

Report
on the
Complaints of the Innu of Labrador
to the
Canadian Human Rights Commission

by
Donald M. McRae
Dean
Common Law Section, Faculty of Law
University of Ottawa

18 August 1993

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EXECUTIVE SUMMARY

This report deals with complaints brought to the Canadian Human Rights Commission by the Innu Nation alleging failure by the government of Canada to exercise direct constitutional responsibility in respect of the Innu with a consequent failure to provide them with the level and quality of services received by other aboriginal peoples in Canada and impeding their ability to control their own affairs through self-government and the devolution of programs and services.

The Innu Nation has also claimed that the Mushuau Innu of Davis Inlet have been relocated by governmental action and placed in a situation without adequate housing or services that has led to a high level of social dysfunction. They claim compensation for the failure of the government of Canada to recognize the particular constitutional status of the Innu and for breach of its fiduciary duty. The Innu Nation claims that the action of the governments of Canada and Newfoundland "constitutes discrimination, and an infringement of the human rights and aboriginal rights of the Innu."

1. Direct Constitutional Responsibility (Complaints No's 1-3)

On the entry of Newfoundland into confederation in 1949, the government of Canada did not apply the Indian Act to the Indian peoples of Labrador. Instead, it entered into an agreement with the government of Newfoundland and Labrador under which the province was to be responsible for Indian and Eskimo peoples of Labrador and the federal government was to provide Newfoundland with some funding for this purpose. On two occasions the federal government has received legal opinions from the Deputy Minister of Justice indicating that it is the federal government that has legislative and executive authority in respect of the Innu and federal officials have had continuing doubts about the legality and appropriateness of their actions. Nevertheless, the federal government has not changed its approach of dealing with the Innu through an agreement with the province of Newfoundland.

The direct consequence of the actions of the federal government in 1949 were that the Innu were not registered under the Indian Act nor did they have the opportunity of having reserves created. Although in more recent years the government of Canada has entered into a number of direct funding arrangements with the Innu, its relationship to the Innu as aboriginal people remains ambiguous.

A request by the Innu in the 1970's to be registered under the Indian Act was not proceeded with by the Department of Indian Affairs, although in the mid-1980's the federal government indicated a willingness to consider registration. The federal government has also sought to imply that the situation of the Innu is the result of their own choice.

The failure of the federal government in 1949 to treat the Innu in the way other Indian peoples in Canada were treated has resulted in the Innu not receiving the range of funding or the level and quality of services that are provided to aboriginal peoples who are registered under the Indian Act and living on a reserve. This discriminatory treatment constitutes a breach by the government of Canada of its "fiduciary obligation" to the Innu as aboriginal people in Canada.

Furthermore, instead of dealing with a single level of government that has developed some expertise in respect of aboriginal peoples, the Innu are dealt with by two levels of government, the primary level being one that has no constitutional mandate in respect of aboriginal peoples and which deals with the Innu as if they were essentially no different than other residents of the province.

The role granted to Newfoundland in respect of the Innu by the federal government has appeared to give Newfoundland an implicit veto over the negotiation of self-government arrangements by the Innu. While negotiations under the federal government's policy on self-government provides for the involvement of the province only with the consent of the parties, the federal government's offer to negotiate self-government with the Innu provides for the "required involvement" of the province of Newfoundland. Thus, the failure of the federal government to deal directly with the Innu as aboriginal peoples in Canada inhibits the negotiation of any self-government arrangement for the Innu and for the devolution to the Innu of programs and services.

2. Relocations of the Mushuau Innu (Complaint No. 4)

In 1948, the Mushuau Innu were moved from Davis Inlet to Nutak some 250 miles to the north. This move was undertaken without any real consultation with the Innu who today still do not understand why they were moved there. The Innu were not happy with this new location, which provided difficult access to traditional caribou hunting areas, and they left of their own volition and moved

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back to Davis Inlet. Although the move to Nutak has been said to have been humanitarian in nature and intended to provide the Innu with the prospects of an economic livelihood, there is no evidence of a need that could not be met in Davis Inlet or that a serious comparison was made of the conditions the Innu would face at Nutak and those that existed at Davis Inlet.

There was very little knowledge or understanding of who the Innu were at that time and government officials assumed that they could make decisions for the Innu. In fact, the decision to relocate the Innu appears to have been motivated by the fact that the government depot at Davis Inlet was to be closed and the Moravian Mission at Hopedale would not want the Innu coming to the government depot at Hopedale. Moreover, the underlying assumption of government officials was that they knew what was in the best interests of the Innu; it was to turn them into "white men" and integrate them into the economy through having them engage in fishing.

In 1967, the Mushuau Innu were relocated to the site of their present village on Iluikoyak Island. The site was chosen primarily because it was suitable for a harbour and wharf to sustain the government store. There was no meaningful consultation with Innu and their interests were assumed to be those identified by the priest and government officials who dealt with the Innu. Although other sites were apparently looked at, the assessment of the availability of water at the site on Iluikoyak Island was not based on any engineering studies or reports and no consideration seems to have been given to any future significant expansion in the size of the Mushuau Innu community. The move was also motivated by an interest in directing the Innu to fishing as an economic activity and failed to take account of the traditional Innu practices of going to the country and caribou hunting.

Although the Innu were not opposed to the move to Iluikoyak Island, they had been led to believe that they would have houses built for them at the new site with running water and sewage disposal. In fact, houses were built with bathrooms and flush toilets that presupposed the existence of running water and sewage disposal, but these amenities have never been provided. The intolerable conditions under which the Mushuau Innu live in Davis Inlet have been an important contributor to the poor standard of health in the community and widespread social dysfunction.

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Government actions in the case of both relocations do not meet the strict standards of conduct required of a "fiduciary" and the failure of the government of Canada to remedy the living and social conditions of the Mushuau Innu is a breach of the "fiduciary obligation" that the Crown has towards the Mushuau Innu as aboriginal peoples in Canada.

3. Compensation (Complaint No. 5)

Since 1949, the government of Canada has had responsibility in accordance with Section 91(24) for the Innu, and this carries with it the "fiduciary obligation" to act in the best interests of the individuals to whom the obligation is owed. The government of Canada has not fulfilled that obligation. While payment of compensation by the federal government would be appropriate, this would not of itself remedy the wrong suffered by the Innu people.

A real remedy in this case would involve putting the Innu in the position they would have been in if governmental responsibilities had been exercised and appropriate human rights standards met. This would involve ensuring that the Innu have the opportunity and the resources to take responsibility for their own lives and future. It would require the federal government to acknowledge its constitutional responsibility towards the Innu and recognition that Newfoundland has a role in respect of the Innu that is no different from that of any provincial government in respect of aboriginal peoples. It would also involve the abrogation of the Canada-Newfoundland Contribution Agreement in respect of the Innu and a commitment by the federal government to treat the Innu as entitled to all of the funding available to Indian peoples who are registered and on reserve without requiring the Innu to go through a symbolic act of subordination by requiring them to become registered under the Indian Act.

4. Recommendations

That the Government of Canada,

- (i) formally acknowledge its constitutional responsibility towards the Innu;

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- (ii) abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshit and Davis Inlet and enter into direct arrangements with the Innu as aboriginal people in Canada. Such arrangements should ensure that the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian peoples in Canada while preserving the unique aspects of existing arrangements such as the outposts program;
- (iii) enter into direct negotiations with the Innu in respect of self-government and for the devolution of programs and services, involving the Government of Newfoundland and Labrador where appropriate in accordance with the principle of mutual consent set out in the September 1989 Policy Statement on Indian Self-Government in Canada;
- (iv) make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them; and
- (v) provide the funding necessary to implement these recommendations.

That the Canadian Human Rights Commission review every five years progress made in the implementation of the recommendations in this report.

INTRODUCTION

In June 1992, representatives of the Innu Nation requested that the Canadian Human Rights Commission (CHRC) carry out an investigation into certain aspects of their treatment by the governments of Canada and Newfoundland. The particular allegations were set out in a letter of July 16, 1992 from the President of the Innu Nation to the Commission and in a further letter of July 27, 1992. (See Appendix 1). In November 1992, the Commission, with the agreement of the Innu Nation and the Department of Indian Affairs and Northern Development (DIAND), asked me to act as a Special Investigator, "to examine the grievances of the Innu of Labrador against the governments of Canada and Newfoundland and to recommend such corrective measures as may be warranted". (See Terms of Reference, Appendix 2).

The particular complaints of the Innu Nation can be summarized as follows:

1. The government of Canada has failed, since 1949, to exercise its constitutional responsibilities in respect of the Innu as aboriginal people in Canada.
2. As a result of the failure of the government of Canada to recognize the particular constitutional status of the Innu and to deal with them directly as aboriginal people, the Innu have not received the level and quality of services received by other aboriginal peoples in Canada.
3. The failure by the government of Canada to recognize the particular constitutional status of the Innu and to deal with them directly as aboriginal people has also denied the Innu the opportunity to control their own affairs through self-government, to have control over the management of such matters as health, housing, welfare, education, and policing, or to control their own infrastructure and other essential programs.
4. The Mushuau Innu have been subjected to three relocations since 1947 which have had disastrous consequences for them. In particular, their present location at Utshimasits does not provide them with adequate housing or services and it impedes their ability to pursue their traditional hunting pursuits, resulting in a high level of social dysfunction. Relocation of the Mushuau Innu to a new community is essential.

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5. The Innu should receive compensation for the failure of the government of Canada since 1949 to recognize the particular constitutional status of the Innu and to deal with them directly and the consequent breach of the government's fiduciary duty to the Innu.

An overriding concern of the Innu is that the actions of the governments of Canada and of Newfoundland constitute a failure to recognize them as aboriginal people and that "this constitutes discrimination, and an infringement of the human rights and aboriginal rights of the Innu".

The Terms of Reference require the Special Investigator:

- to undertake a review of the reports and other documentation collected by the CHRC;
- to interview individuals with direct knowledge of the matters under study including representatives of the governments of Canada and Newfoundland, the Innu Nation and residents of the communities concerned;
- to visit the Innu communities and such other locations as may be relevant to carrying out a full investigation.

In the week of November 30-December 4, 1992, I visited the communities of Sheshatshit and Davis Inlet and interviewed representatives of the Innu Nation and of the Band Council of Davis Inlet and a number of people in the communities. I also sat in on a hearing held by the Royal Commission on Aboriginal Peoples in Davis Inlet. Subsequently I interviewed DIAND officials in Ottawa and also travelled to the Regional Office of DIAND in Amherst, Nova Scotia which has responsibility for program delivery to aboriginal peoples in the Maritimes, including Newfoundland and Labrador, and interviewed officials in that office. I also visited St. John's and interviewed officials of the Government of Newfoundland and Labrador with responsibility for issues relating to the Innu.

In April 1993 I returned to Davis Inlet to interview elders about their further recollections of the 1948 and 1967 relocations. At that time I discussed the complaints further with representatives of the Innu Nation. I have also spoken to

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other individuals in Ottawa and St. John's who had particular knowledge of the issues raised by the Innu.

I have reviewed the material provided to me by the CHRC, and the material provided by representatives of the Innu Nation, by officials of DIAND in Ottawa and in Amherst, and by officials of the government of Newfoundland, and a submission from the Assembly of First Nations.¹ I have also reviewed material that I have obtained independently. Some of this material includes reports and documents from the archives of DIAND and from the archives of the Province of Newfoundland and Labrador.

While research for this report was in progress, the suicide attempt by six Davis Inlet children engaged in gas-sniffing took place. That incident attracted wide public attention and has resulted in action from the federal and provincial governments, and an announcement that the Davis Inlet community would be relocated. These actions have not, however, resolved the issues that have been the subject of the complaint brought by the Innu to the CHRC. Indeed, some of the statements made by federal and provincial officials during this incident highlight the concerns that gave rise to this complaint.

SCOPE OF THE REPORT

The mandate of this investigation, as I have understood it, has been to make an assessment of the complaints raised by the Innu Nation in the light of information obtained from interviews with the individuals concerned and from the available documentary material, and then to make recommendations on how these complaints might be addressed. The investigation was not constituted as a formal commission of inquiry and the Special Investigator has been left to make his own judgment on the matters raised. While I feel that I am able to do so, there are certain limiting parameters within which any investigation of this nature must take place.

First, there is the question of the available record. In part the questions raised in this investigation concern issues on which there is only a partial written historical record. Equally, the written record is generally the record of the government (including the police and the government storekeeper) or the church

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or, going back further in time, the Hudson's Bay Company. By contrast, the Innu have an oral rather than a written tradition. Their record of events is based on the recollections of those who were there at the time or of those to whom these recollections have been passed on. In looking at the issues in this investigation, I have sought to give proper weight to both forms of record, recognizing that each has its strengths and weaknesses and that whether one is superior to the other on any particular issue may well depend upon the context.

Secondly, anyone assessing events that took place some 25 to 45 years ago must take care not to place interpretations or to assign attitudes or assumptions as if the events took place today. This applies both to the standards one might expect of governments at that time as well as to how the Innu may have understood the intentions of or positions taken by government officials.

