

**James Bay and Northern Québec Agreement :  
implementation review (draft report #7)**

Ottawa : Department of Indian and Northern Affairs,  
1981.

Claims and Historical Research Centre: X.37

E92  
J363  
1981  
PT. 1  
C. 1

*Treaties*

E92 J363 1981 PT.1

(CHR#  
X.37)

DRAFT #7  
(Corrected 07/08/81)

WITHOUT PREJUDICE



REPORT

JAMES BAY AND NORTHERN QUEBEC AGREEMENT

IMPLEMENTATION REVIEW

Department of Indian Affairs  
and Northern Development  
August 3, 1981

## TABLE OF CONTENTS

	<u>PAGE</u>
1. INTRODUCTION.....	1
2. BACKGROUND.....	1
3. GENERAL OVERVIEW OF THE AGREEMENT	3
3.1 Provisions of the Agreement.....	3
3.2 The Process of Negotiation.....	4
3.3 Agreement Implementation.....	5
4. FACTORS RELATING TO THE SPECIFIC GRIEVANCES .....	7
4.1 Wording and Interpretation of the Agreement .....	7
4.2 The Dynamic Nature of the Agreement .....	9
4.3 Perception of Agreement Benefits .....	10
4.4 Expectations Arising out of the Agreement .....	11
5. REVIEW FINDINGS: SPECIFIC GRIEVANCES	11
5.1 Ongoing Federal programs, services and benefits ...	12
5.2 "Special" program, services and benefits .....	18
5.2.1 "Catch-up Programs".....	19
5.2.2 Cree Health Services.....	33
5.2.3 Economic Development.....	34
5.2.4 CORE Funding.....	40
5.2.5 Airstrips.....	47
5.2.6 Administration of Justice.....	48
5.2.7 Port Burwell.....	50
5.3 Implementation Costs and Coordination	53
5.3.1 Compensation Funds.....	53
5.3.2 Implementation Process.....	58
5.4 Other Issues .....	66
6. CONCLUSION.....	68

JAMES BAY AND NORTHERN QUEBEC AGREEMENT:  
IMPLEMENTATION REVIEW

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 and Northern Quebec 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 these findings 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 and Northern Quebec 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 Crees were represented by Grand Chief Billy Diamond of the Grand Council of the Crees (of Quebec).

In response to the representations made by the Crees and Inuit the Minister of Indian Affairs and Northern Development, the Honourable John C. Munro, announced in the House of Commons the 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 Mr. Munro on March 31, 1981.

The general terms of reference for the review were:

- a) to determine if Canada has fulfilled, in spirit and letter the obligations which it assumed pursuant to the James Bay and Northern Quebec Agreement, the James Bay Native Claims Settlement Act, the November 15, 1974 Federal letter of undertaking, the follow-up Federal letter of November 11, 1975, 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 report deals with points a) and b). Point c) will be the subject of a Memorandum to Cabinet which will be based on the findings outlined in this report.

The review focused on the specific allegations raised by the native parties in their presentations to the Standing Committee as well as in direct representations 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 review did not consider the implementation of the Northeastern Quebec Agreement (1978), a complementary agreement to the James Bay Agreement, which settled the question of aboriginal title with respect to the Naskapi Band of Schefferville. However, many of the general findings regarding the implementation of the James Bay Agreement are likely applicable to the implementation of the Northeastern Quebec Agreement and where applicable and appropriate corrective actions implemented with regard to the James Bay Agreement will also be applied with regard to the Northeastern Quebec Agreement.

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 and those of other relevant Departments; interviews with individuals involved in the negotiation and implementation of the Agreement and discussions with Cree and Inuit representatives. A legal review of Canada's obligations under the Agreement, as they relate to

the Cree and Inuit grievances, was carried out by the Department of Justice and the legal opinions expressed in this report reflect the findings reached by that Department.

In conjunction with the review Mr. Munro, his Parliamentary Secretary, Mr. Ray Chenier M.P., and senior DIAND officials visited several of the Cree and Inuit communities to see the problems of the Cree and Inuit first hand and to discuss possible solutions.

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 Commission (CEIC), which have or have had specific responsibilities pursuant to the Agreement. Federal Departments with responsibilities pursuant to the Agreement participated in the review by reviewing their specific areas of responsibility and their conclusions are reflected in this report.

