department officials involved

that given current funding, the Department could not meet the Crees' needs without having a serious detrimental impact on the progress of programs in other areas of the Region and country. The shortfall in funding for the Cree communities could possibly be reduced if Quebec agreed to participate in the funding of essential sanitation and other services as required under Section 28.11, but which, up to date has declined to do.

c) Inuit Housing and Infrastructure

The Inuit have requested that Canada participate in the funding of a special accelerated program to upgrade services and facilities available to the Inuit of Northern Quebec to a level comparable to Northern communities in other areas of Canada. Although Quebec assumed full responsibility for the Inuit communities in February 1981 under the terms of the Northern Quebec Transfer Agreement, the Inuit contend that, in light of the constitutional and moral responsibility that Canada has for the Inuit, and Quebec's failure to provide what the Inuit consider to be an adequate level of service, it is necessary for Canada to assist in funding the upgrading program. The need for an upgrading program is well documented in the Jolicoeur Report on conditions in the Inuit communities, which was commissioned by Quebec.

The Inuit have not provided specific figures on what funds they would expect Canada to provide as part of a Federal-Provincial upgrading program but it is clear that their needs are comparable to the Cree villages.

The facilities and services available in Inuit communities in the North West Territories (NWT) are clearly superior to those in similar communities in Northern Quebec. This was clearly evident when as part of the Review, Mr. Ray Chenier, M.P., Parliamentary Secretary to the Minister of Indian Affairs, and DIAND officials toured some of the Inuit communities and then visited Cape Dorset, N.W.T. to compare conditions.

In addition to housing and municipal services, the Inuit were particularly concerned with the inadequate school facilities presently in use. They expressed grave concern that lack of proper education facilities would discourage Inuit children from achieving higher levels of education.

The reasons for this discrepancy between the N.W.T. and Northern Quebec appear to stem primarily from the historical reluctance of Quebec to allow Canada to construct housing and other facilities in Inuit communities situated on Quebec land. DIAND was hampered in construction of capital projects in Quebec whereas there were no such obstacles in the N.W.T. Part of the disparity may also have resulted from differences in the programs provided by the Northern Program of DIAND, which had responsibility for Inuit in the N.W.T., and those provided by the Indian and Inuit Affairs Program, which had responsibility for Inuit in Quebec.

The Northern Quebec Transfer Agreement provides that Canada will pay Quebec $72 million at the rate of $8 million a year for 9 years as well as transfer of $30.2 million dollars in assets to the Quebec government. This Agreement, although not specifically required by the James Bay Agreement, was necessary to achieve the "unified system" of municipal service delivery envisaged in Section 29 of the Agreement. The Inuit objected to Canada signing the Transfer Agreement because in their opinion it did not furnish sufficient guarantees that Quebec would supply the services previously provided by Canada at a level adequate to meet the pressing needs of the Inuit communities.

An examination of the history of the Transfer Agreement makes evident the dilemma faced by Canada at the time of its signing. The expenditure plans submitted by Quebec to the Inuit during the discussion of the Transfer Agreement indicated that Quebec was anticipating spending significantly more in the Inuit communities than Canada had spent in the years immediately preceding the Transfer. However, one of the key elements of the expenditure plan, the Inuit housing program, had not been approved by February 1981 when Quebec put considerable pressure on Canada to sign the Agreement. There were, however, assurances from high level Quebec officials that a housing program, essentially along the lines agreed to by the Inuit, would be approved.

Quebec indicated to Canada that any delay in signing the transfer might result in the Transfer being delayed indefinitely. The urgency to conclude the Transfer was further heightened by the anticipated Provincial election and by the realization by Federal officials that if the Transfer did not take place Canada could not match the expenditures planned by Quebec, even if the proposed housing program was not approved.

There was also considerable confusion as to the real desire of the Inuit. At one point the Minister of Indian Affairs received a letter from the Kativik Regional Government, representing the Inuit municipalities, urging him to sign the Transfer. This letter was later withdrawn by Kativik.

On the basis of the facts before him, and acting on what he considered to be strong assurance from Quebec regarding the housing program, the Honourable John C. Munro signed the Agreement on behalf of Canada on February 13, 1981. Several weeks later it was revealed that the housing program finally approved by Quebec fell short of the program anticipated by the Inuit.

Although the final decision regarding the housing program is regrettable it appears clear from the evidence that Canada was attempting to act in the best interests of the Inuit. Moreover, despite the reduction in the housing program, Quebec expenditures in all areas, including housing, will still significantly exceed the funding that was previously provided by Canada.

d) Health Related Services: Essential sanitation

Despite disagreements as to the legal or moral obligations incumbent upon Canada, it is clear that Canada has a responsibility to ensure that the Cree communities have potable water and adequate sewage disposal facilities. It is clearly beyond doubt that lack of proper infrastructure facilities is a major factor in the poor health conditions experienced by the Crees. It is also true that the overall issue of health care is closely linked and dependent on the living conditions in the Cree communities. There will not be significant improvements in health conditions until there are improvements in overall living conditions and, in particular, essential sanitation services.

This was clearly recognized by the Minister of Indian Affairs, the Honourable John C. Munro, when in September 1980, he undertook to consider the Crees' proposal for a $941,000 remedial works program in the Cree communities of Nemaska and Rupert House, both of which had serious outbreaks of gastro-enteritis in the summer of 1980.

There were serious difficulties in resolving the nature and root of a suitable remedial program. However, in December 1980 Agreement was reached on a program

budgeted at approximately $500,000. This program is now being implemented by the Cree Housing Corporation and to date Canada has contributed $239,000 for its implementation. The balance of Canada's contribution will be paid in accordance with the provisions of the arrangements made last December.

The Crees have reported that the remedial program appears to have been effective and there has not been any serious disease outbreaks in Nemaska or Rupert House this year. Permanent infrastructure facilities are now being installed in both communities.

The Crees have identified a potentially serious health problem in Paint Hills and have proposed a $1 million program to provide emergency remedial services to that community. Discussions are currently underway with the Crees to determine the need, technical details and funding of such a program. The Cree Housing Corporation has undertaken a project to ensure the community water supply is potable and their expenditures will be reimbursed by DIAND. Work on permanent facilities for the community will begin this year.

E. Summary

On the basis of understanding reached during the negotiation of the Agreement the native parties reasonably expected that their urgent housing and infrastructure needs would be dealt with through the application of ongoing programs and services within a relatively short period of time. For various reasons relating to the general budgetary restraint, interpretation of the Agreement, and the magnitude of the necessary improvements, this goal has not been achieved. The needs of the Cree and Inuit communities especially with regard to the provision of essential sanitation are real and urgent. General health and environment conditions in the communities will not improve until these needs are met. Moreover, it is clear that Canada has a responsibility to work closely with Quebec and the Crees to prevent future outbreaks of disease.

5.1.3 Cree Health Services

A. Issue

The Crees allege that Canada and Quebec have failed to fulfill their obligations to provide health services pursuant to Section 14 of the Agreement. The Cree maintain that these alleged breaches have seriously jeopardized the health of the Cree people.

B. Provisions of the Agreement

Section 14 of the Agreement provides for the establishment, by Quebec, of a Cree run Cree Regional Board of Health and Social Services "in order to exercise the powers and functions of a Regional Council within the meaning of the Act respecting Health and Social Services (L.Q. 1971, c. 48)". The Board has responsibility "for the administration of appropriate health services and social services for all persons normally resident or temporarily present in the Region". The Section also gives the Board authority over the existing and future health facilities in the Region including the hospital at Fort George.

Section 14 also provides that:

a) Quebec will "recognize and allow to the maximum extent possible for the unique difficulties of operating facilities and services in the North (14.0.19);

b) to the maximum extent possible services will be applied through the Cree Health Board (14.0.20);

c) that budgets will be based on actual Federal and Provincial expenditures in 1974/75 modified on the basis of changes in population, costs, and the evolution of general Provincial health services (S.14.0.23);

d) health services be gradually transferred from Federal to Provincial control through the Cree Board of Health (14.025);

e) Quebec will recognize and protect the special mandate and perogatves of the Cree Board of Health.