Thirdly, there is a question of cultural assumptions. In writing this report I have to reach certain conclusions about the attitudes and approaches of the Innu or about the positions that they have taken. I do this recognizing that I am viewing their perspectives and approaches through the prism of my own cultural assumptions and that this may have a distorting effect.

Finally, this investigation has been concerned only with complaints made by the Innu Nation. To the extent that the report refers to treatment received by other aboriginal peoples in Canada, it does so in order to clarify the situation of the Innu. It does not purport to draw conclusions about the responsibilities of the governments of Canada or Newfoundland in respect of other aboriginal peoples.

THE QUESTION OF STANDARDS

This complaint has been brought to the Canadian Human Rights Commission, not on the basis of a specific violation of the Human Rights Act, but on the ground that the policies of the Canadian and Newfoundland governments regarding the delivery of services to the Innu "constitutes discrimination, and an infringement of the human rights and aboriginal rights of the Innu."

The specific responsibility of the government of Canada in respect of aboriginal peoples in Canada is now well-recognized as a "fiduciary obligation".

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As the Supreme Court of Canada said in R. v. Sparrow,² "... the government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the government and aboriginals is trust-like" Although the precise content of this fiduciary obligation was not articulated in Sparrow, in its earlier decision in Guerin v. The Queen,³ Dickson J. described it as a "strict standard of conduct".

At the very least, such a standard requires observance by the government of Canada of minimal standards for the protection of human rights, and to this extent the category of aboriginal rights and human rights overlap. In this regard there is an undoubted commitment in Canadian public policy to a high standard in the recognition and protection of human rights in respect of all peoples in Canada. That commitment has been articulated in different ways through the involvement of Canada in developing international instruments for the protection of human rights and becoming party to them, and through the enactment of human rights legislation at both the federal and provincial levels.

This commitment, which has evolved over time, has been present in one form or another throughout the period to which these complaints relate. In 1948 Canada voted in favour of the General Assembly resolution adopting the Universal Declaration of Human Rights; in 1961 the government of Canada adopted a bill of rights, indicating again a commitment to the recognition and protection of human rights. Human rights legislation has been adopted provincially and the Charter of Rights and Freedoms symbolizes the present-day commitment of Canada to the protection of rights.

Although the national and international standards for the protection of human rights to which Canada has made both a political and legal commitment provide a basis for the content of the fiduciary obligation of Canada towards its aboriginal peoples, they do not exhaust that content. Other obligations may be imposed upon a fiduciary as well. Moreover, human rights standards may also provide a basis for assessing the conduct of government independently of the fiduciary obligation Canada has towards its aboriginal peoples.⁴

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BACKGROUND

1. The Innu of Labrador

The Innu comprise about 1500 people living in two communities in Labrador; Sheshatshit to the south and Davis Inlet (Utshimasits) to the north. Historically, the Labrador Innu were part of the nomadic peoples who roamed Nitassinan, (roughly what is known as the Ungava Peninsula) hunting the caribou. Those to the south, particularly along the north shore of the Gulf of St. Lawrence were known to the early settlers as Montagnais, and those to the north including the Mushuau Innu of Utshimasits (Davis Inlet) as Naskapi. But Montagnais and Naskapi are the same people and they share a common language - Innu-eimun. The boundary between Quebec and Labrador divides the Innu of Quebec from the Innu of Labrador.⁵

Traditionally, the Innu hunted in the interior of Nitassinan and visited the coast only during the summer months.⁶ These visits became associated with the trading posts⁷ to which furs were sold and often coincided with the presence of a priest. Sheshatshit and Davis Inlet were places to which the Innu came.⁸ The invasion of the Innu's traditional hunting grounds by white settlers also drove the Innu to the coast.⁹ A dependency on store food developed and the Innu began to spend more time in their coastal settlements. But furs which provided income were often sparse and poverty and starvation were not infrequent. Government relief was provided to the Innu from the 1920's on through the Hudson's Bay Company representative or the priest.¹⁰

In 1948, the Newfoundland authorities closed the depot at Davis Inlet and moved the Mushuau Innu some 250 miles north to Nutak. The Innu did not take to this new environment and in 1949 they went back to Davis Inlet.¹¹

Thus, at the time that Newfoundland entered confederation, Innu settlements had been long established at Sheshatshit and Davis Inlet (Utshimasits) although they were somewhat of a seasonal nature. The Innu lived in tents, and not all of the inhabitants stayed in the settlement the year round. However, families were discouraged by the priest and by government representatives from going to the country on the ground that education could be provided for their children only if they remained in the settlement.

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Housing began to be constructed for the Innu in Sheshatshit in the 1950's. Between 1965 and 1968 housing in Sheshatshit was substantially increased by the building of 51 new units.¹² Housing was also begun in Davis Inlet, but not at the location on the coast where the settlement had existed for many years.¹³ A new settlement was established on Iluikoyak Island some two miles from the existing settlement and the Innu were relocated there.¹⁴

2. The Innu and Government

The Terms of Union under which Newfoundland entered confederation made no reference to the aboriginal peoples of Newfoundland and Labrador, although the matter had been discussed during the negotiations between the representatives of Newfoundland and the representatives of Canada.¹⁵ Following union, the federal government paid costs incurred by Newfoundland in respect of the aboriginal peoples of Newfoundland and Labrador, although the nature and extent of its responsibility or obligation to do so was the subject of substantial internal discussion.¹⁶

In 1954, the government of Canada and the government of Newfoundland entered into an agreement by an exchange of letters,¹⁷

"designed to delimit, on a long-term and more satisfactory basis, the areas of responsibility of the federal and provincial governments with regard to the Indian and Eskimo population of Northern Labrador...".

The agreement provided that the federal government would assume 66 2/3% of costs in respect of Eskimos and 100% of costs in respect of Indians relating to "agreed capital expenditures ... in the fields of welfare, health and education" and assume the full costs of hospital treatment for Indians and Eskimos of northern Labrador during a ten-year period and "to undertake an aggressive anti-tuberculosis program" during the same period. For its part, the government of Newfoundland was to assume all other "financial and administrative responsibilities for the Indian and Eskimo population of Labrador" excluding such federal benefits as family allowances and old-age pensions.

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Ten years later a new agreement was entered into between Canada and Newfoundland, again by an exchange of letters.¹⁸ This agreement renewed the 1954 agreement in respect of medical and hospital costs and the anti-tuberculosis program, but included a new arrangement under which the federal government would "reimburse Newfoundland for 90 per cent of the province's expenditures on Indians and Eskimos" up to a maximum of \$1 million per year.¹⁹ This agreement provided the financial basis for capital developments, particularly housing, in both communities.

The 1964 arrangement, which was to last for 5 years, was extended in 1970 and 1976. In 1981 it was again renewed as two separate agreements, one as the Native Peoples of Labrador Agreement and the other as the Comprehensive Health Agreement. The latter has been renewed on an annual basis, but the Native Peoples Agreement was subsequently divided into two agreements, one relating to the Inuit and the other to the Innu communities of Sheshatshit and Davis Inlet. The Innu agreement was renewed regularly and exists today as the "Contribution Agreement Between the Government of Canada and the Government of Newfoundland and Labrador for the Benefit of the Innu Communities of Labrador, 1991-1996".

This "Contribution Agreement" is designed to provide for services to the Innu communities of Sheshatshit and Davis Inlet, although these are identified as "supplementary programs and services".²⁰ The agreement identifies the amount of funding available,²¹ the purposes for which it can be used and the methods of payment and mechanisms of accountability, and establishes a management committee composed of federal and provincial officials and representatives of the communities of Sheshatshit and Davis Inlet.

Originally the only funding of the Innu by the government of Canada was through the agreements entered into between Canada and Newfoundland. However, in 1984 the federal Cabinet agreed to direct funding contribution agreements between Health and Welfare Canada and aboriginal organizations of Newfoundland and Labrador, including the Naskapi-Montagnais Innu Association.²² In the late 1980's the federal government began to make a number of arrangements directly with the Innu including the provision of post-secondary education costs, and funding for alcohol and drug abuse programs, economic development, and health services.²³ These sources of funding have been made

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available either by agreements between the Innu Nation and the Minister of Health and Welfare or simply by the federal government indicating that it will treat the Innu as eligible for certain programs.

In 1976 the Innu made enquiries of the federal government about registration under the Indian Act,²⁴ and in 1977 applied for registration.²⁵ No such registration took place. However, in July 1978, the Innu were recognized as having a land claim based on "traditional use and occupancy of lands in Labrador."²⁶ Some preliminary negotiations have taken place, but the negotiations are currently in abeyance.

In December 1992, the Minister of Indian Affairs and Northern Development wrote to the President of the Innu Nation indicating that "Canada recognizes the Innu people of Labrador as a special group of aboriginal people" and indicated a willingness to negotiate self-government for the Innu and to work with the Innu with a view to their "achieving greater control over the delivery of programs and services which affect them directly through increased devolution of existing programs and services from both federal and provincial governments."²⁷

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THE INNU COMPLAINTS

Complaint No. 1

The Government of Canada has failed, since 1949, to exercise its constitutional responsibilities in respect of the Innu as aboriginal people in Canada.

The substance of the Innu complaint is that the federal government has chosen to treat the Innu as if they were the responsibility of the province of Newfoundland and has not dealt with them directly as Indians within the meaning of Section 91(24) of the Constitution Act 1867 and hence within the sole legislative responsibility of the government of Canada.

This complaint will be considered in the light of the negotiations leading to the Terms of Union, the provisions of the Terms of Union itself, and the subsequent practice of the federal and provincial governments.

(a) The Negotiation of the Terms of Union

There is little doubt that prior to the negotiation of the Terms of Union federal and Newfoundland officials believed that Indians and Eskimos in Newfoundland and Labrador were "native peoples" within the meaning of Section 91(24), and were thus the responsibility of the government of Canada. In 1947 when discussing the implications of confederation with Newfoundland officials, federal officials indicated clearly that the native peoples of Newfoundland and Labrador would be subject to federal jurisdiction²⁸ and an allocation was made in the 1949-50 budget estimates of the federal government to cover the costs of native peoples of Newfoundland and Labrador for 1949.²⁹

The Sub-Committee of the Canada-Newfoundland Negotiating Team dealing with Indians and Eskimos reiterated in its report of October 10, 1947 that there would be federal responsibility for Indians and Eskimos, stating that they would be the "sole responsibility" of the federal government and would be "entitled to benefits".³⁰ The first and the third drafts of the Terms of Union in 1947 made specific reference to this responsibility, although the reference in the third draft was "pencilled out".³¹

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However, before the Terms of Union were finalized, the idea developed that perhaps the Indian Act should not be applied to the Indians of Newfoundland and Labrador and that they should continue to be administered by Newfoundland. In 1948 there was a discussion in the Department of Mines and Resources (which at that time had responsibility for issues relating to aboriginal peoples) over whether it was appropriate to bring Newfoundland Indians and Eskimos under federal jurisdiction.

This appears to be the genesis of the idea that since the Indians of Newfoundland and Labrador already had the vote, they should not be disenfranchised by placing them under the Indian Act.³² At that time questions were being raised about the appropriateness of the policies under the Indian Act which in any event was in the process of revision. It was felt that perhaps the new province should continue to administer the aboriginal peoples of Newfoundland and Labrador under grants or subsidies from Canada.³³

This position was viewed favourably by K.J. Carter, Newfoundland Secretary for Natural Resources who subsequently convinced Mr. Smallwood of the desirability of continuing to assume responsibility for aboriginal peoples.³⁴ On the Newfoundland side there was some concern that if the federal government took responsibility for the aboriginal peoples of Labrador, this would have a negative impact on the operations of the Northern Labrador Trading Operations.

These discussions took place against a background where little was actually known about the Innu who were the "Indians" referred to in the various discussions.³⁵ This was also the time during which the Mushuau Innu were being relocated to Nutak, and there was even some doubt over whether this group of people really were enfranchised.³⁶ There is no evidence that there was any consultation with the Innu about the implications of confederation.³⁷

(b) The Terms of Union

The Terms of Union made no reference to the Indians and Eskimos of Newfoundland and Labrador. Although it was apparently understood by federal and provincial officials that there would be an arrangement with the province after confederation for Newfoundland administration of Indian and Eskimo peoples,

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there was no agreement or other written understanding of this arrangement. Newfoundland was advised that the Indian Act would not be applied to Indians and Eskimos in Newfoundland and Labrador after Union, and the whole question of responsibility for aboriginal peoples was to be left in abeyance until after a provincial government had been elected. The provision in the federal government's budget estimates for special services for Indians and Eskimos was removed.

(c) Post-Union Practice

(i) The 1954 Agreement

In the period after Union a change in thinking seems to have emerged among some federal officials. What started as a reluctance to apply the Indian Act to the aboriginal peoples of Newfoundland and Labrador developed into some confusion over whether the federal government had jurisdiction over such peoples at all. While some still thought that the Indians of Labrador should be brought under the Indian Act, others seemed to consider that this was not possible and there was some confusion over who the Indians in Labrador really were. A preference seemed to emerge in these discussions that federal involvement should be limited to funding certain services rather than taking full responsibility.