### 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 James Bay and Northern Quebec Territory (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.

The Agreement, signed November 11, 1975, is between the Government of Québec, the Société d'énergie de la Baie James, the Société de développement de la Baie James, the Commission hydroélectrique de Québec (Hydro-Québec) and the Northern Québec Inuit Association, the Grand Council of the Crees (of Québec) and the Government of Canada. The Agreement stipulates that the native people surrender their aboriginal title to the 400,000 square mile 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 Electric Development Project, resulted in approximately 4,200 Inuit and 6,500 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 and proclaimed on October 31, 1977.

The Agreement provides for cash compensation of \$225 million 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 \$32.75 million 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 intended as a statement of Canada's policy and intentions.

Mr. Buchanan also sent letters to the native leaders in conjunction with the signing of the Final Agreement on November 11, 1975. These letters were necessary in order to clarify some of the matters raised in the 1974 letters in light of the negotiations which were carried on in the intervening year and the provisions of the Final Agreement. The 1975 letters 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-Electric Project had to go forward on an urgent basis and from the resulting Cree position that they would resume their court action 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 of the Final Agreement 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 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 Quebec sponsored James Bay Hydro-Electric Project. 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 and Northern Quebec for many years.

During the actual negotiations of both the Agreement in Principle and the Final Agreement, Canada did not become extensively involved until the later stages of negotiation. This is reflected in the fact that, in general, Quebec has more obligations under the Agreement and had 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 report 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 have indicated that they 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 functionaries 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 expectations 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 are and have been significant problems and issues in connection with the implementation of several important sections of the Agreement and the Federal letters of understanding. These difficulties are discussed in detail below.

#### 4. FACTORS RELATING TO THE SPECIFIC GRIEVANCES

There are several general factors relating to the implementation of the Agreement which are important to note before examining the specific grievances raised by the Crees and Inuit.

##### 4.1 Wording and Interpretation of the Agreement

On the basis of the information available to them, the Department of Justice concluded that there is no evidence that Canada is in legal breach of the Agreement. The nature of the obligations assumed by Canada and the wording of the Agreement is such that it is often difficult to determine the exact nature of Canada's obligations and the consequent legal obligations.

For example, 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. These 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. It is often difficult to determine the precise legal meaning of this type of provision.

The Agreement gives Canada fairly wide discretionary powers in the exercise of many of its responsibilities. In assessing Canada's role in implementing the Agreement the review team considered not only Canada's legal obligations but also whether Canada fulfilled its discretionary obligations in a manner consistent with the spirit 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 understandings reached during negotiations, or on the general spirit of the Agreement, that implementation has been much more 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 (Inuit Economic and Social Development) pose the same problem of interpretation.

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 criteria 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 sets out provisions for a wide range of economic and social development initiatives such as: the establishment of Cree associations 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 Section 28. Thus, according to one possible interpretation, 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 can be fitted within the existing range of programs and services available to all Indians.

The interpretation is supported by the position of Canada's negotiators that "programs were not negotiable". The preliminary provisions of Section 28 were, according to the Federal negotiators, 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 the particular programs and service they believed they needed.

The review team found 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 (28.1.1 and 28.1.2) it becomes very difficult to understand to what this section actually entitles the Crees, particularly when one considers the preliminary clause limiting the obligation to the extent of possible funding. The result is, to say the least, confusing.

In interpreting the Agreement the review team adopted the view that Sections like 28.11, although they may not constitute a legal commitment, seem to imply an intention by Canada to make its best efforts to accomplish the goals outlined in the Agreement.

#### 4.2 The Dynamic Nature of the Agreement

The Agreement provides for a detailed framework within which, through ongoing interaction, the native parties and the other signatories can work towards the full implementation of all the



social, economic and political rights and benefits provided in the Agreement. At the time the Agreement was signed it was clearly understood that the achievement of many important aspects of the Agreement would have to be worked out through a long term process of implementation and negotiation.

The Agreement was designed to allow for the evolution of Inuit and Cree self-government and self-determination and to allow for the adaptation of specific rights, benefits, and institutions to changing conditions and circumstances. The Agreement was not intended to be a fixed and static legal document but rather a flexible agreement which would allow problems to be worked out through ongoing interaction. The fact that many important aspects of the agreement were left subject to ongoing negotiation complicated the implementation and interpretation of the Agreement and contributed to some of the specific problems discussed below.