C. Position of the Native Parties

On March 26, 1981 the Crees appeared before the Standing Committee on Indian Affairs and Northern Development and on May 19, 1981 before the Standing Committee on Health, Welfare and Social Affairs. On both occasions the Crees made very strong representations concerning their dissatisfaction with the way in which Quebec and Canada have fulfilled their responsibilities concerning the delivery of health services and health related services such as essential sanitation. The Crees contend that these alleged breaches have contributed to a very serious health situation in the Cree communities which has resulted in the outbreak of serious diseases, including a gastro-enteritis epidemic in which a number of Cree infants died.

The Crees contend that the Health Board has not been given the authority and budget that it requires to function properly and to which it is entitled under Section 14 of the Agreement. The Crees submit that at the time the Agreement was negotiated it was generally recognized that considerable improvement was required in the delivery of health services and it was also recognized that almost all the Cree communities required essential sanitation services. They claim that neither of these goals have been achieved.

The Crees suggest that their ongoing efforts to force Quebec to fulfill its obligations pursuant to Section 14 led to open confrontation between the Crees and Quebec resulting in Quebec restricting Health Board funding and putting the Board under provisional administration. The Crees, on their part, launched a suit against Quebec seeking enforcement of Section 14 of the Agreement. The Crees have also launched a suit against Canada alleging that Canada is also in breach of Section 14. The provisional administration is no longer in force but the relations between the Cree Health Board and Quebec are still very strained.

Regarding Canada, the Crees argue that the creation of the Health Board under Quebec jurisdiction and the transfer of federal facilities and health service responsibilities to the Board does not relieve Canada of its ultimate responsibility for Cree health. The Crees maintain that, notwithstanding the provisions of the Agreement, Canada has a constitutional responsibility, pursuant to Section 91(24) of the B.N.A. Act, to provide health and social services to the Crees. The Crees emphasized this view in their brief to the Standing Committee on Health, Welfare and Social Affairs:

> "... federal laws, programs and policies continue to apply to the Crees. The contemplated assumption under the James Bay and Northern Quebec Agreement by the Cree Health Board, a provincial creature, of greater responsibility for the administration of health and social services does not mean that all federal responsibility and obligations then ceased. Nor is such assumption by the Cree Health Board the equivalent of a release to the Federal Government to provide such services or an authorization to the federal government to terminate its constitutional responsibility to the Crees in health and social services matters."

> "There is no justification for the position of the Federal Government that Section 14 of the Agreement "requires" that the Federal Government cease all health and social services for the Crees as of March 31, 1981. Nor does Section 14 of the Agreement authorize an abdication of federal jurisdiction in these matters. Even if it is eventually held by the Courts that the Federal Government is no longer involved in the delivery of health and social services to the Crees, the Federal Government would still retain ultimate responsibility for the health and welfare of the Crees and for ensuring that Section 14 of the Agreement is properly implemented" (underlining in the original).

The Crees also argue that Section 2.11, which provides for ongoing federal programs to apply to the Crees, means that the Crees continue to be eligible for Federal Indian Health Service Programs even if there are special provisions for Cree health and social services provided for in the Agreement.

In the view of the Crees Canada has a responsibility, as a minimum, to act "as the guarantor of adequate health and social services for the Crees" and to "provide them the means to ensure such adequate services ...". (Underlining in the original).

The Crees also argue that an essential factor in the poor health conditions being experienced by their communities is the lack of essential sanitation services which were to be provided by Canada pursuant to Section 28.11.1. In their view, the health conditions resulting from improper sanitation are closely linked to the overall issue of health care and must be viewed as part of the same issue.

D. Review of Issue

The issue of Federal responsibility for Cree Health services appears to stem from a disagreement that arose during the negotiations. All parties agreed on the desirability of establishing a Cree run health board under Quebec jurisdiction. The Crees, however, expressed a desire to maintain Federal participation in health services through funding and/or direct program delivery. Both the Federal and Provincial Government rejected the idea of joint Federal-Provincial involvement. In the view of the Federal negotiators the Agreement reflects, and was intended to reflect, the final negotiated position which provided for joint

funding and delivery during a transitional period after which Quebec, acting through the Health Board, would assume full responsibility. The Federal negotiators maintained that although Canada would no longer provide direct funding and services, Federal involvement would be maintained through ongoing programs such as the Federal-Provincial health services cost-sharing agreements. As discussed in Section 6.1.1 the Federal negotiators did not understand the Agreement to require Canada to continue to provide health services to the Crees despite the special provisions of the Agreement.

The Department of National Health and Welfare, which was charged with implementing Section 14, based their implementation strategy on the understanding that Canada would withdraw its services and hand over responsibility to the Health Board no later than March 31, 1981, after which NH&W would have no ongoing responsibility for Cree health. On this basis NH&W negotiated with the Crees for the transfer of several facilities and successfully concluded agreements concerning these. Until the recent dispute concerning health services and the final Federal transfer on March 31, 1981 there was no indication from the Crees that they expected Federal services and/or funding to continue beyond March 31, 1981.

Canada does not have all the information necessary to determine whether Quebec is adequately performing the duties they took over from Canada. However, a NH&W analysis of budgets before and after transfer does not indicate any significant drop in funding levels nor does there appear to be any significant decline in the services provided to the Cree people.

The Cree clearly expected that the Agreement would result in a quick improvement in health services and it appears likely that this expectation was shared by Quebec and Canada. The Agreement, however, does not specify such an improvement. The only clear funding guarantees in the Agreement are an undertaking by Quebec to maintain Cree health service funding at least at the same real level as existed at the time the Agreement was signed (S.14.0.23, S.14.0.28).

An important factor which has had a deleterious effect on the quality and quantity of health services is the very real difficulty of attracting and retaining qualified medical staff to work in remote communities. It is not always possible to maintain adequate staff

levels even though adequate salary funds are available. This situation is not unique to the Cree communities; it is an unfortunate but real aspect of life in most of Canada's Northern communities both white and native.

In dealing with the health services dispute, Federal officials have attempted to maintain the integrity of the Agreement and to resolve the issue on the basis of the obligations and responsibilities assumed by the various parties. The Crees themselves maintain that they object not to the provisions of Section 14 but to the way they have been interpreted and implemented by Canada and Quebec. Canada's major object in handling this issue has been to make the Agreement work as intended.

The Crees have indicated that in their opinion Canada has encouraged the Quebec Government to harass them. This perception is not accurate. Canada has attempted to resolve the dispute by negotiation rather than through the courts. In November 1980 Federal officials met with senior Quebec officials to urge a negotiated solution to the dispute which by that time had already resulted in the Cree suing Quebec, and Quebec placing the Health Board under trusteeship. Federal officials were not able to convince Quebec to take a more conciliatory attitude.

More recently, the Minister of National Health and Welfare, the Honourable Monique Bégin, acting on the basis of a resolution of the Standing Committee on Health, Welfare and Social Affairs, is attempting to arrange a meeting between herself, the Minister of Indian Affairs, the Crees and the Quebec Minister of Health and Social Services. The purpose of the meeting would be to try and resolve, through negotiations, some of the outstanding issues concerning health services. Quebec has not yet indicated whether they will participate in such a meeting. Although National Health and Welfare no longer considers that they have a responsibility to provide ongoing services to the Crees they have indicated that they are willing to provide technical advice and assistance if requested by Quebec and the Crees in order to assist in the resolution of the current dispute.

The initiation of Court actions has clearly hindered a negotiated resolution because all the parties are now

reluctant to discuss the dispute for fear of jeopardizing their legal position. As the resolution of the dispute via the courts may take several years it would appear to be in the long term interests of all parties to attempt to find a resolution that would enable the Crees to assume meaningful control of their health care system as is clearly intended in the Agreement.

E. Summary

Canada's objective in dealing with the issue of Cree health care services has been to make the Agreement work as intended although views differ on the timing of the transfer of services this still appears to be the correct approach to take. The assumption by Canada of responsibilities which clearly rest with Quebec will do little to enhance the overall implementation of the Agreement.