In order to clarify matters, a legal opinion was sought in 1950 from the Department of Justice on the "precise legal extent of the federal government's responsibility in so far as Indians and Eskimos residing in Newfoundland and Labrador are concerned". That legal opinion, delivered by the Deputy Minister of Justice on April 14, 1950, was unequivocal. Legislative authority in respect of "Indians, and Lands Reserved for the Indians" was exclusively in the hands of the federal government and that legislative authority carried with it executive authority.³⁸

The opinion went on:

It is the responsibility of the federal government to formulate and carry out all policies that are directed at dealing with Indian[s] or Indian problems. Such policy is to be formulated by Parliament and

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the executive. This responsibility carries with it the responsibility of providing money to be devoted to the carrying out of policies in relation to the Indians.

Notwithstanding this advice, federal officials still considered that it was desirable not to assume direct responsibility but rather to enter into an arrangement with Newfoundland under which the province would administer the Indians and Eskimos of Newfoundland and Labrador. The federal government's role was just to be one of funding.

Some of the confusion in the minds of federal officials derived from the fact that the Terms of Union made no reference to Indians and Eskimos and that the earlier references to federal responsibility in the draft Terms of Union had been deleted. This issue was not dealt with directly in the 1950 legal opinion and the view seems to have lingered that since the Terms of Union were silent on the matter, Newfoundland had never relinquished control over aboriginal peoples. Thus, three years after the 1950 legal opinion, federal officials were still saying that the issue of jurisdiction was not settled in the Terms of Union, and that although the federal government had to accept some responsibility in respect of the Indians and Eskimos of Newfoundland and Labrador under the BNA Act, it had made no commitment to do so either orally or in writing.

The most extreme position was perhaps that taken by the federal Minister of Citizenship and Immigration in 1953. In a letter to the Newfoundland Minister of Public Welfare regarding financial contributions in respect of Indians and Eskimos of Labrador, the federal Minister stated "there is no legal requirement for the Federal Government to assume any responsibility whatsoever, either financial or administrative, in regard to the residents of Northern Labrador".³⁹ The public position seemed to be emerging that while the federal government was willing to provide some assistance to the residents of northern Labrador, as a response in part to the high incidence of tuberculosis, this was not to be construed as any recognition of responsibility in respect of the aboriginal peoples there.

Within the federal government, there was no unanimity on this view. Indeed, the federal government's ultimate decision to enter into the 1954 agreement to provide funding for the Indian and Eskimo people of Newfoundland and Labrador was made against a background of internal discussions in which

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officials did recognize that there was federal responsibility in this field; some even went so far to say that if Newfoundland went to court to compel the federal government to assume responsibility, the province would win.⁴⁰

The exchange of letters constituting the 1954 agreement stated that it was "designed to delimit on a long-term and more satisfactory basis, the areas of responsibility of the federal and provincial governments with regard to the Indian and Eskimo population of Northern Labrador". In respect of federal government responsibility, the agreement is clear. That responsibility consisted of assuming the costs, up to a stated limit, of capital expenditures in the fields of welfare, health and education and some administrative responsibility in respect of hospitalization. There is no indication in the 1954 agreement of the responsibility "to formulate and carry out all policies" spoken of in the 1950 legal opinion.

(ii) The 1965 Agreement

By 1964, the province of Newfoundland was very concerned about the inadequacy of the funding received under the 1954 agreement and in a letter to Prime Minister Pearson, Premier Smallwood invited the federal government to either assume full responsibility for the Indians and Eskimos of Labrador or to provide funding at a level equivalent to funding received by aboriginal peoples living in other provinces.⁴¹ This request led federal officials again to debate their relationship to the aboriginal peoples of Labrador.

A further legal opinion was requested. Again the opinion was unequivocal. The position taken by the Deputy Minister of Justice in 1950 was endorsed and the issue about the absence of any reference to aboriginal peoples in the Terms of Union was clarified. This meant, the legal opinion stated, that the constitutional position in respect of Indians applicable in the rest of Canada was equally applicable to Newfoundland. Furthermore, "... there is no provision in the Indian Act excluding any portion of Canada from its application".⁴²

Discussions of federal officials at this time indicate that they were aware that the federal government had constitutional responsibility for the Indians of Newfoundland and Labrador, and that there was no justification for treating them less favourably than other aboriginal peoples in Canada were treated.⁴³

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Nevertheless, the federal government decided to go ahead and essentially renew the 1954 arrangement. The exchange of letters between Prime Minister Pearson and Premier Smallwood dealt only with financial arrangements; no mention is made of any federal responsibility in respect of the aboriginal peoples of Labrador and it is stated expressly that the federal government did "not wish to disturb the established arrangements for provincial administration of Indian and Eskimo affairs in Newfoundland."

(iii) Subsequent Agreements

Essentially the position has remained unchanged in the subsequent federal-provincial agreements relating to the aboriginal peoples of Newfoundland and Labrador and in the more recent Canada-Newfoundland agreements dealing with the Innu communities of Sheshatshit and Davis Inlet.⁴⁴ The current contribution agreement makes no reference to any specific federal responsibility. It notes the past practice of concluding "special contribution arrangements" and states that "Canada, through the Minister of Indian Affairs and Northern development, maintains a special interest in the social and economic development of the Innu people".

(d) The Continuing Ambiguity of the Federal Government's Position

There are a number of areas where the federal government's actions appear to be guided by recognition that it does have responsibility in respect of the Innu that is not discharged simply by signing a funding agreement with Newfoundland. These include the question of direct consultations with the Innu, the issue of registration under the Indian Act, direct funding from the federal government, and some statements of government officials.

(i) Consultation with the Innu

In a 1965 memorandum to Cabinet on the issue of federal funding for the aboriginal peoples of Labrador, it was noted that unlike other enfranchised Indians, those of Labrador had been given no choice as to their status.⁴⁵ This issue of the

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absence of consultation concerned federal officials because consultation had become an important issue in aboriginal communities elsewhere in Canada. Thus, officials did not want to publicize the 1965 agreement for which it was acknowledged there had been no consultation with the aboriginal peoples concerned.

One official went so far as to say that "the concluding part of the agreement was inconsistent with the expressed policy of the federal government to consult with Indians and Eskimos in regard to matters affecting their future welfare."⁴⁶ In effect, the aboriginal peoples of Labrador were being perceived as no different from other aboriginal peoples in Canada, notwithstanding provincial administration of their affairs. However, in 1965 the federal government sought to remedy the failure to consult by placing the responsibility of consultation on the shoulders of the province.⁴⁷

Today consultation is provided for formally through a management committee set up under the Canada-Newfoundland Contribution Agreement. The Committee is composed of eight representatives; two from each of Canada, Newfoundland, Sheshatshit and Davis Inlet. However, the chair is from either Canada or Newfoundland and the committee functions under an agreement to which the Innu are not a party.

(ii) The Issue of Registration

The question of registration has been one of confusion dating back to even before Newfoundland entered confederation. Initially there seems little doubt that the Indians of Labrador were eligible for registration under the Indian Act. The issue was the desirability of registration, not eligibility. And even after confederation there were some federal officials who took the view that registration of the Innu was the more appropriate route to take. At the time of the renewal of the 1954 Health Agreement it was felt that consideration would have to be given to registering Labrador Indians under the Indian Act which, it was recognized, they could demand to have done.⁴⁸ There is no evidence, however, that the option of registration was explained to the Innu or that they were given any chance to decide whether they wished to be registered under the Indian Act or to be subject to the Canada-Newfoundland Agreement.

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In the mid-1970's there were discussions between the Innu and federal officials about registration.⁴⁹ In 1977 the President of the Naskapi-Montagnais Innu Association indicated to the federal government that they wished to be registered.⁵⁰ This application was not proceeded with by the federal government. It is unclear why the federal government took no action; an internal memorandum attached to the letter from the Naskapi-Montagnais Innu Association indicates that no reply to the letter was necessary at that time.⁵¹ It has been suggested to me that the federal government was not prepared to proceed with the registration of any aboriginal peoples in Newfoundland and Labrador while they were dealing with an application from the Micmacs of Conne River in Newfoundland. There may also have been some disagreement over whether the Innu should be registered on an individual basis, through genealogical links with the Montagnais and Naskapi in Quebec, or treated as a group in their own right.

In any event, it is clear that the government of Newfoundland and Labrador was opposed to such registration. In a letter to the then Chief of the North West River Band, the Premier of Newfoundland stated that if registered the Innu would lose educational and housing benefits for which they were eligible. In his view, "it would be a step backward for the Indians of Labrador to become registered under the Indian Act".⁵²

In the late 1980's the question of registration again arose. Apparently, by this time the federal government was prepared to register the Innu,⁵³ but for their part the Innu had concluded that they did not wish to place themselves formally under the provisions of the Indian Act. Thus, registration did not take place. Although there does not appear to be any documentary evidence of these events, and some DIAND officials to whom I spoke had no knowledge of them, it was to this, presumably, that the Minister of Indian Affairs and Northern Development was referring when he stated in a letter to the President of the Innu Nation that, "the Innu have chosen not to be registered under the Indian Act".⁵⁴

At the present time, the position appears to be that if the Innu applied for registration under the Indian Act they would be able to be registered, although this is not a view that is unanimously held by federal officials, and there has been no recent large-scale registration project like that of the Micmacs of Conne River.

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(iii) Direct Funding

In the late 1980's, the federal government began to enter into some direct funding arrangements with the Innu. Although some of these arrangements are the result of the government simply treating the Innu as eligible for federal programs, as in the case of post-secondary education and uninsured health benefits, others consist of agreements entered into formally with the Innu, generally in the area of health. For example, agreements have been concluded with the Innu Nation Health Commission and the Sheshatshiu Innu Alcohol and Drug Abuse Program. However, none of these agreements gives any indication of the constitutional basis for its conclusion nor do they indicate whether they have any relationship to the Canada-Newfoundland Contribution or Health Agreements.

(iv) Statements of Government Officials

The terms used by governmental representatives to describe the Innu people and their relationship to the federal government have been inconsistent, ambiguous and confusing. In 1975, the Minister of Indian Affairs said that the Innu were "considered by the Department to be Indians for the purposes of the Federal-Provincial Agreement with Newfoundland". In 1978 the Innu were recognized as having a land claim "based on traditional use and occupancy of lands in Labrador".

More recently, in response to the Innu document Canada-Newfoundland Agreements: An Innu Perspective, the Minister of Indian Affairs and Northern Development stated; "Canada recognizes the Innu people of Labrador as a special group of aboriginal people and has agreed to negotiate the Innu claim to aboriginal title in Labrador." Later in the same letter, the Minister refers to Canada's recognition of "the Innu aboriginal status". The letter also indicates that the Innu have chosen not to be registered under the Indian Act.

Following the January 26, 1993, incident involving an attempted suicide by six Davis Inlet children, the Minister of Indian Affairs and Northern Development issued a statement in which he again referred to the choice of the Innu not to be registered under the Indian Act, and then went further and said that the Innu

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people "have chosen to remain as unregistered non-status Indian people under the care of the Province of Newfoundland."⁵⁵

(e) Conclusions

Instead of treating the Indian peoples of Labrador as "Indians" under Section 91(24) of the BNA Act, at the time Newfoundland entered confederation, the government of Canada chose to treat them as if they were no different than other residents of the province of Newfoundland. This result was reached after consultations with the government of Newfoundland. Implicitly, the government of Canada and the province of Newfoundland agreed at that time not to apply the Indian Act to the Innu (and other Indians) of Newfoundland and Labrador. In effect, the federal government passed its responsibility in respect of the Innu on to the government of Newfoundland.

The federal government has never acknowledged that it has direct responsibility for the Innu as aboriginal peoples of Canada in accordance with Section 91(24). Nevertheless, it has implicitly recognized that it has some responsibility through the various funding arrangements with Newfoundland and with the more recent direct funding arrangements that have been entered into with the Innu. The federal government's actions following the recent crisis in Davis Inlet over the suicide attempt by six children show an increasing tendency to act as if there was direct federal responsibility for the Innu people. Nevertheless, the federal government has still sought to imply that the Innu are the responsibility of the province of Newfoundland and Labrador.⁵⁶

Moreover, the federal government has also sought to imply (and sometimes stated expressly) that the situation of the Innu is the result of their own choice. But to characterize the fact that the Innu are not registered under the Indian Act as a result of a decision by the Innu is simply misleading. There is little doubt that if the federal government had undertaken a process of registration in 1949 the Innu today would all be registered. Equally, if in 1949 Canada had wanted to establish a reserve for the Innu, there is little doubt that a reserve would have been created. Moreover, if the federal government had proceeded with registration as requested by the Innu in the 1970's the Innu today would be registered.