#### 4.3 Perception of Agreement Benefits

In reviewing the implementation of the Agreement the review team became aware that some segments of the general public and the civil service have adopted the attitude that the Crees and Inuit are now well off in relation to other aboriginal peoples and therefore do not require and are not entitled the same access to government funds and assistance made available to other native groups in the country.

This attitude is in contradiction to the underlying spirit and intent of the Agreement and is, in any case, not factually accurate. The Agreement was not designed to solve all the problems of the Crees and Inuit nor was it intended that the payment of compensation funds would be used as an excuse for reducing programs and services to which the native parties were entitled.

Another false perception of the Agreement is a tendency to treat all Cree and Inuit problems as "special" problems which must be dealt with solely in light of the terms of the Agreement rather than within the general ambit of ongoing programs and services. The Crees and Inuit have expressed annoyance with the habit practiced by some government officials of immediately referring Cree and Inuit matters, no matter how routine, to a "native executive assistant".

#### 4.4 Expectations Arising From the Agreement

In 1975 both the native parties and the governments had high expectations for the successful implementation of the Agreement. This mood of confidence is clearly evident from the press reports at the time of the signing.



The high expectations arising from the Agreement may, paradoxically, be a contributing factor to the current implementation problems in that they have tended to obscure the actual provisions of the Agreement. In certain instances it appears that conflicts concerning implications stem more from failed expectations than from actual breaches of obligations under the Agreement.

#### 4.5 Federal Budgetary Restraint

Federal budgetary restraint 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. In general, the funding currently available for native orientated programs is inadequate to meet proven needs. This situation has tended to slow down development in many Indian communities including those coming under the Agreement.

#### 4.6 Federal Implementation of the Agreement

The system established to oversee the implementation of Canada's responsibilities pursuant to the Agreement were sometimes ineffective and thus created some serious implementation problems.

### 5. SPECIFIC GRIEVANCES

In conducting the review, officials quickly found that where the letter and spirit of the agreement were clear, Canada had met its commitments or was in the process of doing so. It is in areas where subjective factors are important that most problems have arisen. This report attempts to analyze these problems in general terms, without detailed analysis of precise dollar figures and without drawing any conclusions as to precisely what can and should be done to rectify problems. The reason is that problems in living up to the spirit of the Agreement once identified as such, can only be solved by the parties acting together to realize that spirit. Discussions on details there must be, but they should be undertaken jointly by those parties concerned with the success of the Agreement.

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.

One of the primary objects of the review is to 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 positive attitudes on behalf of all parties, it will be possible to solve these problems with much less acrimony.

The grievances raised by the native parties fall into three broad categories:

- a) problems relating to the provision of ongoing programs, services and benefits;
- b) problems relating to the provision of "special" progress services and benefits; and
- c) problems relating to the overall implementation of the Agreement.

5.1. Ongoing Federal Programs, Services and Benefits

A. Issue

The Crees 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 understanding, were to continue to apply to the native parties.

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 Section 3(3) of the James Bay and Northern Quebec Native Claims Settlement Act:

"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 (November 15, 1974) 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) 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:

- i) 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.
- ii) Replacement of Federal programs with Provincially constituted programs funded by Quebec with cost sharing agreements with the Federal Government. For example Quebec assumed 25% of the cost of the Cree School Board and Canada 75%. Previously

Canada paid 100% of education costs. This has resulted, the Crees say, in Canada saving \$12.2 million since 1976-77.

- iii) 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 Crees have received a reduced level of service and funding.

D. Review of Issue

a) Sections 2.11 and 2.12

The people who negotiated the Agreement on behalf of Canada are unequivocal in stating that Sections 2.11 and 2.12 were included in the Agreement in order to guarantee the Crees and Inuit would not be cut off from programs and services offered by Canada and Quebec. 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 or reduce the programs and services available to them.

An analysis of program expenditures in the Cree and Inuit communities indicates that ongoing programs are, and have been, applied to the Crees and Inuit on the same basis as to other Indian and Inuit communities. The Crees and Inuit have been subject to the same cut-backs applied elsewhere in the country but have also benefitted from applicable program improvements.