5.1.4 Economic Development

A. Issue

The native parties contend that the Agreement in its spirit and letter obligates Canada to encourage and promote the economic development initiatives of the native parties. They contend that Canada has failed to encourage economic development and has only applied the current inadequate programs available to all native communities.

B. Provisions of the Agreement

Chapters 28 and 29 deal respectively with Economic and Social Development of the Cree and Inuit. The provisions of the Agreement in these sections should be read in conjunction with Sections 2.11 , 2.12, and 28.1.1 all of which are discussed above. Section 29.02 is the Inuit equivalent of Section 28.1.1.

Both Chapters list specific economic and social programs. Chapter 28 provides for the development with the assistance of Quebec and Canada of the James Bay Native Development Corporation (28.2); the establishment of a Cree Trapper's Association a Cree Outfitters and Tourism Association and a Cree Native Arts and Crafts Association, (28.4 - 28.7)", a Joint Economic and Community Development Committee (28.8;) for Training courses and employment opportunities (28.9 -

28.10); for the provision of community centers and essential sanitation services, and funding of economic development agents and community workers (28.11); for assistance to Cree Entrepreneurs (28.12); and for the continuing negotiations on other services.

While most of the programs contained in Chapter 28 are joint undertaking of Quebec and Canada (28.9 - 28.10), some are to be undertakings of the Cree, Quebec and Canada (28.4, 28.11), while others are undertakings limited to Canada (28.12.4).

Federal involvement in economic programs for the Inuit in Chapter 29: job training and employment (29.0.24 to 29.0.32); an interim joint committee to coordinate and make recommendations on Federal and Provincial socio-economic development programs (29.0.33 to 29.0.35); and support to "Inuit entrepreneurs by providing them with technical and professional advice and financial assistance" (29.0.39).

C. Position of the ~~mature~~ Native parties

The Crees argue that the implementation of Chapter 28, which was meant to be

> "a blueprint for new economic and social programs, services and undertakings for the Cree which would allow them to participate in the 'opportunities' presented by development in Northern Quebec",

has been an unqualified failure.

Because of cutbacks and inflation the Department's budget for economic development programs has been reduced, reducing the proportion available to the Crees while "there has been no effort to continue to have other Federal programs apply to the Cree people of James Bay". The Cree argue that DREE programs and other Federal economic development projects have been applied in a very "minimal way to the James Bay Territory and the Cree people of James Bay".

The Crees contend that the programs mentioned in Chapter 28 were to be in addition to existing programs available under the provisionns of Section 2.11, 2.12 and 28.1.1. In an interview with the review team the Crees indicated that they would not have signed the Agreement if they understood that all programs in Section 28 would be considered only as normal ongoing programs.

Pursuant to the Agreement Canada is to encourage and promote Inuit social, cultural and economic development. The Inuit argue that Canada's obligations have not been met and that any proposal of the Inuit is not implemented "unless the measure fit (sic) squarely within the four corners of existing federal programs".

While the Inuit are aware that funding of programs is subject to the approval of Parliament, they argue that Canada has interpreted this provision to mean programs that Canada undertook to establish for the Inuit "had to be pigeon-holed into existing program criteria which are inflexible and do not contemplate those measures...". They state that Makivik enterprises, regardless of Canada's undertaking in Section 29.0.39, have not received any assistance with start-up costs. The Inuit feel their enterprises should be eligible for DREE grants, which the Inuit view as being contemplated by the Agreement.

Representatives of the Inuit, in discussions with the review team, specifically mentioned problems with training programs, which they said were inflexible and with training allowances, which did not reflect the costs of living in the North.

The Crees would like to see the funding of "a master economic development plan, a staff of qualified people, training programs and access to programs for financial assistance to new businesses". They would like to see the emphasis placed on transportation routes and infrastructure.

D. Review of Issues:

a) Interpretation of the Agreement

The language of Chapters 28 and 29 is not precise and has created major problems of interpretation. Where the Crees and Inuit have generally felt that programs were not to be limited by sections 2.12, 28.1.1 and 29.0.1, the Federal government has generally interpreted these Sections to mean that Crees and Inuit projects have to fit into existing programs and have to compete for limited economic development funds with other bands in Quebec.

This difference in interpretation was one of the main reasons that the Joint Economic and Community Development committee established under section 28.8, never functioned effectively.

b) Cree Economic Development

The Agreement allows for the creation of three Cree Associations, a Cree Trappers' Association, a Cree Outfitting and Tourism Association and a Cree Native Arts and Crafts Association, subject to feasibility studies. Canada and/or Quebec are to assist the Cree with funding and technical advice in establishing these Associations. The Cree, in their submission, indicate that the budget required for these three associations, is $6 million yearly. They gave no detailed breakdown of this figure.

The Cree Trappers Association, as outlined in section 28.5 began functioning after a feasibility study had been carried out. The Crees, Quebec and Canada all contributed to the study and setting up the program. While a feasibility study partially funded by DIAND is now underway for the Cree Outfitters and Tourism Association, it is still unclear if, and when, such an association will be set up. The main initiative still rests with the Cree.

A Native Arts and Crafts Group existed before the Agreement, and this organization will form the basis for the Cree Native Arts and Crafts Association. A feasibility study is underway. In the meantime the Cree Arts and Crafts group is receiving a proportional share ($50,000.) of the DIAND Regional budget for the provincial Arts and Crafts program.

Section 28.12 of the Agreement stipulates that Canada, and Quebec will provide "within the scope of services and facilities existing from time to time" technical and financial assistance to the Cree in establishing and running business ventures.

The Government has interpreted this section to mean that the Crees are eligible for what ever assistance and funding is generally available to Indians and has relied on existing personnel and programs to fulfill its obligations. The Cree indicate that they do not have easy access to government programs that provide general assistance for business ventures.

Cree entities and individuals are eligible for economic development assistance from the Quebec region of DIAND but they have made very limited use of this source of

funds. Moreover, the Region's economic development budget has been cut by inflation and budget cuts. The Region informed the review team that they can consider funding of small projects, but that they did not have any money for major projects, which would have to be considered in Ottawa. This situation would be true for any Indian or Inuit group.

While the Region indicates that they had been willing to assist the Crees in any manner possible to find funds and technical assistance, both from the Department and outside the Department, two problems existed:

1. The Crees made it clear to the Region that they did not want any assistance unless they specifically asked for it (which they have not done); and

2. If they had asked for it there would still to be difficulties because of the magnitude of their proposals and because such programs as special ARDA are not available in Quebec. Special ARDA, which is a program delivered through the Department of Regional Economic Expansion (DREE), requires a Federal-Provincial Agreements, and Quebec has not been willing to enter into such an agreement.

The absence of DREE programs in James Bay and Northern Quebec area was a complaint of both the Crees and Inuit. Both argued that DREE had funded other projects in the area, but up until recently had done nothing for natives. The Crees informed the review, however, that they in conjunction with the James Bay Development Corporation, have been negotiating for a forestry road with DREE.

c) Inuit Economic Development

The Inuit argue that the type of enterprises that they have been setting up through subsidiaries, are the type of projects that would ordinarily have been eligible for start up and infrastructures grants from DREE, but which are not available in Northern Quebec. The Inuit are asking for assistance with these start-up costs, that is the increased costs associated with developing infrastructure in the North, which to date they calculate has cost them an extra $3.7 million.

At present Makivik has a severe cash flow problem. The restrictions in the Agreement on the use of compensation

funds, the prolonged payment period, and the excessive cost of carrying out projects in the North have resulted in the amount of funds actually available for new development being quite limited.

The Eskimo Loan Fund is not large enough to concur all the "start-up" costs requested by Makivik although some projects may have been funded if the Inuit had assistance earlier.

The Eskimo Loan Board administers loans for Inuit for all of Canada. The administration of this program is divided between the Northern and Indian and Inuit Affairs Program of DIAND. The Northern Program administers the fund for the N.W.T., where the majority of Inuit live. The Quebec Regional Office, Indian and Inuit Affairs Program administers the fund for the Inuit of Quebec, Labrador, Manitoba. The total fund available is $7,720,000, of which $2,150,000 is administered out of the Quebec office. It is a revolving loan fund but there is also a guarantee element to the fund which can be used to assist groups to get other financial backing. The loan program is directed towards individuals or groups, including the various Inuit corporations established under the Agreement. The Board has received one request from Makivik, on behalf of the Land Holding Corporation at Chimo. The venture has received the loan. There have been no other requests from Makivik or any other Inuit group created by the Agreement.