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But the Innu were not given any opportunity in the 1940's to decide whether they wished to be registered under the Indian Act and to have a reserve created, and the decision to leave them under the administration of the province of Newfoundland and Labrador was not one on which they were consulted. And when the Innu decided that they did wish to be registered, the federal government did not accede to their wishes. Only in the late 1980's was the federal government apparently prepared to register the Innu. By this time perceptions of the Indian Act, inside and outside of government, had changed, and coming within the Act was viewed by the Innu as detrimental to their status as aboriginal peoples.⁵⁷

In the light of the above, I conclude,

- (i) that in 1949 the Government of Canada failed to acknowledge and assume its constitutional responsibility for the Innu as aboriginal people in Canada;
- (ii) that the direct consequence of this failure was that the Innu were not given the opportunity at that time to become registered under the Indian Act and to have reserves created for the communities of Sheshatshit and Davis Inlet; and
- (iii) that to this day the Government of Canada has not acknowledged in an unequivocal way its direct constitutional responsibility for the Innu as aboriginal people in Canada.

The question of acknowledgement of constitutional responsibilities may appear to be one of form. But it is also a matter of substance. By failing to acknowledge and assume responsibility for the Innu as aboriginal people in Canada, the federal government failed to treat the Innu in the same manner as it has treated other Indian peoples who have been given the opportunity to be registered under the Indian Act and thereby to obtain the benefits that are consequential upon this. In 1947 the government of Canada indicated to Newfoundland that those benefits would include education, health care, family allowances, and conservation projects. The federal government did not provide all of these benefits to the Innu.

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The question arises whether in fact the federal government exercised or fulfilled its constitutional responsibilities towards the Innu by other means. In this regard, it is clear that the federal government does not see its responsibilities under Section 91(24) as being fulfilled solely by registration under the Indian Act. The federal government assumes some responsibility for non-status Indians and for Inuit who do not go through a process of registration. Thus, federal officials have suggested that the funding arrangements with Newfoundland could be regarded as proper mechanisms for the fulfilment of federal government responsibilities in respect of the Innu as aboriginal peoples.

However, the result of the way in which the federal government and the government of Newfoundland have chosen to deal with the Innu has led to the impression that Newfoundland has almost a constitutional responsibility in respect of the Innu as aboriginal peoples. This authority is viewed at times by federal officials as tying the hands of the federal government in dealing with the Innu on matters that in respect of other aboriginal peoples in Canada would be undeniably within the jurisdiction of the government of Canada.⁵⁸

This is clearly illustrated by the recent events over the decision to relocate the community of Davis Inlet. On February 9, 1993, the Minister of Indian Affairs and Northern Development announced that the federal government had agreed to the relocation of the Davis Inlet community, but made the decision on where the Mushuau Innu were to go dependent on the province of Newfoundland.⁵⁹ The implication was clear: the province of Newfoundland was going to have a veto on the matter. Subsequent events have reinforced this conclusion.

Regardless of the form in which the federal government has chosen to exercise its responsibilities, the question is whether it has met appropriate standards of conduct applicable in its relations with the Innu. The starting principle for assessing the conduct of the government of Canada towards the Innu is the fiduciary obligation that the government has towards aboriginal people in Canada. The federal government can only argue that it has carried out or fulfilled its constitutional responsibilities in respect of the Innu by its arrangements with the government of Newfoundland if it can show that it has thereby properly executed its fiduciary obligation.

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In this regard there is an initial, and quite fundamental, problem. By failing to offer the Innu the opportunity of registration under the Indian Act, the federal government discriminated against the Innu. It treated them differently from other Indian people who had been given that opportunity. It also deprived them of access to benefits and services provided to status Indians.

Whether the Innu were deprived of those benefits in fact, can be determined only in the light of an assessment of the level and quality of services received by the Innu since 1949 and of their treatment by the federal government and the government of Newfoundland. Thus, a final answer to this question will be given after other complaints of the Innu Nation have been considered.

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Complaint No. 2

As a result of the failure of the government of Canada to recognize the particular constitutional status of the Innu and to deal with them directly as aboriginal people, the Innu have not received the level and quality of services received by other aboriginal peoples in Canada.

In the light of the conclusion that the failure of the federal government to acknowledge and assume direct responsibility for the Innu in 1949 had the consequence that the Innu were not brought within the Indian Act, the appropriate measure for determining whether the Innu have received the level and quality of services received by other aboriginal peoples in Canada is to compare their situation with that of other aboriginal peoples who are registered under the Indian Act and who obtain the full benefits that are available from that status -- that is, Indian people who are status and on-reserve.

Such a comparison is not without difficulty and in the view of some federal officials it is practically impossible to make. Each Indian band or community is seen as having its own characteristics and needs, and comparisons between bands across provinces are complicated by the policy of DIAND to provide a level of services to status, on-reserve Indians similar to that available to the non-aboriginal community in the same province. Under such a policy, there will be an inevitable variation between bands on a province-by-province basis, and differences can even occur between localities within provinces. Moreover, in the case of the Innu, the cost of the services they receive cannot easily be segregated from the total cost of the services provided by the Newfoundland government to all residents of northern Labrador.

Notwithstanding these difficulties, some comparisons can be made and some general conclusions can be drawn about the situation of the Innu since 1949.

The question of the level of services will be addressed first, followed by the question of whether the federal government has met its obligations as a "fiduciary".

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(a) The Historical Pattern

(i) The Level of Funding

The immediate consequence of the failure to bring the Innu under the Indian Act in 1949 was that while the level of benefits received by status, on-reserve Indians elsewhere in Canada increased significantly from the 1950's on, those benefits did not accrue automatically to the Innu. The consequence of leaving responsibility for the Innu to the Province of Newfoundland and Labrador was that the standard for receiving benefits was the standard provided by the province to all residents of Newfoundland; it was not the standard set by the government of Canada for aboriginal people across the country to whom the Indian Act applied. Any changes to or improvements in the services provided to the aboriginal peoples of Labrador depended upon the renegotiation of the agreement between Canada and Newfoundland.

This deficiency was noted by the Royal Commission on Labrador in 1974. The Commission pointed out that while the standard set in the 1970 Canada-Newfoundland Agreement was that of the level of the benefits received by the aboriginal people of northern Quebec, in fact the federal government had been using 1965 figures and not 1970 figures for northern Quebec in establishing the amount to be paid under the agreement. The conclusion of the Commission was that "the Indian and Eskimo people of Labrador are not now receiving anything like the benefits which would be available to them under Federal Government financing elsewhere in Canada".⁶⁰

However, the Commission pointed out, the lower level of funding received for the aboriginal people of northern Labrador was not just an oversight: "... Ottawa was acknowledging, at least within its own walls, that it was consciously supporting and advocating a policy of discrimination against the native people of Labrador".⁶¹ To compound this, there were consistent allegations that the moneys under the agreement were not being used for the Indian and Eskimo people alone, but were being used by the province for services in northern Labrador that were not limited to aboriginal peoples.

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(ii) The Administration of Programs

Another consequence of the funding arrangement adopted by Canada and Newfoundland was that, unlike the case of other aboriginal peoples in Canada, the Innu have had a third-party, the province of Newfoundland, interposed between them (the recipient) and the funder (the federal government). At one level this simply creates a greater administrative burden and provides the opportunity for each level of government to try to shift responsibility for particular issues to the other. This causes difficulty for peoples who are operating without the resources or expertise that has been built up in other sectors of society for dealing with governments.⁶²

Beyond this, there is a more fundamental disadvantage that has been suffered from this tripartite relationship. Newfoundland has no constitutional responsibility for aboriginal peoples. It has responsibility for all of the residents of the province and that has been the historic basis on which it has premised its treatment of the Innu and other aboriginal peoples. Thus, what the Innu have perceived as a denial of their fundamental rights as aboriginal peoples, the government of Newfoundland has seen as the equal application of its laws to all residents of Newfoundland and Labrador. This has been particularly evident in the application of Newfoundland wildlife laws to the Innu,⁶³ which has led to repeated requests from the Innu to the federal government to intervene with the province.⁶⁴

Equally, the Province of Newfoundland has had no infrastructure of the kind developed by the federal government to deal with the issues of aboriginal peoples, and the federal government has not had the incentive to build up a concentration of expertise with respect to the Innu and their issues. It is only in recent years that responsibility for dealing with the administration of the federal government's relations with the Innu, including the Canada-Newfoundland Contribution Agreement, has been moved to the regional office for the maritime provinces and thus allowing for the development of knowledge, expertise and institutional memory.

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(iii) Access to Federal Funds

While the conclusion of direct funding agreements has opened access to funding that had not previously been available, it is not always clear whether the Innu are in fact eligible for certain federal programs or not. The problem is illustrated by the statement by the Minister of Indian Affairs and Northern Development who in 1975 wrote that if the peoples of the communities of Sheshatshit and Davis Inlet formed themselves into an association, they would be eligible for CORE funding from the Secretary of State.⁶⁵ Over a year after the formation of the Naskapi-Montagnais Innu Association, the Association's officers were still writing to the Minister asking why the Secretary of State had in fact refused them funding.⁶⁶

(b) The Situation Today

Without citing concrete comparative figures, many federal officials appear to be of the view that while amounts on specific items may differ, overall the level of support received by the Innu would be comparable to that received by a similar-sized group of aboriginal people elsewhere in Canada. Other officials consider that in certain areas, the Innu probably do not receive an amount comparable to other groups and the area of economic development is sometimes cited as an area where the Innu are disadvantaged.

There is also concern over the actual application of the Canada-Newfoundland Contribution Agreement. Newfoundland's ten percent share is not a cash contribution, and there is scepticism among both the Innu and federal officials over whether that ten percent ever shows up anywhere. For their part, some Newfoundland officials consider that their contribution to the Innu both through the services they provide to all residents of Newfoundland (and hence to the Innu) and through the benefits of the contribution agreement do not put the Innu at a comparative disadvantage. Increasingly, however, Newfoundland officials are questioning why they let themselves get into the position whereby they assumed financial obligations that would have been assumed by the federal government if the Innu had been registered under the Indian Act and on reserve.

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While the evidence is not complete, there is strong support for the view that the Innu are in fact seriously disadvantaged financially by the present arrangements. A comparison can be made between the funding received by the Davis Inlet community and the funding received by an equivalent Indian community in Nova Scotia to which the Indian Act applies. On the basis of figures supplied by DIAND, a similar-sized Nova Scotia band received approximately \$4.1 million in funding under a Master Funding Arrangement with DIAND for the 92-93 fiscal year, exclusive of funding for economic development. Of this, approximately \$1.7 million was for education and \$1.6 million for social development. An additional \$60,000 was received for economic development.

By contrast, figures derived from information provided by the Band Council of Davis Inlet, Newfoundland Social Services and the Innu Nation indicate that the funding received by the Davis Inlet community for 1992-93 is more in the range of \$2.4 million, of which \$824,000 was for education and approximately \$500,000 for social services.⁶⁷ An additional \$40,000 was received for economic development. Moreover, these figures understate the case, for they do not reflect the fact that status residents of a reserve in Nova Scotia enjoy certain tax exemptions not available to the Innu.

Even taking into account any costs that may be hidden in the infrastructure of the government of Newfoundland for the delivery of education and social services, the disparity is substantial. It calls into question both adequacy and equity in the provision of funds to the Innu under existing arrangements.

(c) Conclusions

First, there is no doubt that in the early years of the bilateral agreements between Canada and Newfoundland in respect of the aboriginal peoples of Labrador, the Innu did not receive financial contributions equivalent to what would have been received by other aboriginal groups who were entitled to benefits under the Indian Act. The Royal Commission on Labrador made this point clearly in 1974, and it has not been controverted.

Second, it was not until the late 1980's that the Innu were granted access to a wider range of federal programs, through direct funding arrangements, that would

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supplement the resources coming from the Canada-Newfoundland contribution agreement. But still today the Innu are not eligible for all programs that other aboriginal peoples have access to and their eligibility often depends on ad hoc decisions rather than on the consistent application of some principle of eligibility.

Third, the Innu have functioned within the framework of a provincial system that treats them as no different than the other residents of that province. Their special status as aboriginal peoples has not been the basis on which the government of Newfoundland has dealt with them.

Fourth, unlike aboriginal peoples to whom the Indian Act applies who deal directly with the federal government, the Innu have had to deal with the bureaucratic structures of two levels of government, of which the primary level has been Newfoundland. This has led to inefficiency in the organization of their own efforts in dealing with government and confusion over which level to deal with on a number of issues.

Fifth, the denial of a direct relationship with the federal government has deprived the Innu of the opportunity to be dealt with by a bureaucratic and administrative structure that has a mandate to deal specifically with aboriginal peoples as peoples entitled to rights that are different from those to which others in society are entitled. While there may be controversy over the nature of the expertise available in DIAND, it is different from the kind of expertise that can be built up in a provincial administration with no mandate to deal with the particular interests of aboriginal peoples.

In the light of the above, I conclude that the failure of the Government of Canada to acknowledge and assume direct responsibility for the Innu as aboriginal people which resulted in the failure in 1949 to apply the provisions of the Indian Act to them, has meant that the Innu have not received the same level and quality of services as are made available by the federal government to other aboriginal peoples in Canada.

The question arises whether the failure of the federal government since 1949 to provide the Innu with the level and quality of services made available to other aboriginal peoples in Canada constitutes a breach of its fiduciary obligation towards the Innu?