Appendix #1 documents Federal expenditures on ongoing programs in Northern Quebec over the past 5 years.

It is important to note that Federal program expenditures in the Territory in the period 1975/76 - 1980-81 total over \$155 million or more than 4 times as much as the Federal Government's share of the compensation payments.



The review team did not discover any specific examples of the native parties being deprived of programs, services and benefits because they were "rich". As noted above it does appear, however, that some segments of the civil service and the general public have this misconception of the Agreement and this may have effected decisions concerning the application of some discretionary programs.

Despite the ambiguous wording of some of the relevant provisions, especially the statement in the letter of understanding, 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 program 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.

During negotiations the Federal negotiators maintained the position that, ongoing programs would continue to apply, where applicable, to the Crees and Inuit on the same basis as they applied to other Indian and Inuit communities. For example it was not intended, as the Crees maintain, 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) Expenditure "savings"

It was realized at the time the Agreement was being negotiated that transfers of program responsibility would result in changes in DIAND's financial and administrative responsibilities and that in certain instances this might result in "savings". 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 the provisions of the Agreement.

In several instances the programs established under the Agreement have, in fact, resulted in significant increases in Canada's expenditures in the Cree and Inuit communities. For example 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. These new expenditures have of course not resulted in reductions in other areas.

As Cree and Inuit communities assumed responsibilities previously carried out by the Department there were personnel cut-backs in the district offices serving the 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 appear 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. Comments/Summary

The Crees and the Inuit have given great emphasis in their presentations to the needs of their communities. The review has indeed shown that the needs of the Crees and Inuit are great. The trips to the Cree and Inuit communities of James Bay and Northern Quebec, taken by the Minister of Indian Affairs and Northern Development, his Parliamentary Secretary and DIAND officials have shown serious needs in the area of housing, municipal infrastructure (including roads, water and

sewage, garages, community centres and band government offices), education, fire prevention, and sanitation services in many communities. The review has also shown that where the Agreement guaranteed the provision of ongoing programming, these needs have indeed been taken into account in allotting to the Crees and the Inuit their fair share of departmental programming.

The level of funding is disappointing, but it reflects the needs of the Cree and Inuit communities relative to the needs of Indian communities in Quebec and Canada.

The next question is, therefore, whether the letter and spirit of the Agreement suggest that special efforts, over and above the allotment of a fair share of ongoing programs, should have been made to meet these needs. This question is considered in section 5.2.

## 5.2 "Special" Programs, Services and Benefits

The native parties contend that the "special" Federal programs, services and benefits which were specified in the Agreement have been applied very narrowly and in a manner which has hampered or prevented the native parties from enjoying all the benefits to which they are entitled. The Inuit stressed this point in their brief to the standing committee:

"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."

The review team found evidence that there have been serious problems in implementing some of the special programs established under the Agreement. These problems are discussed in detail in the following sections of the report.

### 5.1.2 Catch-Up Programs

#### A. Issue

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

#### B. Provisions of the Agreement

"Catch-up programs are in fact not a "special" program under the Agreement. As the native parties admit, the Agreement makes no specific reference to "catch-up". However, the native parties have put considerable emphasis on what they view as Canada's moral commitment to carryout "catch-up" programs and in this sense they view it as a "special" responsibility.

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 special provision for a general upgrading program in all the native communities. The Federal letters of understanding 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 the 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 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. 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 at that time 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. "Catch-up" would result from the application of ongoing programs and the Agreement generally.

A major focus of the brief presented by the Crees is the critical role that the lack of proper sanitation has played in the 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. They argue that Section 28.11 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.

The Crees are also 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 that 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 Crees have also expressed dissatisfaction with the way in which Canada has fulfilled its undertakings, pursuant to Mr. Buchanan's letter of November 15, 1974, concerning a water and sewage system in Eastmain and the relocation of Nemaska.

The Inuit perspective on the "catch-up" issue differs considerably from that of the Crees because the Inuit villages are Quebec municipalities under Quebec jurisdiction and eligible for Quebec programs and funding. 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 this was conditional on Quebec providing level of programs and services, especially housing and infrastructure, geared to the real needs of their communities.