While Makivik rightly argues that it should not have to use as much of the compensation funds for economic development projects as they have, and that DREE grants should be available for such projects in Northern Quebec to offset the high costs of starting businesses in the North, Makivik did not make any application to DREE or Indian Affairs for such grants when the projects were undertaken. Although all the projects listed in the Makivik submission are well underway, the Region office is looking for funds to assist the Inuit.

d) Transportation Infrastructure

Section 28.16 provides for continuing negotiations between Quebec, Canada and James Bay Cree for the construction and maintenance of access roads to Eastmain, Paint Hills and Rupert House. A study

completed in May 1977 estimated the costs for these roads to be $92 millions. The cost-benefit analysis established that the cost of the roads to be prohibitive. While during the winter of 1980-81 a winter road connected Rupert House and Matagami, the negotiations are at a standstill. DREE is Canada's principal representative on the Committee.

e) Training

Previous to the signing of the Agreement, CEIC did not offer any programs north of 55. With the Agreement, CEIC had to develop a development strategy for the North as well as open offices and train new Inuit employees. This has recently been completed and CEIC believes that they should now be in a better position to meet Inuit needs.

There seem to be a number of problems developing training programs for trades, the standards for which are provincially controlled. Some of the problems stem from the very limited number of apprentice cards available under Quebec's quota system with regard to which Quebec makes no exceptions for the Inuit or Cree.

The interim joint committee set up under 29.0.27, to coordinate training programs offered by Quebec and Canada, functioned until 1980 when its responsibilities were transferred to the Kativik Regional Government, as was contemplated by the Agreement. Since then there have been no further meetings between Quebec, Canada and the Inuit jointly.

E. Summary

Regardless of the wording of various sections of Chapters 28 and 29, it seems fairly clear that the general intent of these chapters was to encourage and assist Cree and Inuit economic ventures. To date this intent has not been fully realized. It is clear that greater cooperation and joint action is necessary in order to fully realize the economic development goals of the Agreement individual had been specifically appointed in Ottawa and the Region to not only assist in the planning process, but to keep the Cree and Inuit informed of Federal economic development programs that might generally be of assistance to them.

Ongoing discussion about modification and the applications of other programs, such as DREE, is needed.

5.1.5 Core Funding: Cree

A. Issue

The Cree maintain that pursuant to Section 28.15 of the James Bay Agreement, Canada has a legal obligation to provide CORE funding to the Cree Regional Authority (CRA) and the Cree local governments.

B. Provisions of the Agreement

Section 28.15 of the Agreement states:

> "Canada shall, subject to departmental directives existing from time to time, provide Cree local governments and the Cree Regional Authority with CORE funding for the conduct of their internal administration and other funds to cover administrative costs of governmental programs delegated to the said governments and/or Authority."

C. Cree position

The Cree argue that Section 28.15 obligates Canada to provide CORE funds to cover all costs of "internal administration" at the local level and at the level of the Cree Regional Authority.

For the 1980/81 year the Crees estimated their CORE costs to be approximately $1.5 million out of an overall budget of $2.7 million. CORE funding for the CRA would be expected to continue at this level with adjustments for inflation and changes in CRA responsibilities. The Crees also are claiming reimbursement of approximately $970,000 in CORE expenses incurred by them from the date of the establishment of the CRA.

The Crees have not made any specific claim regarding the funding of the Cree local governments (band councils) except to state that the level of funding currently received by these entities is not adequate especially in view of their added responsibilities stemming from the Agreement. The Crees also maintain that the CORE funding requirements of the Cree local governments will increase even more when the proposed Cree/Naskapi Act comes into force.

The Crees base their argument essentially on the spirit and intent of the Agreement and argue that Canada has adopted a

legalistic and narrow interpretation of Section 28.15. In a letter to the Honourable Francis Fox, Secretary of State, January 9, 1981 the Cree summarize their argument as follows:

> "At the time that the James Bay and Northern Quebec Agreement was signed, there was not in Canada under any Government Agency, a program for core funding such an Agency (CRA) since no other of its kind existed at that time. In signing the Agreement, Canada had either:
>
> 1. an intention in good faith to provide for the operation of this organization; or
>
> 2. the words in the Agreement were intended to be deceptive".

D. Review of Issue

DIAND has viewed Section 28.15 as being a statement that existing CORE funding programs would be applied to the CRA and the Cree local governments on the same basis as they were applied to other Indian bands and organizations similar to the CRA across the country. This view appears to be backed, at least in part, by Section 28.1.1 which specifies that the programs noted in Section 28 will be applied according to th criteria established and applied to ongoing programs of general application.

a) Band CORE Funding

Cree local governments have received CORE funding at the same level and subject to the same criteria as other Indian bands. The Departmental program directive dealing with CORE funding specifies that CORE funds are provided to defray such basic costs as operation and maintenance of a Council office, honoraria for Band Chiefs and councillors, professional advice and band contributions to district council operations. CORE funding is based on a per capita contribution and is not directly related to the actual costs incurred by a band. The band receives the funds as a grant and are free to expend them as they see fit for the specified purposes.

The CORE funds received by the eight Cree bands in 1977-1981 are:

1977-78: $254,900.00
1978-79: $258,700.00

1979-80: $297,200.00
1980-81: $300,000.00

Cabinet approval has recently been received to increase CORE funding by XX% and the Cree bands will be entitled to the increased funding.

Under the terms of the proposed Cree/Naskapi Act, which is being negotiated pursuant to Section 9 of the Agreement, the Cree bands will assume much greater powers then currently exercised by bands operating under provisions of the Indian Act. The Department is cognizant of these increased responsibilities and the need for increased funds to carry them out. The Crees have put forward estimates on the costs of the proposed legislation and Department negotiators are discussing these with them as part of the overall process of negotiations on the proposed legislation.

The requirement under Section 22 to appoint Cree Local Government Environment Administrators will also entail increased administrative costs for the Cree bands. The Department of the Environment is currently studying a Cree proposal to fund the administrators program.

b) CRA CORE Funding

The Department has maintained that the only type of CORE funding for which the CRA is eligible is the CORE funding available to "district councils" under the provision of the Department's D-4 Program Circular. Under that circular, district councils can receive a small start-up grant in their first three years of operation after which the circular specifies that the Department will not fund district councils, although band councils have the option of transferring their CORE funds to a district council.

Department officers involved in the negotiation of Section 28 told the Review team that during negotiations it was made very clear to the Crees that the entitlement of the CRA would be limited to the provisions of circular D-4 and the draft provisions of that circular, which did not come into effect until April 1, 1976, were given to the Cree negotiators. In the mind of Canada's negotiators there was no doubt that unless the policy on the CORE funding was changed the entitlement of the CRA was very limited.

The limitations on the extent of CRA CORE funding may be explained by a perception, held during the negotiations, by both the Crees and Canada, that the role of the CRA would be fairly limited and costs would be minimal. Neither party fully realized the extent of the workload that the CRA would have to handle in order to fulfill its mandate.

Section 28.15.1 does not specify which Department is responsible for providing the funding pursuant to Section 28.15.1. On several occasions the Crees have argued that this section refers to the CORE funding program provided by the Department of the Secretary of State and on that basis attempted to negotiate a CORE funding program with that Department. Although Secretary of State reached a tentative agreement with the Crees these negotiations were suspended in January 1981 on the grounds that the CORE funding obligation was a clear responsibility of DIAND.

The CORE funding referred to in Section 28.15.1 is clearly intended for the support of regional and local governments. On the other hand the CORE funding provided by Secretary of State is intended for the use of political organizations such as provincial or territorial association. Canada's negotiators claim that, although the Section does not specify the Department responsible, it was clearly understood that the reference to "departmental directives" was a reference to those directives of the Department of Indian Affairs, specifically Program Circular D-4, which had been placed before the Cree negotiators.