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The obligation imposed on the government of Canada by virtue of its fiduciary relationship with the Innu is a strict one. At the very least it involves an obligation not to discriminate. It is an obligation that in 1949 would have required the government of Canada to treat the Innu in the manner that other aboriginal peoples in the same situation were being treated. This would have involved the opportunity to be registered under the Indian Act and to have a reserve created. In this regard the federal government cannot be said to have met the appropriate standard because it did not provide the Innu with the same opportunity in 1949 that it had provided to other Indian peoples and it did not then or in subsequent years provide a level and quality of service that it had made available to other aboriginal peoples in Canada.

But the obligation on the federal government surely goes further than a duty not to discriminate. It involves an obligation to act for the benefit of aboriginal peoples,⁶⁸ and to take whatever measures are appropriate in the light of the particular circumstances of the "trust" and the actual needs to which those circumstances give rise.⁶⁹ What was appropriate in respect of the Innu in 1949 and subsequently depended on their particular needs, including such matters as health, education, spiritual and material well-being, housing, access to water, and sewage facilities. Thus, treatment equivalent to that received by other aboriginal groups may not of itself be sufficient to meet the standard for a "fiduciary" or to meet generally recognized human rights standards that are equally applicable to the relationship of the government of Canada to the Innu.

In any event, it is clear that in the present case the standard of equality with other aboriginal groups was not even met and thus the fiduciary obligation was not met.

In light of the above, I conclude that the failure of the Government of Canada to provide a level or quality of services to the Innu similar to that provided to other aboriginal peoples in Canada constitutes a breach of its "fiduciary obligation" to the Innu as aboriginal people in Canada.

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Complaint No. 3

The failure by the Government of Canada to recognize the particular constitutional status of the Innu and to deal with them directly has also denied the Innu the opportunity to control their own affairs through self-government, to have control over the management of matters such as health, housing, welfare, education, and policing, or to control their own infrastructure and other essential programs.

To a certain extent the problems that have emerged in the access of the Innu to services as a result of the failure of the federal government to acknowledge and assume responsibility for the Innu as aboriginal peoples in Canada, are similar to those that arise in the areas of self-government and control over programs. The concept of self-government has no place in the way in which the province of Newfoundland and Labrador normally organizes the affairs of its residents. This is not to suggest that Newfoundland is presently opposed to the idea of self-government for the Innu.⁷⁰ Rather, the point is that self-government for aboriginal peoples is not a concept that fits readily into a legal system that is based on the premise that all peoples in the system should be treated in exactly the same way.

By contrast, the constitutional recognition of a special responsibility in the federal government for aboriginal peoples has resulted in a longstanding acceptance of the idea that the federal government can establish regimes for aboriginal peoples that are not applicable to the non-aboriginal population of Canada. Self-government is a concept that the government of Canada has recognized for aboriginal peoples and for which policies and negotiating mechanisms have been developed.⁷¹

A similar situation exists with respect to control over such matters as education, housing, health, welfare and policing. The province of Newfoundland provides these services to all residents of the province, including the Innu. The demand of the Innu for control over these services as they apply to them represents a request for treatment different from that accorded to other residents of the province. This is demonstrated by efforts of the Innu to negotiate control over education in Sheshatshit and to have two aboriginal police officers recognized in

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Davis Inlet. In each case the Innu have had to negotiate directly with the province.⁷²

By contrast, devolution of services is a logical corollary to the federal government's self-government policy for aboriginal peoples and it is expected that those bands that have established self-government arrangements will have already begun, or will have a framework for, a process by which they will gain control over services or contract for them directly.

It is of course impossible under Canada's constitution to implement self-government arrangements or to provide for the devolution of services to aboriginal peoples, without some involvement by the province in which the aboriginal community is located. Such matters as the designation of lands as a reserve or the utilization of provincial social or educational services have to enter into the discussions. Accordingly, in self-government negotiations in which the federal government is involved elsewhere in Canada, the province is often fully consulted and is frequently at the table.

The particular problem faced by the Innu, as a result of the failure of the federal government to assume direct responsibility for the Innu as aboriginal people, is that the province of Newfoundland has implicitly been given a role in self-government negotiations that is greater than the normal role of a province in any self-government negotiations between the federal government and aboriginal peoples. As mentioned earlier, the effect of the arrangement that has been in place since 1949 has led to an implicit assumption that the province has almost a veto over matters that would otherwise be regarded as within federal jurisdiction.

This situation is illustrated in the letter of the Minister of Indian Affairs and Northern Development advising the Innu Nation of the willingness of the government of Canada to enter into negotiations on self-government. The Minister indicates a preparedness to enter into negotiations on both self-government and the devolution of the delivery of programs and services. However, the letter makes clear that there will be tripartite meetings with the province on the devolution of services and programs, and states further that a copy of the letter will be sent to the Premier of Newfoundland "given the required involvement of the Province of Newfoundland in Innu self-government and in the transition to that goal...."⁷³

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The clear implication of this statement is that the province of Newfoundland is an essential partner in self-government negotiations and that in fact the negotiations cannot proceed without the province being at the table. But this position stands in contrast to the policies enunciated by DIAND in respect of Indian Self-Government Community Negotiations. The "Policy Statement on Indian Self-Government in Canada" which describes the objectives of self-government negotiations states:

In some areas it may be necessary to secure the involvement and cooperation of provincial governments. Community negotiations, however, will not alter the division of powers between the federal and provincial governments but will, through practical measures, attempt to accommodate Indian governments within the existing constitutional framework. Hopefully, provincial governments will cooperate in recognizing and making room for strong Indian governments. This would be to the advantage of all levels of government in Canada. The involvement of provincial governments in the negotiation process will only take place with the mutual consent of all concerned.⁷⁴

A parallel statement on the negotiating process provides:

Depending on the issues under discussion, provincial governments may also be required to participate in negotiations. However, provincial involvement would require the mutual consent of all parties.⁷⁵

The difference between the stated policy on provincial involvement in self-government negotiations and the particular position taken with the Innu is manifest.

If the Innu had a direct relationship with the federal government and had been funded directly, the issue of self-government would have been dealt with in direct negotiations between the federal government and representatives of the Innu people. The province would have been involved from time to time as and when necessary, but its presence would not have been required in all negotiations and the involvement of provincial representatives would itself have been the subject of negotiations between the Innu and the federal government.

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The "required" involvement of the government of Newfoundland in self-government negotiations, mentioned in the November 23, 1992 letter of Minister Siddon, poses a particular difficulty in view of the history of the relations between the Innu and provincial authorities. The view of the Innu that the province has consistently tried to treat them as residents of the province of Newfoundland with no particular recognition of their special status as aboriginal peoples will make tripartite negotiations on self-government problematic. The point is that there is no reason why such negotiations have to be tripartite in respect of the Innu when they are not so for other aboriginal peoples in Canada.⁷⁶

In the light of the above, I conclude that the failure of the Government of Canada to assume responsibility for the Innu as aboriginal people in Canada has impaired the ability of the Innu to move towards self-government and to obtain control over programs and services that affect them. The existing arrangements will inhibit future negotiations on self-government and devolution of programs and services.

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Complaint No. 4

The Mushuau Innu have been subjected to three relocations since 1947 which have had disastrous consequences for them. In particular, their present location at Utshimasits does not provide them with adequate housing or services and it impedes their ability to pursue their traditional hunting pursuits, resulting in a high level of social dysfunction. Relocation of the Mushuau Innu to a new community is essential.

(a) Relocation to Nutak

Early accounts suggest that the Mushuau Innu used to come in the summer to both Davis Inlet and Voiseys Bay. However, the regular visits of a priest, Father Edward O'Brien (known to the Innu as Father Whitehead), to Davis Inlet resulted in the Voiseys Bay Indians eventually moving to Davis Inlet. In the late 1930's the Newfoundland Ranger responsible for Davis Inlet encouraged some of the Innu at Davis Inlet to move back to Voiseys Bay where he said there would be work. In fact there was no work in Voiseys Bay and the families had to return to Davis Inlet with little food and in an emaciated condition.⁷⁷

The records of the 1920's and 1930's show that the Mushuau Innu were often in dire circumstances. The diversion of their traditional hunting efforts into fur-trapping for profit had made them particularly vulnerable to seasonal changes in the abundance of wildlife and in the 1920's government relief began to be provided. From time to time a shortage of caribou led to starvation among the Mushuau Innu who were equally vulnerable to disease. Reports also indicate that social problems existed amongst the Innu at that time, often resulting from the use of alcohol.

In 1942 the Newfoundland authorities took over the Hudson's Bay depot at Davis Inlet, which the Company had been unable to run at a profit,⁷⁸ and placed it under the jurisdiction of the newly created Northern Labrador Trading Operations. However, as time went on the Newfoundland authorities also had difficulty running their northern posts profitably. In 1945, the Northern Labrador Trading Operations brought in \$45,000 from the fur trade; in 1948 revenues were only \$3,000.⁷⁹ In 1944 there were discussions about closing the post at Davis

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Inlet,⁸⁰ and in 1946 plans for closing the post during the winter months were articulated.⁸¹ By the middle of 1947 it appeared that a decision had finally been taken to close the post at Davis Inlet.⁸²

During this period relief provided to the Innu at Davis Inlet was rising⁸³ and the view was developing among some Newfoundland officials that the Innu were becoming completely dependent on government relief. It was believed that instead of going hunting in the summer months, the Innu were going a few miles up-river and then waiting until their supplies ran out before returning to Davis Inlet.⁸⁴ The view developed amongst some officials that the Innu should be treated more like the white population and integrated into the economy, particularly by encouraging them to engage in fishing.⁸⁵

In 1948 a decision was taken to move the Mushuau Innu north to Nutak. It is not clear when or at what level that decision was made and as late as June 1947 the post manager at Davis Inlet, Max Budgell, did not seem to be aware of any plans to move the Mushuau Innu.⁸⁶ However, the idea of centralising aboriginal residents who were scattered along the coast goes back at least to the nineteen-thirties.⁸⁷ Moreover, the implications of the post closure at Davis Inlet for the Mushuau Innu had been in the minds of government officials. Budgell believed that once the post was closed, the Innu would "drift to Hopedale".⁸⁸ However, the perceived opposition of the Moravian Mission in Hopedale to the Innu moving there was stated as the reason for not closing the post in 1946.⁸⁹

Father O'Brien was informed of the relocation of the Mushuau Innu by the "Chief", Joe Rich,⁹⁰ who apparently had been taken to Nutak before the relocation to see the area.⁹¹ The actual move was completed by boat (the "Winnifred Lee"). The Innu were placed in the hold with the cargo,⁹² although some managed to pitch tents on deck, and were transported up the coast to Nutak, stopping just outside Nain to allow the Newfoundland Rangers to come on board to arrest one of the Innu whom they had been seeking for some time.⁹³

After their arrival in Nutak the Innu were provided with tents, clothing and food.⁹⁴ However, the area surrounding Nutak was treeless, and some of the Innu lived initially in the shacks that were used for storing firewood for the Inuit for whom the Innu were "put to work cutting timber".⁹⁵ Others pitched their tents using firewood. Within a few weeks they moved to treed areas around the bays,

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including Okak Bay, and set up their tents. However, much of the area was barren ground which made hunting difficult. The Innu also engaged in cod fishing and trout fishing with some success according to the Innu and to government reports.

Generally the Innu were not happy at Nutak and so informed Father Cyr when he visited them there.⁹⁶ At the end of their second winter they decided to return to Davis Inlet. Joe Rich in particular had decided that he did not want to stay. His relationship with Max Budgell had apparently deteriorated and he was deeply affected by the drowning of one of his sons.⁹⁷ Although some of the younger Innu were not unhappy at Nutak, the older Innu were dissatisfied with the conditions for hunting and they readily agreed to go back to Davis Inlet. All of the Innu returned to Davis Inlet via Nain by foot, re-establishing themselves at the place they had lived before being moved to Nutak.

To this day the Innu do not know why they were moved to Nutak. They were not consulted in advance, and while government representatives obviously discussed the matter with Joe Rich, there is no indication that Joe Rich either had decision-making authority for the Mushuau Innu or was invited to exercise any judgment about the desirability of the move.⁹⁸ His letter to Father O'Brien, indicated that they hoped to get more "deer" (caribou) than at Davis Inlet, a reason for the move somewhat different from that articulated by government officials.

Contemporary government reports suggest that the move to Nutak was designed to provide employment for the Innu. This policy of relocating the Mushuau Innu to Nutak and "teach[ing] them to fish" was described in the October 1949 report to the Newfoundland government of Harold Horwood, M.H.A.⁹⁹ as "monstrous but necessary", and Horwood stated that the "servile labour" of cutting wood for the Inuit at Hebron was "better than the enforced idleness they suffered at Nain and Davis Inlet". The comment encapsulates a contemporary attitude; aboriginal people had to be integrated into some sort of economic activity. As Horwood said earlier in his report, the policy of the Commission of Government was to "make white men" of the Indians and Eskimos. However, he argued in his report, "the effort to make the native a productive producer for the world's markets should be written off as a failure".¹⁰⁰

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Was the relocation just a misguided effort to provide the Innu with employment? Was it a humanitarian act designed to assist a people who were in a dire economic condition? Although one of the stated reasons for the move was that the hunting grounds at Davis Inlet were no longer productive, when government representatives spoke of non-productive hunting grounds they were referring to fur-bearing animals.¹⁰¹ They were less concerned with caribou on which the Innu traditionally depended. Caribou hunting was a subsistence, not a profit-making, activity.