The Inuit 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 early 1970's while the Agreement was being negotiated. 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 communities in the Northwest Territories (N.W.T.).

In discussion with DIAND officials and during Mr. Munro's visit to the Inuit communities the Inuit put special emphasis on the critical need to improve school facilities in almost all the Inuit communities. The Minister was shown several examples of school facilities which required extensive repair, replacement or enlargement.

The Inuit object strongly to the Northern Quebec Transfer Agreement (February 13, 1981) under which Canada transferred 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 Issue

The needs of the Cree and Inuit communities were viewed at first hand by the Minister of Indian Affairs, his Parliamentary Secretary and DIAND officials working on the review. Many communities experience overcrowded housing, inadequate water and sanitation services, little fire protection, poor roads and little municipal infrastructure. Education facilities are often poor, particularly in the Inuit communities. Ironically, given the purpose of the Agreement, some Cree communities experience difficulties with electricity.

It is clear from discussions with people involved in the negotiation of the Agreement that the general tone and spirit of the negotiations engendered high expectations about the changes and improvements that the 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 \$11.9 million in the Inuit communities in the period 1975/76 - 1979/80.

DIAND has consistently maintained that provisions of Section 28.11.1, dealing with essential sanitation, 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 time frame for funding. Furthermore, it was considered that the inclusion of Québec funding under Section 28.11.1 would help cover those costs which could not be covered through the application of the ongoing program.

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 note, however, 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 Crees consider to be a special expenditure, their overall proportion of the budget is 21%. Department officials do not, however, agree with the Cree view. In their view half of the Federal expenditure (\$5. million) on Ft. George can be legitimately classified as an ongoing program expenditure.

The Inuit communities represent approximately 13% of the Quebec Region population and the expenditures in these communities (1975/76 - 1979/80) represent approximately 18.4% 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. The added expense of construction in the North, however,



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. 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. This situation appears to have had a particularly damaging impact with regard to the construction of badly needed school facilities in the 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 some of the Cree and Inuit communities are still below minimum acceptable standards. These poor conditions are a major factor in the poor level of health in the communities and can be 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 utilizing 10 years of Department funding over a 5 year period. During the 5 year construction phase the Department undertook, subject to Parliamentary approval, 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 encountered in achieving the aims of the Five Year Agreement:

- The capital funds available to the Department have decreased, thus preventing the Department from maintaining the \$3.5 million funding level;
- Quebec has refused to participate in the construction of housing or infrastructure, thus leaving a significant part of the program unfunded; and
- There have been significant cost overruns attributable, at least in part, to management problems within the Cree Housing Corporation. The Crees admit these problems and are taking steps to correct them.

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.

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. The review team was not able to confirm this expenditure. 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) Nemaska and Eastmain

The 1974 Federal letter of understanding to the Crees commits Canada to "fund and assist" in the re-establishment of a permanent community for members of the Nemaska Band. Mr. Buchanan's letter of November 11, 1975 to Chief Diamond qualified this undertaking by specifying that "no new or special funds can be provided for this purpose" and, consequently, costs of the relocation would have to be paid out of regular appropriations. The Cree maintain that they understood the 1974 letter to mean that new funds would be available and that the relocation would be carried out quickly.

The Department received Treasury Board approval in 1979 to participate in a 10 year program to rebuild

Nemaska. Federal funding of \$2.1 million was approved. Part of the Nemaska Band has already been relocated at the new site and construction of additional facilities is continuing.

A masterplan for Eastmain, uncluding the construction of water and sewage facilities, is currently being worked out by the Cree Housing Corporation in conjunction with the residents of Eastmain. The priority for construction of facilities in Eastmain will be determined by the Cree Housing Corporation taking into consideration available funds, the needs of other communities, and other relevant factors.

The Cree concerns regarding the Nemaska and Eastmain projects relate to the overall issue of whether certain commitments should be considered as "special" obligations or as goals to be achieved within the general ambit of ongoing programming and funding. The review team could find no evidence that it was intended that Canada should assume total responsibility for funding these projects or that Canada was obliged to carry out the projects immediately on signing the Agreement. Moreover, it appears that it was intended that the projects would be carried out with participation from both Canada and Quebec, with perhaps limited participation by the Crees themselves, and that the priorities for construction would be based on an evaluation of competing needs in other Cree communities. Nevertheless the letter of understanding indicates a commitment by Canada to carry out the Eastmain and Nemaska projects. Hopefully this intent can be achieved in the near future.

d) 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, Canada should assist in funding the upgrading program.