On the other hand the Cree Regional Authority was incorporated pursuant to Section 11A of the Agreement and that Section specified that the CRA would have powers which are clearly analogous to those carried out by a regional government or in the case of Indian bands a district council. Section 11A has no reference to the funding of the CRA therefore it seems reasonable to assume that Section 28.15.1 was legitimately viewed by the Crees as a commitment to fund the CRA in the fulfillment of at least part of the duties for which it was mandated. A complicating factor in the CORE funding of the CRA stems from the fact that it has never officially been recognized as a district council and thus is not eligible for even the limited CORE funds available to such councils.

Although the program circulars concerning district councils and CORE funding appear to have been rigidly applied to the CRA, this does not appear to be the case regarding district councils in other areas of the country. A recent DIAND study of district councils, which identified 43 such organizations across the country, indicates that only 6 of the 43 councils surveyed complied with the essential criteria set out in the program circulars. Very few of the existing councils applied for or received the start-up CORE funding available to them under the program circulars and few receive CORE funding contributions from their constituent bands. Nevertheless the study indicates that these district councils receive substantial Departmental funding to cover CORE costs through various ad hoc arrangements. The conclusion of the study was that although the official DIAND policy is to provide only limited CORE funding to district councils, this policy has been virtually ignored.

c) Inuit CORE Funding

The Inuit have raised concerns about the lack of CORE funding for the Inuit villages and the Kativik Regional Government. The Inuit situation is different from the Cree because there is no provision in the Agreement for Canada to provide CORE funding to the Inuit. Inuit local and regional governments come under Quebec jurisdiction and receive funding from Quebec for the type of expenditures usually covered by CORE funding.

The Inuit community councils received CORE funding until 1978/80 when these Federally constituted bodies were replaced by non-ethnic municipalities incorporated by Quebec. The fact that the new municipalities are non-ethnic makes it difficult for Canada to provide CORE funding unless the existing program criteria and directives are substantially changed.

The Inuit have requested that Canada provide CORE funding to the 15 Inuit Land Holding Corporations which are ethnic entities and which perform certain local government functions relating to the management of Inuit lands but which are not local governments as such.

It may be possible to include the Landholding Corporations within the CORE funding program, however, it would appear that this issue could be more

legitimately dealt with as a cost of implementing the Agreement as discussed in Section 5.4 of this Review.

E. Summary of Review Fundings

It seems reasonable to believe that the spirit of Section 28.15.1, if not the intention, was to provide both the CRA and the local governments with a reasonable level of CORE funding. If the Cree fully realized that the CORE funding permissible under the Agreement was extremely limited it seems unlikely that they would have agreed to this section.

5.1.6 Airstrips

A. Statement of Issue

The Crees and Inuit claim that Canada has failed to meet its obligations respecting the construction of airstrips as set in the letters of understanding to the Inuit and Cree leaders dated November 15, 1974 and signed on behalf of Canada by the then Minister of Indian Affairs, the Honourable Judd Buchanan.

B. Provisions of the Agreement

The Federal letters of understanding set out the following undertaking with regard to the construction of airstrips

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

C. Position of the Native Parties

The Cree and Inuit maintain that the letter of understanding clearly obligates Canada to undertake a program of airstrip construction in Northern Quebec. In their view Canada has not fulfilled this obligation.

D. Review of Issue

The letters of understanding do not legally commit Canada to construct airstrips but rather are a statement that Canada will consider requests from the Inuit and Crees on the same basis as other such requests. Read as a statement of intent, however, the undertaking in the letters appears

to be a clear statement of Canada's intention to carry out a program of airstrip construction in Northern Quebec.

Until recently no comprehensive program was carried out or planned by Canada. Problems relating to the status of Cree and Inuit lands and program cutbacks impeded the fulfillment of Canada's undertaking. Consequently, at present air service facilities in the Inuit and Cree communities are, in general, significantly inferior to the facilities in similar remote communities in the Territories and the other Provinces.

In the period 1976-77 to 1980-81 under the terms of this program, Transport Canada expended $454,000 on the construction of airstrips in the Cree and Inuit communities. The average cost of a single airstrip in the N.W.T. is $1.-2.5 million.

In recent months Transport Canada has begun discussions with the Province of Quebec and the Inuit on proposal for a Federal-Provincial cost-shared program for the construction of airstrips in the Inuit communities. The preliminary estimate for the cost of the program, which would begin in 1983-84 and would be spread over a number of years, is $21 million. Inuit proposals to increase the length of the proposed strips in order to accommodate larger aircraft may result in an upward revision of this estimate. It is anticipated that final agreement can be reached on this program in the near future.

The Province of Quebec has refused to consider including the Cree communities in the proposed construction program. If Quebec cannot be convinced to include the Crees in this program Transport Canada will consider acting unilaterally to provide airstrip facilities.

E. Summary

Canada has not yet fulfilled its commitment pursuant to the Federal letters of understanding. Recent initiatives indicate, however, that this deficiency may soon be remedied.

5.1.7 Administration of Justice

A. Issue

The Cree charge that Canada has done little or nothing to implement the provisions of the Agreement in regard to the

areas of administration of Justice under Federal jurisdiction.

B. Provisions of the Agreement

Section 18, which deals with the Administration of Justice for the Cree, states:

> "The Minister of Justice of Québec shall be responsible for the administration of justice throughout the Territory."

It provides that the provision of the Canada Evidence Act shall be amended

> "insofar as it may be necessary to adopt such provisions to the circumstances, usages, customs and way of life of the Crees ...".

It also provides that, "in accordance with a federal-provincial agreement with respect to costs of the programs ... that Crees who are sentenced may be placed in a place of detention in the James Bay Territory," that a detention centre for women be set up in the Territory and that special rehabilitation programs for Cree be set up.

Section 20, which deals with the administration of Justice for the Inuit requires amendments to the Criminal Code to take into consideration Inuit culture and to allow that 6 jurors only be sworn in the territories of Abitibi, Mistassini and Nouveau Québec in the judicial district of Abitibi.

C. Position of the Native Parties

The Crees have indicated that they believe Canada has done little to implement its obligations respecting the administration of justice pursuant to Section 18 of the Agreement. The Inuit have not made specific comments regarding administration of justice.

D. Review of Issue

Canada's responsibilities under these two sections fall under the administration of the Department of Justice and the Solicitor General.

Section 18.0.37 provides for the establishment of a judicial advisory committee, composed of representatives of

the Cree and Quebec, which will advise authorities about the amendments of laws required to give effect to the provisions of the Section. The Department of Justice have been awaiting the recommendations of this Committee on the required amendments to the Criminal Code.

The Inuit have not not made a request or recommendations for the modifications of the Criminal Code to suit Inuit customs or to allow for 6 jurors in the territory of Abitibi, Mistassini and Nouveau Québec.

Although, under the Agreement, Quebec is responsible for the administration of Justice, the Department of the Solicitor General believes that there are various areas where Federal particiption is necessary or would be helpful. The Department, therefore, has created a three man group to examine existing programs and policies for natives and the penal system. In particular this group will be looking at sections 18.0.26, 18.0.27, 18.0.28, 19.0.29, 18.0.30, 18.0.31, 18.0.33, 18.0.35, 18.0.36, 18.0.37, 18.0.38, 19.1.12, 19.2, 19.3, 19.4, and the similar articles in Chapters 29 and 21.

D. Summary

While not all the provisions under Chapters 18 and 20 have been carried out, there is a willingness on the part of the Department of Justice and the Solicitor General's Department to discuss the changes necessary with the native parties.

5.1.8 PORT BURWELL

A. Issue

The Inuit claim that the Inuit of Port Burwell were forced to leave their community as a result of Canada's failure to fulfill its obligations pursuant to the Agreement. They are seeking the re-establishment of the Port Burwell community or alternative arrangements to be negotiated.

B. Provisions of the Agreement

The community of Port Burwell, located at the Northwestern tip of Ungava Bay, is part of the Northwest Territories. However, because of the traditional ties between this community and the Northern Quebec Inuit it was decided to include Port Burwell within the general provisions of the

Agreement. In addition, special provisions were made in the Agreement to deal with the special problems resulting from special status of Port Burwell.