And even if there was a concern about caribou-hunting, there is no evidence of the caribou having disappeared from traditional Mushuau Innu hunting grounds. Although the winter of 1948 had apparently been hard and there had been some starvation,¹⁰² the Innu do not recall that there was a particular shortage of animals in their hunting grounds near Davis Inlet or that the situation was dramatically different from previous years. In fact, in 1947 Max Budgell had identified the problem in productivity not to an absence of animals; rather, he said, the Innu would not hunt. In his view the Innu had become dependent on government relief and were reluctant to go into the country.¹⁰³ Moreover, there is no indication of any attempt to assess hunting conditions at Nutak, which in the end turned out not to be as favourable as those near Davis Inlet.

If, on the other hand, the objective was to bring the Mushuau Innu into the fishing economy, which Horwood certainly identified as an objective of relocation, then there was no need to relocate them. There is no evidence that the fishery near Nutak was any better than the Davis Inlet fishery. What was different was that there would be a government depot at Nutak, but none at Davis Inlet once the existing depot was closed. A government depot was essential if the Innu were to be integrated into the fisheries economy, as there had to be somewhere they could sell their fish. The fishery and cutting wood for the Inuit were to provide an economic return for the Innu. In this way the cost of government relief could be reduced.¹⁰⁴

In other words, the decision to relocate the Innu to Nutak was a consequence of the decision to close the government depot at Davis Inlet. It was a decision guided by a belief that the Innu should become economically productive and based on the administrative convenience of the location of the government depot. Moreover, the perception that there would be opposition from the Moravian

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Mission to the Innu coming to Hopedale meant that some alternative had to be provided. That alternative was the relocation of the Innu to Nutak where there was a government depot managed by Max Budgett in whom the Innu generally had confidence.

This is not to deny that the government officials involved may have believed that they were acting in the best interests of the Innu. But their assumptions had nothing to do with the Innu's view of the world, nor did they attempt to understand what that view was through discussions with Innu other than Joe Rich or through community meetings or consultations. No-one asked the Innu if they wanted to change from their traditional hunting activities to commercial fishing. No-one asked if they wished to move away from an area with which they had been associated for many years. The perception of government officials of what was in the best interests of the Innu was grounded in an assumption that the Innu had to be made to become "white men", that is integrated into white economic society. And the officials also had a conflicting obligation to do what was best for the Northern Labrador Trading Operations.

Moreover, the lack of consultation with the Innu on what their interests and wishes might be was compounded by a failure to make a serious comparison between the situation at Davis Inlet and the situation at Nutak. Thus, the lack of trees, so necessary for the Innu to put up their tents and live with some degree of comfort, the extensive barrens that made hunting difficult, and the lack of a comparison between the hunting conditions or even the conditions for fishing at Davis Inlet and Nutak, all indicate that the move was not fully thought out. The Innu were dealt with as people who could be moved at will, and changed by government decision from hunters to fishers.

In the light of the above, I conclude,

- (i) that the relocation of the Mushuau Innu to Nutak was undertaken without any real consultation with the Innu and without their consent;
- (ii) that there was very little knowledge or understanding of who the Innu were as people at that time and government officials assumed that they could make decisions for the Innu;

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- (iii) that there is no evidence of a serious comparison of the conditions the Innu would face at Nutak with those that existed at Davis Inlet;
- (iv) that the decision to relocate the Mushuau Innu was motivated by the fact that the government depot was to be closed at Davis Inlet and by the belief that the Moravian Mission at Hopedale would be opposed to the Innu coming to the government depot at Hopedale.
- (v) that the decision to relocate the Mushuau Innu was taken against a background of an assumption that white officials knew what was in the interests of the Innu and of a policy that sought to turn the Innu into "white men" and to integrate them into the economy primarily through fishing.

(b) Relocation to Iluikoyak Island

The idea of again relocating the Mushuau Innu, and even of relocating the North West River Innu, had currency throughout the 1950's. In 1951 the Minister of Public Welfare of Newfoundland wrote to Premier Smallwood about moving the Innu of North West River to Schefferville,¹⁰⁵ and a conference on Labrador in 1952 has on its agenda the resettlement and possible amalgamation of Indian groups.

In 1952 the government depot at Davis Inlet was re-opened at its old site across the bay (the "Run") from the Roman Catholic Mission,¹⁰⁶ even though there had been doubts about the adequacy of the harbour and waterfront at the depot site.¹⁰⁷ Contemporary documents indicate that government officials continued to speculate about ways to integrate the Innu into the white economy,¹⁰⁸ but that they did not consider the Davis Inlet area to be a place where this could be done. Suggestions were made to move the Mushuau Innu closer to North West River so that over time the two groups would merge.¹⁰⁹ The theme of merging the Davis Inlet and North West River Innu was repeated by both government and church officials in 1956.¹¹⁰

In a 1957 report, W.G. Rockwood indicated that a decision had already been taken to assist Davis Inlet Innu to move to North West River, but that they were

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reluctant to go. The possibility of some of the Mushuau Innu moving to Schefferville was also raised.¹¹¹ In 1959, the Minister of Citizenship and Immigration of the federal government was informed of a project to relocate the Davis Inlet Innu to North West River.¹¹² No such relocation took place, although it has been reported that during the next seven to eight years some seventeen families did move from Davis Inlet to North West River,¹¹³ some for treatment of TB at the hospital there.¹¹⁴

In the early 1960's concern was again expressed about the adequacy of the site for the government store at Davis Inlet and it was suggested that it be moved to a location some 20 miles away.¹¹⁵ In the mid nineteen-sixties a housing program was developed for Davis Inlet, but it was concluded by government officials that the existing townsite was unsatisfactory.¹¹⁶

At this time a difference of view emerged between the representatives of the Roman Catholic Church. The priest in North West River (Father Pirson) supported by the priest in Happy Valley (Father de Harveng) took the view that the Mushuau Innu should be relocated to North West River where there were better opportunities for schooling, health and housing.¹¹⁷ This was opposed by the priest of Davis Inlet, Father Peters, who considered that the Mushuau Innu should stay in the area they regarded as home and in which there was a good supply of food. In Father Peters' view health was better in Davis Inlet than in North West River (by this time there was no TB in the community) and the only benefit from moving to North West River would have been the opportunity for education.¹¹⁸ Father Peters was very much in favour of moving to a new site in Davis Inlet -- a project that has been described by the Mushuau Innu as Father Peters' "new idea".¹¹⁹

This dispute was taken seriously by government officials and the opinion of the Bishop was at least informally sought. In fact, it was not until they learned that the Church officially supported relocation to a new site in Davis Inlet and not to North West River, and would build a mission at the new site, that Newfoundland officials fully committed themselves to the relocation.¹²⁰

The question of whether or not to move to North West River was apparently discussed with the Mushuau Innu and contemporary documents record a vote having been taken among the Innu at a meeting on April 9, 1966.¹²¹ Few Innu

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have any recollection of a vote being discussed and none recall participating in any vote. One elder recalls a government official (Max Tiller) telling them that they would have a vote and that if 50% were in favour of going to North West River then they would all be moved there. This elder's recollection was that all of the Innu refused to cast a ballot. In any event, Innu elders recall, most people did not want to move to North West River.

Whether or not a vote took place on relocation to North West River, it is clear that there was no vote on whether to relocate to the new site on Iluikoyak Island nor was there any formal consultation. Some Innu recall a meeting with government officials when they were told that they would have to relocate because the existing site was too small and rocky for building new houses. They were told that a new site was being looked for that had sandy soil and good deep water for a wharf.

The chief, Joe Rich, and the council appointed by the priest, were the only Innu involved in looking for a new site.¹²² The decision on the specific site chosen was made by "mostly the government people" according to a recent Innu account, although one Innu report states that "Mr. Peters and Joe Rich were the ones who picked out the site for Davis Inlet".¹²³ Some Innu claim that no serious attempt was made to look at the mainland,¹²⁴ and that everyone knew that Iluikoyak Island would be chosen (an area with which they were all familiar) because the government officials wanted a place for a wharf.

It is likely that the priest, Father Peters, played a leading role in the choice of the site and relocation. He was a dominant figure, who Innu describe as someone "who did lots of good things for the Innu", and who was always making decisions for the Innu on what he thought was best for them. He apparently dug the well that led to the conclusion that there was sufficient water and he was a strong advocate of the site as early as March 1966.¹²⁵ He has stated that the Innu who inspected the new site were in favour of it and that "the decision to move to the new site was done with the approval of the Innu, but not with a consultative vote".¹²⁶

For their part, the Innu consider that the decision on the site was made essentially by Father Peters, Joe Rich and government officials.¹²⁷ There was no consultation and the question of approval or disapproval by them did not arise.

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No one was really opposed to the move,¹²⁸ and as they point out, in the light of what they were led to believe they were going to get at the new site, who could have disagreed with such a move?

Although water supply was obviously an important factor, in fact there was no systematic assessment of the availability of water. An impression was gained, from the existence of a small brook, from the surface water, and from the well dug by Father Peters, that there would be sufficient water but "no testing was done for deep well water supply",¹²⁹ and no-one was looking ahead to an increase in the population of the Mushuau Innu. Perhaps more important at the time was the fact that the site was perceived to have a good deep water capacity for a harbour and wharf and thus would be a good location for the government store. A surveyor was sent to the site, not for the purpose of determining its suitability, but rather to lay out plans for a town, dock and warehouse on a site that had already been chosen.

The fact that the Innu were to be moved to an island and thus cut off from their hunting grounds for not insignificant periods during the year does not seem to have surfaced as an issue. However, the fall and spring freeze-up and break-up had been identified as a problem when the store was located on an island while the Mission and the Innu were on the mainland and given as a reason in support of relocation.¹³⁰ But even if the freeze-up and break-up issue had been considered, it would probably have been discarded, because the notion that the Innu would be encouraged to engage in fishing as an economic activity was very much alive. An attribute of the new site was seen to be that it was "not too far from fishing grounds".¹³¹

A key consideration in the relocation was the expectation of the Innu as to what they would receive at their new site. On this Innu elders are virtually unanimous. Their understanding was that houses would be built for them, that the houses would have basements, running water, sewage, furnaces and some furniture. Whether or not such an expectation was realistic or not in a remote Labrador community in 1967 is beside the point. The fact is that this was the uniform understanding of the Innu at that time, and for that reason they considered that they had no choice but to make the move. That is the sense in which it can be said that they "consented" to the move to the new site on Iluikoyak Island.

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How could the Innu have been left with this impression? Some of the Innu recall a meeting when government officials spoke of these things and Father Peters translated. Joachim Nui and Philip Rich were present at a meeting with Ross King, Eric Evans (the storekeeper), Father Peters, Joe Rich, Jerome Rich and David Rich,¹³² when they were told about the houses they would be getting in the new community. At that time they were told what the houses would be like. Others recall hearing Joe Rich speak of the houses on the basis of what he had been told by "government people". Because Joe Rich was the only Innu with access to government officials¹³³ what he said was accepted by the other Innu as representing the government's position.

There is no doubt that running water was in Father Peters' mind at that time. On March 8, 1967, he wrote to R.S. King asking whether it would be possible to have a water supply in each house or a general water supply for the village that would work year round without freezing. He went on: "what will be the hygiene and cleanliness in the houses if they have to carry water in a pail...."¹³⁴ In August of the same year, he wrote again to King saying, "We will discuss too a way of keeping pumps from freezing under houses The water is there so we have to find a way of keeping it during the winter."¹³⁵ And the expectation of running water must have been shared by those letting the contracts for the construction of the houses, as bathrooms and toilets were installed.

When Joachim Nui was working with the contractors building the houses, he realized that no basements were being constructed. He drew this to the attention of the foreman who told him that basements were to come later. Philip Rich also asked why basements were not being constructed and was told by the carpenters that water and sewage were going to come later.

The Director of Northern Labrador Services, R.S. King, was obviously aware of an expectation that there would be running water in the houses in Davis Inlet, for he noted in his annual report for 1968 that the problem of installing water in the houses was one of expense because of the problem of freezing in the winter.¹³⁶ While that proposition may not have been astounding in 1968, (particularly when the expected basements had not been constructed) what is incredible is that twenty-five years later the matter has still not been remedied.