The need for an upgrading program is well documented in the Quebec commissioned Jolicoeur Report on conditions in the Inuit communities.

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 N.W.T. 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.

The reasons for the discrepancy between the N.W.T. and Northern Quebec may stem 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 result 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 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 similar communities in the N.W.T.

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 \$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 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 proposed Transfer. One of the key elements of the expenditure plan, the Inuit housing program, had, however, not been approved by February 1981 when Quebec put considerable pressure on Canada to sign the Agreement. There were 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 Quebec 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, Quebec expenditures in all areas, including housing, will still significantly exceed the funding that was previously provided by Canada. The funds which would have been available to DIAND for Inuit housing and municipal



services, if the Agreement had not been signed, would have been approximately \$8 million. Quebec, even with the scaled down housing program, plans to spend \$24.5 million during the same period. In the specific area of housing Quebec projects expenditures of \$3.6 million which is 75% greater than the \$2 million which would have been available from DIAND had the Agreement not been signed.

e) Inuit School Facilities

In addition to housing and municipal services the Inuit are 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 the inadequately of the current school facilities are similar to the reasons why a general catch-up program is required. The situation regarding schools was also effected by the fact that the Inuit population is growing rapidly and more Inuit parents are opting to have their children remain in their communities for schooling rather than sending them to residential schools.

Although the Katvik School Board comes under Quebec jurisdiction Canada maintains an ongoing obligation for Inuit education by funding 25% of Katvik's operational and capital budget.

On the basis of the first hand observations of the Minister, Mr. Chenier and DIAND officials it is clear that the Inuit are justified in demanding that the construction of new school facilities be given a very high priority.

f) 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 do everything possible to ensure that the native communities have potable water and adequate sewage disposal facilities. It is beyond doubt that lack of proper infrastructure facilities is a major factor in the poor health conditions experienced by the Crees and Inuit. It is

also true that the overall issue of health care is closely linked and dependent on the living conditions in the 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 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 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 difficulties in resolving the nature and cost 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. Comments/Summary

The Crees and Inuit 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. That the overall results anticipated in 1975 have not been achieved seems to be a result more of budgets that have

decreased in relation to costs than a failure to respect the agreement. Still, while over the last five years significant progress has been made in improving conditions but it is clear much more remains to be done before all the communities have adequate housing infrastructure, and school facilities.

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. It is clear that Canada has a responsibility to work closely with Quebec and the Crees to prevent future outbreaks of disease.

#### 5.2.2 Cree Health Services

### 5.2.3 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, 28.1.1 and 29.0.2 all of which are discussed above. Section 29.0.2 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 undertakings 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 includes: 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 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 Crees 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 provisions 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 were to be considered only as normal ongoing programs.

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.

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 has to be 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, has 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.

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 Indian and Inuit communities 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 Crees, 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. Canada and Quebec funded the study and the setting up of the program. To date the Crees have not finalized their proposal for a feasibility study of a Cree Outfitters and Tourism Association, so it is unclear if and when such an association will be set up.

A Cree Native Arts and Crafts Group existed before the Agreement, and this organization will form the basis for the Cree Native Arts and Crafts Association. The Cree Arts and Crafts group is receiving \$50,000 annually to support their organization.

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.

Canada has interpreted this section to mean that the Crees are eligible for whatever assistance and funding is generally available to Indians and has relied on existing personnel and programs to fulfill its obligations. The Crees 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, three problems existed:

- 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);
- The Crees have not put in any requests for funding of projects; and
- If they had asked for funds for large projects there would have been difficulties because of the magnitude of their proposals and because programs such 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 Agreement, 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 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 sought assistance at the time the projects were started.

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.

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. Comments/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. It is clear that greater cooperation from all the parties concerned and joint action is necessary in order to fully realize the economic development goals of the Agreement.