For purposes of the Agreement an Inuit of Port Burwell is deemed to have been born or to be born in Quebec and if ordinarily resident in Port Burwell, is deemed to be ordinarily resident in Québec. The provisions of Section 3 (Eligibility) Section 6 (Land Selection - Inuit of Quebec) Section 7 (Land Regime Applicable to the Inuit) Section 24 (Hunting, Fishing and Trapping) Section 25 (Compensation and Taxation) and Section 27 (Inuit Legal Entities) apply to the Inuit of Port Burwell.

Section 2.3 stipulates:

> "Canada or the Government of the Northwest Territories, as the case may be, will continue to be responsible for providing programs and services to the Inuit who are ordinarily resident in Port Burwell in accordance with criteria that may be established from time to time."

Section 15, schedule 1(4) specifically provides that:

> "Agencies of Québec and Canada will immediately upon the signing of the Agreement, undertake to improve health and social services" for residents of Port Burwell.

C. Inuit Position

The Inuit contend that the Inuit of Port Burwell are unable to enjoy the benefits provided for them because they were evacuated to other Inuit communities along the mainland of Quebec. The Inuit argue that the major reason for the evacuation was Canada's failure to improve health and social services for Port Burwell. The Inuit claim that the evacuation was against the wishes of the Inuit living in the community and no provision was made by Quebec or Canada to help offset the pressure for housing and social services in communities that received the Port Burwell residents.

The Inuit demand that Canda redress the damages suffered by the Inuit of Port Burwell because of their evacuation and "restore them the meaningful exercise of their rights under the Agreement."

D. Review of Issue

The Federal Government and the Inuit have different views of the cause and outcome of the evacuation of the Port Burwell community in February 1978 and the review has not turned up any new facts that will clarify this issue.

The Inuit contend that the reason that Port Burwell had to be evacuated was because Health and Welfare had not provided adequate health services, giving the closing of the nursing station as an example. They also argue that the Government of Northwest Territories (GNWT) pressured the Inuit of Port Burwell to leave.

On the other hand, Health and Welfare state that Port Burwell continued to have adequate health services, even though the nursing station was closed, since there were regular visits from medical staff and airlift service for emergency cases. The GNWT are firm that they were only reacting to requests from the Inuit of Port Burwell, who wanted to leave.

There have been a number of meetings, concerning the situation at Port Burwell, between representatives of the Department, both Indian and Northern Program, GNWT and the Inuit, during which each side presented options for solving the impasse. The Federal Government has been awaiting a response from the Inuit to a July 1978 letter from the then Minister of DIAND, J. Hugh Faulkner. The letter outlined a number of options available for the Inuit of Port Burwell which the Government wished to discuss with the Inuit.

The options outlined are:

1) "That the Port Burwell people return to Port Burwell, N.W.T." The letter describes the services that would be provided by the GNWT and Health and Welfare under this option.

2) "That the Port Burwell Inuit move to Bell Inlet, P.Q. from the communities in which they now live". This option would require the participation of Quebec.

3) "That the Port Burwell Inuit remain in the Quebec Communities in which they are now living". This option would allow for discussions between Makivik, Canada and Quebec concerning the benefits of the Port Burwell Inuit under the Agreement.

The Inuit, in a meeting in January 1981, indicated that the Port Burwell Inuit would like to return to Port Burwell if an airstrip were built and the nursing station were reopened. Imaqpik Fisheries, owned by Makivik, is considering the possibility of using Port Burwell as a northern base for its fishing operations. At that meeting the Inuit undertook to respond to the 1978 letter, while the DIAND officials would talk to MOT concerning the airstrip. The situation has not changed since then.

E. Summary

This issue is still outstanding. However, there appears to be a possibility of negotiating a solution which will enable the Inuit of Port Burwell to enjoy the rights and benefits to which they are entitled under the Agreement.

5.2 IMPLEMENTATION COSTS AND COORDINATION

5.2.1 Compensation Funds

A. Statement of Issue:

The Crees and Inuit contend that they have been forced to use their compensation funds on programs, services, negotiations, legal fees and other matters which should have been funded by Canada and Quebec as part of the overall implementation of the Agreement.

The native parties maintain that the compensation funds were not intended for this purpose and they are seeking reimbursement of the funds spent.

B. Provisions of the Agreement

Section 25 of the Agreement provides for the following compensation payments:

a) $150 million "basic compensation"
- $75 million to be paid over 10 years beginning 1976 with Canada paying $32.75 million and Quebec $42.25 million

- $75 million to be paid by Quebec as Hydro-Québec royalties over a 21 year period ending in 1997.

b) $75 million "compensation for future development"
- to be paid by Quebec in the form of provincial debentures over 5 years ending in 1980.

c) compensation in respect to non-status beneficiaries and the Inuit of Point Burwell based on formulae set out in Sections 28.1.15 and 25.1.16 (approximately $4 million)
- to be paid by Quebec and Canada in the same proportions as the first $75 million.

d) $3.5 million to cover negotiations costs
- to be paid by Quebec.

The total compensation is approximately $232.5 million with Canada responsible for paying $34 million and Quebec $198.5 million.

Canada's portion of the compensation payments, fifteen percent, is proportional to that area of the territory over which Canada had a legal responsibility to settle the question of aboriginal title.

The compensation funds are divided between the Cree and Inuit on the basis of their respective populations (approximately 60% Cree, 40% Inuit) with the Cree receiving approximately $137.4 million and Inuit $95.1 million. To date both native parties have actually received approximately 2/3 of the compensation payments payable to them. The compensation payments are exempt from taxation, but interest on earnings from the compensation is subject to tax laws of general application.

Section 26 and 27 provide for the establishment of two legal entities (Cree Board of Compensation and the Makivik Corporation) to receive and administer the compensation funds on behalf of the Cree and Inuit.

Section 26.0.4 of the Agreement specified that the Cree legal entity will be established for the following purposes:

a) The reception, administration and investment of the Compensation payable to the Crees, pursuant to the provisions of the Agreement;

b) the relief of poverty, the welfare and the advancement of education of the Crees;

c) the development, the civic and other improvement of the Cree communities within the Territory.

Section 27.0.4 provides the following purposes for the Inuit entity:

a) to receive the Compensation and to administer and invest the Compensation and the revenues therefrom;

b) the relief of poverty, the welfare and the advancement of education of the Inuit;

c) the development and the improvement of the Inuit communities.

Sections 26 and 27 also provides general restrictions, similar to those applying to trust companies, on the manner in which the compensation funds can be invested.

C. Position of the Native Parties:

Both the Cree and Inuit consider the compensation funds to be a "sacred trust" for use by "future generations". In their view the compensation funds were paid in return for the surrender of the aboriginal rights of the present and all succeeding generations of their people. They expressed the strong feeling that these funds should be preserved in order to ensure the long term well being of their people. Spokeman for the Crees said that the people at the community level made the decision that no compensation funds be distributed to individuals because they felt strongly that the funds should be used for the overall benefit of the community.

The representatives of the Crees and Inuit felt that the compensation funds were being used against them in that government now treated them "as rich Indians" who no longer required assistance or funding from government. It was the clear understanding of the native negotiators that the payment of compensation funds would not effect the right of Cree and Inuit people to receive all government programs and services normally available to other Indians and Inuit and/or citizens of Quebec and Canada.

The Crees claim that, to date, they have spent approximately $24 million on the implementation of various sections of the Agreement with approximately $9 million spent on housing and infrastructure and $15 million on other aspects of implementing the Agreement. The Inuit estimate that they have expended $9.6 million on various area of implementation which they believe should be rightfully funded by Quebec and Canada.

These expenditures have been derived from the revenue earned from the compensation funds and not the capital

itself. The Crees report, however, that in recent months they have also been forced to use part of their capital funds.

The native parties are requesting both Canada and Quebec reimburse them for the compensation funds they have expended.