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The federal government was not unaware of what was happening in the Davis Inlet relocation. In 1965 the federal-provincial committee set up under the renewed Canada-Newfoundland agreement providing financial assistance in respect of the Indians and Eskimos of Labrador was told of the possibility of relocating the Davis Inlet Innu to North West River.¹³⁷ At the third meeting of the Committee, in 1966, the plan for building houses at the new site was discussed and the federal share of the cost mentioned.¹³⁸

At the next meeting, on being advised that the relocation had not yet taken place, the federal representative suggested that perhaps a study should be undertaken which "would be helpful in determining the wisdom of having the Indians move".¹³⁹ It was left to the provincial authorities to decide whether to undertake such a study. Federal officials returned to the idea of this study at the next meeting and expressed concern that relocation was going ahead without such a study being done. The matter was not pursued and the relocation went ahead.¹⁴⁰

Not only did the houses lack the amenities expected by the Innu, but the quality of the buildings was poor. By February 1968, the government representative in Davis Inlet was reporting that houses constructed in the previous summer were leaking at the windows and through the roof.¹⁴¹

Notwithstanding complaints about their housing made by the Innu to the priest and to government officials, the situation was not remedied. Wells have been dug and running water is available in the Mission, the school, the teachers' residences, the nursing clinic, the nurses' residence and in some houses occupied by non-Innu. The Innu houses remain unserved by water and sewage facilities. No-one in the Innu community can understand why the Mission and the nursing clinic can have wells that are productive, but that attempts to dig wells at Philip Rich's adjacent house have not yielded serviceable, uncontaminated water. Frank Peters suggests that cutting down the vegetation at the townsite has lowered the water table.

The problems relating to the health of the Innu since relocation are well-known. Between 1980 and 1984, 43.5% of the cases of TB in Northern Labrador came from Davis Inlet, even though Davis Inlet constituted at that time about 2% of the total population of Northern Labrador.¹⁴² In 1987, a study of the health

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situation in Davis Inlet stated: "by any definition, the health of Innu living in Davis Inlet is appalling".¹⁴³ In a 1992 internal memorandum to the Assistant Deputy Minister, Health Services Branch, Health and Welfare Canada,¹⁴⁴ it was stated:

The situation remains critical in Davis Inlet. The lack of health and social services, poor living conditions and jurisdictional confusion has resulted in the existing crisis.

In addition to the physical health of the Mushuau Innu there are the other conditions that have been described graphically in various press reports about Davis Inlet. Chronic levels of alcoholism, gas sniffing, domestic violence and general social dysfunction; living conditions that most Canadians would find totally unacceptable; minimal numbers graduating from secondary-school and even fewer from post-secondary institutions, and excessively high rates of attempted and actual suicide.

For many Mushuau Innu today, relocation to Iluikoyak Island was a major cause of this condition and it is obvious that it has been an important contributing factor. The difficulty of keeping a house and its inhabitants clean when there is no running water, or of providing healthy food for a family, or even being able to provide children with food before school in a house where all of the food freezes overnight are all retold graphically in Gathering Voices and are obvious to visitors to the community. The lack of an adequate water supply in the village has meant that fire-fighting facilities are practically non-existent, as illustrated by a fire in February 1992 in which six children died. This tragedy led to the community consultations that resulted in the publication of Gathering Voices.

There are also problems with the village structure that the Innu confronted on moving to Iluikoyak Island. It placed families in separate houses and turned away from the extended family-based living arrangements that had been their tradition.¹⁴⁵ No thought was given to this in 1967 and it is being addressed only today in the context of the Mushuau Innu's plans for relocation to Sango Bay on the mainland.

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In the light of the above I conclude,

- (i) that the Mushuau Innu were relocated to their present site on Iluikoyak Island without any meaningful consultation about the move;
- (ii) that the particular location was chosen primarily because it fulfilled the needs for a harbour and wharf to sustain the government store;
- (iii) that the interests of the Innu were assumed to be those identified by the priest and government officials who dealt with the Innu;
- (iv) the relocation was also motivated by an interest in directing the Innu towards fishing as an economic activity and was not focused on preserving traditional Innu practices such as returning to the country and caribou hunting;
- (v) that although the Innu were not opposed to the move, their views were formed by the understanding that they would be receiving houses that would have running water and sewage disposal and this understanding is supported by records of the time and by the construction of amenities in the houses that presupposed the existence of running water and sewage disposal;
- (vi) that there has been a failure since 1967 either to provide the Innu with the living conditions they understood they were to get when they moved to their present location or to remedy the fundamental deficiencies of the lack of running water or of any sewage disposal system;
- (vii) that the living conditions at Davis Inlet are an important contributor to the standard of health in the community and the widespread social dysfunction that exists there.

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(c) Conclusions

A common, fundamental problem with both relocations is that the authorities simply made assumptions about what was in the interests of the Mushuau Innu and acted accordingly. The Innu were not given the opportunity to articulate their needs and interests or to make decisions for themselves. And in each case, the relocation went in the direction of taking the Innu away from their traditional culture and practices, by trying to turn them to fishing, by putting them into communities that ran contrary to their traditional, extended family-based organization of living arrangements, and by making it more difficult to engage in traditional hunting activities by locating them on an island with consequent freeze-up and break-up problems.

This is not to deny that those involved in making decisions for the Innu were acting in accordance with what they perceived to be the Innu's best interests.¹⁴⁶ However, they had not developed a mechanism for understanding the Innu's interests in any real sense, and they viewed the Innu's interests from the optic of their own. But, in any event, intentions are really irrelevant. It is with the consequences of the actions of the authorities that we must contend, and those consequences have played a vital part in the position that the Mushuau Innu find themselves today.

The question arises how the conduct of the authorities in relocating the Mushuau Innu should be viewed in the light of aboriginal rights or human rights. The 1948 relocation to Nutak took place at the time when nations were adopting the Universal Declaration on Human Rights which spoke of the "equal and inalienable rights of all members of the human family". The 1967 relocation took place shortly after the adoption of the International Covenant on Civil and Political Rights, Article 27 of which spoke specifically of the rights of persons belonging to ethnic minorities within a country "to enjoy their own culture", and some eight years after the adoption of the Canadian Bill of Rights. Government officials cannot have been unaware of this context.¹⁴⁷

Did the actions of the authorities in both relocations meet the standards appropriate for a fiduciary? A fiduciary is held to a "strict standard of conduct" and must act for the "benefit" of those to whom the fiduciary obligation is owed, and may be required to take "timely and effective measures" to ensure that the

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rights of the beneficiaries of the fiduciary obligation are protected. In the circumstances of these relocations and in the continuing failure to remedy the condition of the Mushuau on Iluikoyak Island, it is difficult to see that these standards have been met.

Although the 1967 relocation was carried out by the government of Newfoundland, the government of Canada, in accordance with its constitutional mandate under Section 91(24) and its fiduciary responsibility to aboriginal peoples in Canada still bears ultimate responsibility. That responsibility could not be exercised by watching from afar from a federal-provincial committee and making suggestions for an in-depth study of the matter, but not insisting that it be carried out.

In the light of the above, I conclude

- (i) that the actions of the authorities¹⁴⁸ in relocating the Mushuau Innu to Nutak in 1948 failed to meet the appropriate standard of conduct for a fiduciary;
- (ii) that the relocation of the Innu to Iluikoyak Island in 1967 and the failure to remedy the living and social condition of the Mushuau Innu on Iluikoyak Island since that time are a breach of the fiduciary obligation of the Crown for which the Government of Canada under its constitutional mandate in respect of aboriginal peoples bears responsibility.

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Complaint No. 5

The Innu should receive compensation for the failure of the Government of Canada since 1949 to recognize the particular constitutional status of the Innu and to deal with them directly.

Although the complaint brought by the Innu refers specifically to compensation, I will address the more general question of an appropriate remedy in this case.

As I have concluded above, the federal government failed in 1949 to exercise its constitutional responsibilities in respect of the Innu as aboriginal peoples in Labrador. Instead of exercising those responsibilities directly by treating the Innu as Indian people eligible to be registered under the Indian Act, the federal government, with the agreement of provincial authorities, left responsibility for the Innu to the Province of Newfoundland and Labrador assuming only the obligation to provide some funding.

The reasons for this action have been dealt with earlier. Some might appear laudable, such as seeking to avoid a perceived disenfranchisement of the Indian and Eskimo people of Labrador; others were less defensible, such as seeking to avoid full financial responsibility. All have to be perceived against a background of practically no real knowledge of who the Innu were (or where they were) or what their wishes were, and a paternalistic view of the need to integrate the Innu into the white society and economy.

Regardless of motivation, the decision of the federal government in 1949 not to exercise direct responsibility for the Innu as aboriginal people was wrong. It neither reflected the constitutional responsibility of the federal government nor created a situation that operated for the benefit of the Innu. And, notwithstanding two legal opinions indicating that the federal government did have responsibility and apprehension among some federal officials about whether they were taking the correct course of action, the matter has never been rectified. Although increasingly the federal government has dealt with the Innu directly, the situation remains unchanged. The events following the crisis involving the suicide attempt by six children at Davis Inlet provide a clear illustration of this.

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Equally, the relocations of the Mushuau Innu to Nutak and to their present location on Iluikoyak Island on the basis of the assumption that the government could move them at will without a real understanding of their own interests or aspirations or their consent, cannot be justified. And the failure to remedy the situation in Davis Inlet involves a continuation of that wrong. The 1967 relocation and subsequent events are clearly the responsibility of the government of Canada and it is for the government of Canada to act to remedy the matter.

The causes of the situation the Innu find themselves in today obviously go back further than 1949; indeed, they can be traced back to the time of contact. The Hudson's Bay Company, the Church, the Grenfell Association's medical services, the white settlers, and the pre-confederation authorities in Newfoundland, all bear responsibility for shaping the response of the Innu to the colonized world. However, since 1949 the federal government has had a specific "fiduciary" obligation in respect of the Innu -- it has had both the opportunity and the obligation to act. Regrettably, it has not done so.

This inaction by the government of Canada constitutes a failure by a fiduciary to act in the best interests of the individuals to whom it has an obligation. It is a failure to live up to the standards that most Canadians would expect of their government, and it is a failure to meet the standards required by the international community of states in respect of the protection of basic human rights.

The question arises as to the appropriate remedy. The Innu have claimed compensation. It would be possible, although no doubt difficult, to make a calculation to determine the difference between the amount the Innu would have received since 1949 if they had been registered under the Indian Act and had reserves created at Sheshatshit and Davis Inlet and the amount they have in fact received under the existing arrangements. Such a calculation would have to take into account a quantification of the benefits and services provided by Newfoundland independently of the Canada-Newfoundland agreement, and would have to place some figure on the difficulties that the Innu have faced in dealing with the complications of two levels of government.

The federal government has seen fit to apologize and to provide monetary compensation in other circumstances. If the federal government did decide to take such steps in this case, this might go some way to remedying the failure of the

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government of Canada to fulfil its fiduciary obligation towards the Innu. However, to pay compensation and consider that the matter is resolved would be an abdication of responsibility and not a true recognition of it. The full magnitude of what has been lost to the Innu cannot be restored by the payment of compensation. They cannot be "compensated" for the social and cultural loss they have suffered as a people.

A real remedy in the present circumstances would address the actual problems faced by the Innu today. The remedy would be one that ensures that the Innu are able to be in the economic, social and spiritual situation they would have been in if governmental responsibilities had been properly exercised and appropriate human rights standards met.

In considering the ambit of such a remedy, attention must be directed to what has been perceived by aboriginal scholars as fundamental to recognition of the rights of aboriginal peoples. This is that:

... from early colonization until the present time, no government or monarch has ever genuinely recognized Aboriginal peoples as distinct Peoples with cultures different from, but not inferior to, their own. Aboriginal peoples have not been viewed by the dominant culture as peoples whose ways of life should be tolerated or respected except in the most paternalistic and oppressive terms.¹⁴⁹

Failure to recognize that the Innu are peoples with a unique culture of their own that is entitled to recognition and respect lies at the centre of the treatment that the Innu have received from governments. This was referred to frequently in discussions with individual Innu and was recognized by many federal officials. The Innu have not been given the opportunity, the resources, or the freedom, as peoples with a distinct culture of their own, to take responsibility for their own lives. Decisions are made about them on the basis of their perceived best interests.

And the problem persists. In discussions that I had, it appeared that some federal and provincial officials did not think that the Innu really knew what was best for themselves. The controversy over the proposed new relocation of Davis Inlet highlights this. The Mushuau Innu have decided that they wish to relocate

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to Sango Bay. The government of Newfoundland is not convinced that Sango Bay is the most appropriate place for them. The debate has the air of history repeating itself -- the best interests of the Innu are being determined by government officials and not by the Innu.¹⁵⁰

It is for this reason that a full understanding and appreciation of what has happened to the Innu, and in particular of the circumstances of the relocations of the Mushuau Innu, cannot be ignored or treated as events of the past that can now be put aside. They have to be recognized by the governments concerned as examples of a standard of treatment -- no matter how well-intentioned it might have been -- that cannot be repeated. They must stand out as a clear lesson for future relations between government and the Innu.

A "remedy" for the Innu Nation cannot, of course, provide a panacea for the problems the Innu face. In this regard, the Innu are acutely aware of the precarious position they are in as a people. They are aware of the "lost" culture of their elders; of the fact that their children have been inundated through television with a southern, white culture; they are aware of the difficulty, if not impossibility, of turning the clock back for their children; they are aware of the impact of losing the cultural values of their traditional ways; they are aware of the fragility, if not non-existence, of the economic base on which their communities presently rest.