5.2.4 Core Funding: Cree

A. Issue

The Cree maintain that pursuant to Section 28.15 of the 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 Crees 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 by Section 28.1.1 which specifies that the programs noted in Section 28 will be applied according to the 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
1978-79:	\$258,700
1979-80:	\$297,200
1980-81:	\$300,000

Cabinet approval has recently been received to increase the CORE funding available to band and the Cree bands will be entitled to this increase.

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 greater powers than 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 that available to "district councils" under the provision of the Department's D-2 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-2. The Crees were given copies of the D-2 circular to ensure that there would be no doubt concerning the provisions applicable to the CRA. According to Canada's negotiators it was very clear 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 CORE funding. 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 agreement with that Department. Although the 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, whereas, the CORE funding provided by Secretary of State is intended for the use of political organizations such as provincial or territorial native associations. Canada's negotiators maintain 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-2, which had been placed before the Cree negotiators.

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. The study indicates, however, that these district councils receive substantial Departmental funding to cover CORE type 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 not often been followed.

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 that of the Crees 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 impossible 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 5.3.1 below.



d) Secretary of State Funding Programs

Although the Secretary of State's CORE funding program is not applicable to the Cree and Inuit government entities, their political organizations, the Grand Council of the Crees (of Quebec) and Makivik Corporation, both receive funds from this source to defray administrative expenses.

The Secretary of State's Migrating Native Peoples Program funds Friendship Centres used by James Bay Crees in Val d'Or, Chibougamau and Senneterre. Administrative and Training funds provided for these centres in 1980-81 totalled \$188,055. The Crees maintain that Canada has not provided sufficient funding for the centres and estimate that \$2 million a year should be provided by Canada.

The funding of friendship centres is in accordance with Section 28.14 of the Agreement:

"Quebec and Canada shall continue to the extent possible funding and assistance for facilities, programs, services and organizations such as Friendship Centres existing or which may exist from time to time outside Cree communities for the purpose of assisting Cree persons residing, working or temporarily in non-native communities or in transit.

Federal officials consider the section to be a reiteration of the general principle regarding the continued application of ongoing Federal programs. Friendship Centres serving the Crees have, consequently, been treated in the same fashion as centres in other parts of the country. Secretary of State is, however, willing to consider, in accordance with existing program criteria, Cree proposals regarding the Friendship Centres program.

E. Summary/Comments

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.

#### 5.2.5 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 Crees 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.

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. At present air service facilities in the Inuit and Cree communities are significantly inferior to the facilities in similar remote communities in the Territories and the other Provinces.

An interim program initiated in 1976-77 resulted in Transport Canada expending \$454,000 between 1976 77 and 1980 81 for airstrips in the Cree and Inuit communities. This compares to an average cost of \$1.-2.5 million per airstrip for comparable communities in the N.W.T.

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 thus far refused to consider including the Cree communities in the proposed construction program. Transport Canada will continue to discuss this matter with Quebec.

E. Summary/Comments

Canada has not yet carried out the undertakings which it assumed pursuant to the Federal letters of undertaking. Recent initiatives indicate, however, that this deficiency may soon be remedied.

5.1.7 Administration of Justice

A. Issue

The Crees charge that Canada has done little or nothing to implement the provisions of the Agreement in regard to the administration of justice.

B. Provisions of the Agreement

Section 18, which deals with administration of justice for the Crees states:

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

It provides that the provisions 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 Crees be established.

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 Departments of Justice and the Solicitor General.

Section 18.0.37 provides for the establishment of a judicial advisory committee, composed of representatives of the Crees 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 yet 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 participation is necessary or would be helpful. The Department is undertaking an examination of existing programs and policies for natives as they relate to the Agreement. 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/Comments

There is a willingness on the part of the Department of Justice and the Solicitor General's Department to discuss with the native parties the action required under the Agreement.

5.2.7 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 the 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 Quebec. 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 which received the Port Burwell residents.

The Inuit demand that Canada 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 the Department of National 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 Government of the Northwest Territories (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 DIAND, 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 still like to return to Port Burwell if an airstrip were built and the nursing station were reopened. Inaqpiq Fisheries, owned by Makivik, is considering the possibility of using Port Burwell as a northern base for its fishing operations. At that meeting Federal officials indicated to the Inuit that an Inuit response to the options outlined in Mr. Faulkner's letter could form the basis of renewed discussions to resolve this issue. No response has yet been received from the Inuit.