D. Review of Issue

The purposes for which the Crees and Inuit have expended compensation funds fall into three main categories:

a) Negotiation costs - The native parties claim that many of the provisions of the Agreement were left vague because of the pressure to sign the Agreement. They argue, and Canada's negotiators agree, that it was understood during negotiations that several sections of the Agreement would require further intensive negotiation in order to implement the basic framework established by the Agreement. However, the Agreement makes no provision for funding the Cree and Inuit participation in these negotiations. The native negotiators proposed that such funding be provided but this proposal was not adopted by Quebec or Canada.

It is true, nevertheless, that both native parties have been required to participate in lengthy, detailed, and costly negotiations especially on matters such as the proposed Cree/Naskapi Act, the Northeastern Quebec Agreement negotiations, and land selection negotiations. These negotiations were a direct result of the Agreement and failure of the native parties to participate in them would have made it impossible for them to realize many important rights and benefits. The native parties have also claimed that Canada should forgive the loans made to them during the pre-Agreement negotiations. Canada has refused to do so on the grounds that the conditions of these loans, including the conditions they would be repayed out of compensation funds, was clear at the time the loans were made and the native parties accepted them on that basis. Moreover, all funds provided to other native claimants since 1975 have also included this repayment feature. The repayment schedule for the loans has, however, been renegotiated and this was intended to compensate the native parties, in part, for the ongoing costs of post Agreement implementation negotiations.

b) Implementation Costs - The Agreement provides for Cree and Inuit representation on a wide variety of bodies established to oversee implementation of various provisions of the Agreement. There is some provision for funding certain aspects of the participation of the native parties but, in general, there are no provisions to provide overall funding for expenses such as consultants, lawyers fees, and environmental research. During negotiations the native parties proposed that provision be made for Canada and Quebec to fund general implementation costs but this proposal was not adopted by Quebec or Canada.

Many of the bodies established to implement the Agreement are involved in technical and complex matters, such as environmental assessment and the management of the hunting, fishing, and trapping regimes. It is generally agreed that, in order for the native parties to meaningfully participate in the management of the Agreement, it is essential that they have access to the expertise required in order for them to make informed decisions.

c) Program costs - The native parties, and the Cree in particular, claim that they have been forced to fund program costs for purposes such as housing and infrastructure which should have been assumed by Canada and/or Quebec. This issue is dealt with in Sections 6.1.2.

E. Summary of Review fundings

Both the native and government negotiators agree that, at the time of negotiations, the complexity and inherent cost of the negotiations and implementation mechanisms required by the Agreement was underestimated. If the negotiators had a better understanding of the long term costs of this aspect of the Agreement, it is possible more serious consideration would have been given to government funding of some of these expenses.

The general spirit and intent of the Agreement tends to support the argument of the Cree and Inuit that the compensation funds were not intended to be a primary source of funds for Cree and Inuit involvement in the implementation activities and negotiations necessary to implement, protect and enhance the rights and benefits they achieved under the Agreement. In practical terms both

native parties realized that there would be certain expenses that they would have to cover in implementing the Agreement but they did not forsee, nor did the government, that these expenses would constitute such a significant part of the compensation revenues. Both government and the native parties assumed that most of the compensation revenues would be free for the Cree and Inuit to use on programs of their own choice.

5.2.2 Implementation Process

A. Issue

The native parties contend that Canada's overall management of the implementation process has been a major impediment to their achievement of the rights and benefits to which they are entitled under the Agreement.

B. Provisions of the Agreement Says:

The Agreement establishes no overall process for coordinating and overseeing the implementation of the Agreement although there are numerous committees and agencies charged with implementing specific provisions.

The Joint Economic and Community Development Committee (S.28.8) established for the Crees and the Interim Joint Committee established for the Inuit (S.29.0.33) have relatively broad mandates but still fall short of an overall coordination role.

C. Position of the Native Parties

a) Cree

The Crees maintain that Canada has failed to establish the type of implementation procedures and mechanisms necessary to ensure all obligations are implemented in a timely and efficient manner. They have expressed particular concern regarding the need to clearly define and identify implementation responsibilities; appoint senior officials to oversee Federal implementation; and establish mechanisms to provide the "special" Parliamentary appropriations to which they feel they are entitled.

The Cree request that special legislation be adopted by Parliament to establish a formal implementation

structure and to appropriate the special funds required to implement the Agreement. In their view legislation is necessary to ensure the permanency of the implementation structure established. The Crees did not present specific details on the mandate or makeup of the implementation structure they would like to see legislated.

b) Inuit

The Inuit advocate the establishment of a formal Implementation Committee composed in equal numbers of members appointed by the native people and the governments involved. In their brief to the Standing Committee the Inuit set out the following principles for the conduct of the proposed committee:

"a) the interpretation of the agreement in question in accordance with its spirit and intent;

b) the recognition of the special social and economic needs and conditions prevailing in the territory contemplated by the Agreement; and

c) the promotion of greater self-determination on a local and regional basis ..."

The Inuit believe that an Implementation Committee should have general responsibility for overseeing implementation and resolving disputes relating to implementation. While the Committee would normally be only advisory the Inuit believe that in certain circumstances the Committee should have the power to make final binding decisions. The Committee as proposed would also be responsible for "... the coordination, review and finalization of all budgets for programs and bodies created or contemplated by an agreement, subject to the approval by Parliament of the necessary appropriations." In line with the Cree recommendations the Inuit propose that legislation be passed to provide for annual Parliamentary appropriations to fund all aspects of the Agreement.

It should be noted that the Cree do not support the idea of giving the Implementation Committee binding powers. They informed the review team that they prefer the option of keeping open access to the courts as a last method of conflict resolution.

D. Review of Issue

a) Implementation mechanisms

Canada's responsibilities regarding implementation arise at three distinct levels.

i) Internal Departmental Coordination

The Federal departments with obligations under the Agreement have coordinated their responsibilities in various ways. The Department of the Environment established a special office to oversee Agreement implementation while other Departments appear to have relied on existing regional offices in Quebec. In most cases decisions on major policy issues have been referred to Ottawa headquarters offices for decision.

In the Department of Indian Affairs regional coordination is carried out by a senior executive, designated the Associate Regional Director-General, who does not have line management responsibilities but rather is responsible for ensuring that implementation responsibilities of the Region are planned and carried out by line managers. He works in close cooperation with the Regional Director-General and the Director of Operations, the senior line manager in the Region.

DIAND's coordination of implementation at the regional level appears to have functioned successfully in dealing with routine implementation matters. Significant problems have arisen in resolving issues on which the Region and the native parties are in dispute. It would appear that there is insufficient capacity built into the system, especially at Headquarters' level, to effectively deal with such issues.

Responsibility for implementing program responsibilities of the Agreement rests with the Indian and Inuit Affairs Program of the Department. In the early stage of the implementation process, the Office of Native Claims was involved in overseeing all of Canada's implementation responsibilities, including DIAND program matters.

This function was, however, gradually assumed by the Indian Program.

One of the major problems in coordination at the Ottawa level has been a lack of clear focus for decision-making on Agreement issues. As a result of re-organizations and changes in key personnel, it has not been possible to establish on an ongoing basis one Headquarters' unit or individual who has a clear responsibility for liaising with the native parties and the Region to ensure that matters requiring Ottawa's participation are adequately and efficiently handled. This situation was further complicated by the difficulty in determining whether a particular issue is a "program" matter or a matter with "policy implications" of concern to the whole Department or the Government. Due to this confusion some matters have been referred to the Assistant Deputy Minister of the Indian and Inuit Affairs Program, while other responsibilities have been handled through the office of the ADM, Corporate Policy. The Claims Policy Committee chaired by the Deputy Minister dealt with some implementation issues but didn't establish no clear mechanism to deal with implementation problems on an ongoing basis, as is implemented.

In recent months clearer lines of authority have been established by the official designation of the ADM, Corporate POlicy, as the senior Ottawa official responsible for overseeing, in coordination with his colleague ADMs, all aspects of the Department's involvement in the implementation of the Agreement. It is anticipated that this action will help to improve the Department's capacity to deal with implementation issues.

ii) Federal Inter-Departmental Coordination

In the early stages of implementation the Office of Native Claims, which is headed by an Executive Director reporting to the Deputy Minister of DIAND, was given an overall responsibility for overseeing the implementation of Canada's responsibilities. This role was a logical outcome of the role that ONC played as chief Federal negotiator and coordinator during the negotiation of the Agreement.