E. Comments/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 fully enjoy the rights and benefits to which they are entitled under the Agreement.

5.3 IMPLEMENTATION COSTS AND COORDINATION

5.3.1 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 Port 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.

**DRAFT**  
**FOR DISCUSSION ONLY**

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 Crees 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, the Cree Board of Compensation and the Makivik Corporation, to receive and administer the compensation funds on behalf of the Crees 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. Spokesman 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 used part of their capital funds.

The native parties argue that sub-sections b) and c) of Sections 26.0.4 and 27.0.4, which appear to give the native corporations a wide mandate, were included primarily to ensure the tax exempt status of the corporations. These sub-sections should not be viewed as an indication that the Crees and Inuit anticipated spending large amounts of their compensation funds on programs and services usually provided by the governments.

The native parties are requesting that 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 that they would be repaid 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 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.

E. Summary/Comments

Both the native and government negotiators agree that 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.

5.3.2 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:

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) Crees

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 Crees 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 Crees 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 managers in the Region.

DIAND's coordination of implementation appears to have functioned successfully in dealing with routine implementation matters. 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 (ONC) 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 Assistant Deputy Minister, Corporate Policy. The Claims Policy Committee chaired by the Deputy Minister dealt with some implementation issues but did not establish a clear mechanism to deal with implementation problems on an ongoing basis.

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 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 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 shift 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 Crees 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.

DR. JILLON

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 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 the 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 report the Crees 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/Comments

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.

5.4 Other Issues

There are other issues of particular concern to the Inuit, but which were beyond the terms of the review, and consequently are not discussed above.

a) Extinguishment of Title

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 "abhorrent

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 review team undertook to make sure that this issue was brought to the attention of those responsible for the constitutional discussions.

b) Inuit Political Representation

The question of political representation, specifically the creation of a Federal Inuit constituency, was also discussed. It was agreed that the matter could be more effectively dealt with on the political or constitutional level.

c) Offshore Islands

The Inuit also expressed concern with the delay in resolving the issue of Inuit claims to the Offshore Islands. These islands, although located in the Northwest Territories, have been traditionally used by the Inuit of Northern Quebec and Canada agreed in 1975 to enter negotiations with the Northern Quebec Inuit to settle their claims to these islands. For various reasons these negotiations have not yet been concluded.

The Inuit have expressed a desire to leave these negotiations in abeyance for the moment pending the emergence of a clearer picture with regard to the overall issue of Inuit land claims in the N.W.T. and other related matters. Canada is ready to resume negotiations on the Offshore Islands at the request of the Inuit. Consideration is being given to providing a negotiations loan to help finance Inuit involvement in these negotiations when they resume.

6. CONCLUSION

On November 11, 1975, when the James Bay Agreement was signed, the Crees and Inuit, Canada and Quebec, had high expectations that the Agreement would enable the Inuit and Cree people of James Bay and Northern Quebec 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, it is clear, however, 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 the wording 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 overall coordination, in itself, has contributed to many of the specific problems of implementation.

If the James Bay Agreement is to succeed 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. It is also clear that mechanisms must be developed to work out problems of interpretation and implementation before they reach the crisis stage.

The review team had some difficulty in discerning just what the spirit of an agreement whose wording was carefully negotiated by a large number of lawyers and other parties might be and in finding means of applying that spirit in a practical way to solve the very real problems that have been experienced. In conducting the search, the team found a number of reasons for the difficulties that had arisen that perhaps go beyond the normal problems that attend any complicated agreement; the parties understood that the agreement needed to be fleshed out through day-to-day interaction; the natural expectations of all parties upon which the Agreement was build were dashed owing to changed economic circumstances; and the wording of the Agreement itself sometimes directly causes confusion. This report has spoken of all of these difficulties. But they do not define the spirit of the Agreement.

Perhaps what defines the spirit of an Agreement which ges to the heart of the future of two peoples is the will of the parites to look at the difficulties and mistakes of the past and, building on achievements already made, to work together, to correct them and breathe new life into the Agreement. It is in this hope that this report has been prepared.

On the basis of the findings and conclusions of this report recommendations on the measures to be taken to ensure that Canada's obligations under the Agreement are fully implemented now and in the future will be prepared for consideration by Cabinet.