As chief Federal negotiator, ONC established an informal inter-departmental Steering Committee, chaired by Canada's senior negotiator and consisting of representatives from each concerned Department. After the Agreement was signed this Committee continued to meet in order to oversee and coordinate Canada's initiatives regarding the Agreement.

In the early stages it appears that this arrangement worked well. Problems began to arise, because some departments appeared to feel that the activities of the Committee, and ONC's role in chairing it, unduly impinged on their areas of jurisdiction. This problem probably resulted from the fact that, although it was assumed that DIAND would oversee Canada's implementation activities, this mandate was never clearly established, either administratively or legally, and therefore DIAND had very little clout or even influence with regard to the activities of other government departments.

Another problem which arose in the operations of the Steering Committee was the lack of participation by senior officials. Members of the Committee often had to refer back to their superiors before decisions could be reached.

The implementation committee ceased functioning around the end of 1977, which coincided with the end of the implementation period specified in the Agreement. It was understood in the Department that after that date, coordination responsibilities would be shifted to the Indian Affairs Program. No interdepartmental structure was established to replace the coordinating committee although informal contacts were maintained with the other departments at the regional level.

The Interdepartmental Committee on Indian and Native Affairs, chaired by the Deputy Minister of DIAND and consisting of Deputy Ministers of departments dealing with Indians and native issues dealt with some implementation issues but again no mechanism was established to handle such issues on an ongoing basis.

iii) Overall Coordination of Implementation

The Agreement makes no provision for a forum to discuss the overall implementation of the

Agreement. There are numerous committees and corporations which include representatives of the Cree and Inuit, Quebec and Canada. These committees have limited mandates and despite the fact that some have worked well they are not capable of dealing with overall coordination or resolving issues on which there are basic policy differences.

During the negotiations, the Inuit suggested the formal establishment of an Implementation Committee but this idea was not included in the Agreement. The reasons for not establishing an Implementation Committee are unclear but two factors probably were a fear that the Committee might impinge on exclusive areas of Federal, Provincial or native jurisdiction and a reluctance to overburden the Agreement by establishing one more formal structure.

The proposal contained in the Inuit brief to establish an Implementation Committee was first made to Canada and Quebec approximately 18 months ago and, at that time, the Deputy Minister of Indian Affairs indicated that, in principle, DIAND agreed with this idea and was willing to discuss it with the Inuit and Quebec. Quebec did not accept the proposal and consequently no progress could be made in establishing the Committee.

The existing committee which comes closest to having a comprehensive mandate is the Joint Committee on (Cree) Social and Economic Development established under Section 28.8. This Committee met fairly regularly during the first years of the Agreement but has been dormant in recent years. The main difficulty in operating the Joint Committee appears to have been an inability to devise mechanisms for resolving disputes over major issues of policy and interpretation. On many issues the Committee was deadlocked and therefore ineffective. The activities of the Committee clearly were not carried out in the same spirit of cooperation and compromise which animated the original negotiations.

An overall forum or structure for implementing the Agreement, given the proper spirit, could play an effective role in defusing many serious issues before they lead to confrontation and legal actions. It is clearly within the spirit of the

Agreement to attempt to solve outstanding issues on the same basis and in the same spirit that the Agreement was negotiated.

b) Annual Report

The obligation in the James Bay and Northern Quebec Native Claims Settlement Act for Canada to submit an Annual Report on the implementation of provisions of the Agreement has not been carried out effectively. For various reasons relating to the two recent Federal elections and internal changes in DIAND only one Report has been tabled since 1978. The native parties have been very critical of Canada's failure to submit the required Reports and have also expressed serious reservations about the contents of the Report that was issued.

It is recognized that the Annual Report could serve a very useful purpose in identifying for Parliament and the various parties to the Agreement difficulties being experienced in th overall implementation of the Agreement. In this way, the Annual Report, could help to resolve issues before they reached the crisis stage. Involving the native parties, perhaps by inviting them to contribute chapters of the Annual Report might also be worthwhile.

During work on this Review the Cree and Inuit were informed that the tabling of the next Annual Report, would be delayed so that it could accurately reflect the outcome of the Review and the discussions held with the native parties. Both native parties considered this to be a prudent course of action. The detailed critiques of the 1980 Annual Report, which the Cree and Inuit submitted to the Standing Committee, will be considered in the preparation of the next Report.

c) Appropriations

The payment of compensation funds is approved each year by Parliament pursuant to the statutory authority contained in Section 9 of the James Bay and Northern Quebec Native Claims Settlement Act. There is no other statutory authority for the appropriation of funds required to fulfill Canada's obligations in the Agreement. Program and capital funds required for programs or services to the Cree are considered as part of general appropriations obtained by the various

departments and are subject to the same cutbacks or improvements applied to other general appropriations. This manner of dealing with appropriations is based on the notion that basically the Agreement guaranteed that the native parties would continue to be eligible for normal programs and services.

The basic problem in putting program and capital expenditure on the same kind of statutory basis as the compensation payments is the difficulty in forecasting expenditures with the kind of precision that is necessary if they are to be made statutory. There is a possibility, however, of setting aside Agreement funding as a specific vote within the general appropriations. This would give recognition to the special nature of these expenditures and would make it clearly evident how much was being expended by Canada to fulfill specific provisions of the Agreement. It remains to be determined if such a separate vote would be technically feasible within the current system of budgetary appropriations.

D. Summary

Lack of proper mechanisms, structures and attitudes regarding implementation has been a major impediment to the smooth and efficient implementation of the Agreement. The establishment of more effective systems for implementation can do a great deal to prevent the build up of the type of conflict and tensions which, in recent years have consumed time and resources that could be used much more productively in achieving the aims and objectives of the Agreement.

6. Conclusion

On November 11, 1975, when the James Bay Agreement was signed, the Crees and Inuit and both governments had high expectations that the Agreement would enable the Inuit and Cree people of James Bay to advance and prosper as full participants in the social and economic life of Quebec and Canada while still preserving their traditional culture and lifestyles. Now, almost six years after the signing, it is clear that many of these expectations have not been achieved.

Significant progress has been made in implementing many important provisions of the Agreement, however, it is clear that the successes in implementation have been overshadowed, at least recently, by many serious problems. Moreover, while important progress has been made in

improving the basic conditions of life in the Cree and Inuit communities it is beyond doubt that the overall conditions in many of the communities are still far below acceptable standards.

The reasons for the current problems, as detailed above, are many and complex but there appear to be two major underlying problems which are of particular significance:

a) Interpretation of the Agreement

The Agreement itself has some basic flaws. There is a lack of clarity and precision in the wording of several key provisions. This has led to serious problems in interpreting the legal meaning as well as the spirit and intent of the Agreement which in turn have resulted in difficulties in implementing Canada's obligations. the lack of clarity in he working of the Agreement may also have resulted in creating expectations which are not in accordance with the legal obligations assumed by Canada under the Agreement.

b) Coordination of Implementation

The overall coordination of Canada's responsibilities with respect to its obligations under the Agreement has not been adequate. It is clear that all the parties to the Agreement underestimated the complexity and length of the implementation process required in order to ensure that the native parties fully realize all their rights and benefits. The lack of adequate overal coordination, in itself, has contributed to many of the specific problems of implementation.

If the James Bay Agreement is to succeed in the long term it is clear that all the parties to the Agreement must take particular care that obligations are fulfilled not only legally but also in their spirit and intent. It is also clear that mechanisms must be developed to work out problems of interpretation and implementation before they reach the crisis stage.

The lack of clarity in the Agreement will no dobut, continue to pose serious problems for Canada and the native partiews. Canada's objective must be to treat the Cree and Inuit fairly and equiptable and in accordance with the Agreement, but on the otherhand this must be accomplished within an economic environment which requires the government to make tough and sometimes painful decisons regarding the allocation of scarce financial and program resources among competing interests.

On the basis of the findings and conclusions of this Review recommendations will be prepared, for consideration by Cabinet, on the

measures to be taken to ensure that Canada's obligations under the Agreement are fully implemented now and in the future.