It does not help for outsiders to keep reminding the Innu of these things, nor does it help to have governments acting as if the Innu are not able to take responsibility for their own affairs -- of continuing to treat the Innu as children, as Chief Katie Rich has said. The wish of the Innu people is to determine their own future in accordance with their own values, to provide for the education of their children in a way that will permit them to preserve and enhance their unique culture in the light of present-day economic and social realities. They wish to make their own decisions and to take responsibility for them, to break away from a cycle of dependency and subordination that the existing system imposes on them. To a certain extent this is what self-government and control over programs and services can bring them, but to do this there must be a break with the past and the forging of a new relationship with both levels of government.

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The portrayal of the Innu community in Davis Inlet by the press after the January 1993 attempted suicide by six children gives an accurate picture of a community in crisis. But there is another side to the Innu people in both Sheshatshit and Davis Inlet. There is a people who without the benefit of formal schooling in their language and culture have proudly maintained that language in an era when indigenous languages are declining.¹⁵¹ There are the people who may seem uncomfortable and out of place in contemporary village society but who are in complete control of themselves and of their lives in the country.¹⁵²

There are the people who feel acutely that they are standing on the edge of two cultures and are desperately trying to ensure that there will be a future for their children as Innu.¹⁵³ And, there are the young leaders who have put aside a youth of alcoholism to try to change the cycle of despair in their communities but who speak with growing frustration of their attempts to get change from governments.¹⁵⁴

What is needed is a dramatic gesture of confidence, a new initiative from the federal government -- an acknowledgement of the constitutional responsibility of the federal government towards the Innu and a commitment to deal with them directly as if they were registered under the Indian Act and on reserve. This would involve replacing the existing Canada-Newfoundland contribution agreement in respect of the Innu with an agreement directly between the government of Canada and the Innu that would provide funding to the Innu from the federal government at a level available to Indian bands that are registered and on-reserve. That funding should ensure the continuation of the unique elements of existing arrangements that reflect the particular needs of the Innu, such as the outposts program that enables them to go to the country.

At the same time, there should be public acknowledgement that the role of the government of Newfoundland in respect of the Innu is no different than the role of any other provincial government in respect of aboriginal peoples who are registered under the Indian Act and on-reserve.

But this should not involve any requirement that the Innu be formally placed under the Indian Act. To require the Innu to be so registered would be to elevate form over substance. It would be nothing more than a symbolic act of subordination -- to legislation that the Canadian Human Rights Commission itself

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has described as "outdated and paternalistic". There is no reason why the federal government could not act directly without imposing the process of registration under the Indian Act on the Innu.¹⁵⁵

In hand with such a gesture of confidence should go a commitment to the expeditious relocation of the Mushuau Innu, in accordance with their own wishes, to a site chosen by them. The federal government has almost gone this far already; it needs to take the further step.

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RECOMMENDATIONS

Accordingly, I recommend:

That the Government of Canada,

- (i) formally acknowledge its constitutional responsibility towards the Innu;
- (ii) abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshit and Davis Inlet and enter into direct arrangements with the Innu as aboriginal people in Canada. Such arrangements should ensure that the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian peoples in Canada while preserving the unique aspects of existing arrangements such as the outposts program;
- (iii) enter into direct negotiations with the Innu in respect of self-government and for the devolution of programs and services, involving the government of Newfoundland and Labrador where appropriate in accordance with the principle of mutual consent set out in the September 1989 Policy Statement on Indian Self-Government in Canada;
- (iv) make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them; and
- (v) provide the funding necessary to implement these recommendations.

The third part of this recommendation is similar to the position enunciated by the Minister of Indian Affairs and Northern Development in his November 23, 1992 letter to the President of the Innu Nation. However, it alters the basis for negotiations, for it makes clear that the primary negotiations on self-government are to be between the federal government and the Innu people and that they would not automatically be tripartite negotiations.

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The remedy suggested then, is a change in direction by the federal government, with a commitment to making real progress with the Innu people in moving to self-government arrangements where the Innu can take greater responsibility for their people, for their culture and for their future. It requires letting the Innu themselves set the pace and the agenda for the negotiations for these arrangements. And, it requires the allocation of resources that will enable them to do this.

On the part of the Innu it requires some considerable planning and assessment of needs and priorities, of looking at other aboriginal communities for guidance on the process of self government negotiations and the development of an internal infrastructure to manage the outcome of these negotiations. Of course, there is no guarantee that the Innu can overcome in the short, or even the long, term the enormous social and economic problems that they face. What is clear is that they will not do so if things remain the way they are. For this reason the actions of the federal government in recognising and according to the Innu the opportunity to take responsibility themselves for their own future must be unequivocal and decisive.

The action taken by the federal government must result in real progress for the Innu in respect of the relocation of Davis Inlet and the negotiation of self-government and devolution arrangements. For this reason, it would be appropriate for the Canadian Human Rights Commission to review the situation of the Innu people on a regular basis, say every five years, to ensure that steps to remedy the problems identified here are being taken and are effective.

Accordingly, I make the further recommendation:

That the Canadian Human Rights Commission review every five years progress made in the implementation of the recommendations in this report.

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1. Assembly of First Nations, Violations of Law and Human Rights By the Governments of Canada and Newfoundland in Regard to the Mushuau Innu: A Documentation of Injustice in Utshimasits (Davis Inlet), Submission to the Canadian Human Rights Commission, May 1993.
2. (1990) 70 D.L.R. 385, at 408.
3. (1984) 13 D.L.R. 321 at 341.
4. Both federal and provincial officials with whom I talked had reservations about whether all of the complaints made by the Innu could be treated as human rights questions.
5. For background see Georg Henricksen, Hunters in the Barrens, 1973. See also Peter Armitage, Land Use and Occupancy Among the Innu of Utshimassit and Sheshatshit, July 1990, prepared for the Innu Nation.
6. Whether the trips to the coast were only as a consequence of the existence of trading posts or whether the Innu came to the coast before contact is unclear. Roche states that a trading post was established at Northwest River as early as the mid-1700's; Resettlement of the Mushuau Innu, 1948: A Summary of Documents, prepared for the Innu Nation, August 1992, p.2. Henricksen links the close identification of the Mushuau Innu with the coast with a change in the migration route of the northern Labrador caribou in 1916; Henricksen, op. cit., 13.
7. In the case of Sheshatshit, the trading post was located across the water at North West River, and in the case of Davis Inlet, the trading post was on an island near the coast. The Innu settlement was located on the mainland.
8. Voiseys Bay, to the north of Davis Inlet, was also a place to which the Innu went. A priest was stationed at North West River and, from the 1920's on, one came every summer to Davis Inlet.
9. Armitage, op. cit., supra, 5-6.
10. From 1927 on Davis Inlet was visited regularly by Msgr. O'Brien. Records of relief given are found in the "Letters and Papers of Msgr. Edward Joseph O'Brien, 1923-47" which are held in the Newfoundland Room of the Queen Elizabeth Library, Memorial University, St. John's Newfoundland.
11. This incident will be dealt with in more detail later.
12. Armitage, op. cit., supra, 10.

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13. At the old Davis Inlet settlement only one Innu family lived in a house. This house had been built by the priest for the family of Joe Rich whom the priest had appointed as the chief of the Mushuau Innu: Henricksen p. 97.

14. The move to the new settlement will be dealt with in more detail later.

15. This question will be dealt with more fully later.

16. Richard Budgel, Canada, Newfoundland, and the Labrador Indians 1949-69, 6 Native Issues No. 1, p. 40 (1984).

17. J.W. Pickersgill to H.L. Pottle, April 12, 1954; Pottle to Pickersgill, April 26, 1954. The agreement was to come into effect on April 1, 1954.

18. L.B. Pearson to J.R. Smallwood, May 25, 1965.

19. The limit under the 1954 agreement had been \$200,000 per year. In the 1965 agreement the federal government also made a back payment to Newfoundland representing 90% of the province's capital expenditure for Indians and Eskimos for the period 1959-1964.

20. The agreement is signed by the federal Minister of Indian Affairs and Northern Development, the Premier of Newfoundland and Labrador as Minister Responsible for Intergovernmental Affairs, and the Newfoundland Minister for Development.

21. The shares are 90% for the federal government and 10% for the province.

22. Letter dated 24 February 1993, from Judith D. Ross, Health and Welfare, Canada, to George Miller, CHRC,

23. It was suggested to me by officials in DIAND that this new activity by the federal government was a consequence of the publicity the Innu were receiving over their opposition to low-level flying.

24. Letter of Penote Antuan to F. Campbell Mackie, ADM, March 22, 1976.

25. Letter of Atwan Penashue to Warren Allmand, Minister of Indian Affairs and Northern Development, March 16, 1977.

26. Letter of J. Hugh Faulkner, Minister of Indian and Northern Affairs to Penote Michel, July 18, 1978.

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27. Letter of the Hon. Tom Siddon to Peter Penashue, November 23, 1992.

28. Edward Tompkins, "Pencilled Out: Newfoundland and Labrador's Native People and Canadian Confederation, 1947-1954," March 31, 1988, p. 12; Wendy Moss, "Constitutional Responsibility for the Aboriginal Peoples of Newfoundland", 7 April 1988, p. 2.

29. Moss, ibid., p. 2.

30. Tompkins, ibid., p. 15.

31. Tompkins, ibid., p.17.

32. It is not entirely clear how the Innu became "enfranchised". Certainly it seems unlikely that they had ever voted and it is not clear that they had full rights of citizenship in any event. There had been earlier legislation limiting the sale of alcohol to Indians and limiting their movement out of Labrador; Albert W. Jones, "Emergence of Aboriginal-Governmental Relations in Newfoundland and Labrador", 10-11, (manuscript provided by author).

33. It has been suggested to me that this approach was an experiment in shifting federal responsibility for aboriginal peoples to the provinces which it was intended to apply more generally. While this may be so, I did not find any documentary evidence of such an intention.

34. The chronology of events is dealt with exhaustively in Tompkins, ibid., pp. 17-24. As late as May 1949, Mr. Smallwood was of the view that the aboriginal peoples of Newfoundland and Labrador would come under the jurisdiction of the federal government; telegram of Smallwood to F.W. Peacock, Superintendent, Moravian Mission, Nain, May 1, 1948.

35. For example, it was believed that the Indians were so intermixed through marriage with the white population that perhaps they would not be eligible for registration under the Indian Act.

36. Information provided by K.J. Carter to October 1948 meeting with Acting Director federal Department of Mines and Resources: Roche, "Resettlement" op. cit. note 6, p. 12.

37. Innu elders that I have spoken to have no knowledge of any discussions about confederation, although there is some recollection of either Newfoundland or federal officials coming to Northwest River to announce that confederation had taken place and that family allowances and pensions would be paid.

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38. The opinion pointed out that for the purposes of the BNA Act the term "Indians" included Eskimos.

39. Letter Harris to Pottle, March 28, 1953.

40. Paul Pelletier to J.W. Pickersgill, Secretary of State, 16 March, 1954. See also N.A. Robertson to Paul Martin, Minister of Health and Welfare, June 1950; "The federal government's responsibility in this matter seems to be inescapable, legally and otherwise...."

41. Apparently the letter of Premier Smallwood to Prime Minister Pearson was sent in draft form initially so that the Prime Minister could propose changes. Even though that letter asserted federal responsibility for Indians and Eskimos in Labrador, no objection was made to the draft by Prime Minister Pearson: letter Smallwood to Pearson, 23 March 1964.

42. Letter of Deputy Attorney-General, dated November 23, 1964.

43. Views expressed by Deputy Minister Indian Affairs in interdepartmental meeting, February 25, 1965; letter Laing to Minister of Health and Welfare, April 22, 1965.

44. The 1983-84 Canada-Newfoundland-Native Peoples of Labrador Health Agreement notes in the preamble that "Canada ... has a special responsibility in the health care of Native people", thus implying that its agreement with Newfoundland is an exercise of its constitutional responsibility in respect of aboriginal people.

45. Memorandum to Cabinet, 23 April 1965: "contrary to enfranchised Indians, the Indians and Eskimos (of Labrador) have been given no choice with respect to their status."

46. Memorandum to Minister of Northern Affairs, 29 June 1965.

47. Although Newfoundland officials advised their federal counterparts that the consultations were taking place, Innu consulted by James Roche had no recollection of this.

48. Minutes of an Interdepartmental Meeting, 25 February 1965. Views of R.F. Battle, Deputy Minister of Indian Affairs.

49. Letter of Penote Antuan to Harry Chapman, DIAND, December 15, 1976.

50. Letter of Atwan Penashue, President, Naskapi Montagnais Innu Association, to Warren Allmand, Minister of Indian Affairs and Northern Development, of March 16, 1977.

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51. Departmental Secretariat, Docket SA-3023, May 18, 1977.
52. Letter of Premier Frank Moores to Bart Jack, October 4, 1976. Apparently the Province was equally opposed to the registration of the Conne River Micmacs.
53. It has been suggested to me that in this area too the federal government's position was influenced by the publicity the Innu were receiving over the issue of low-level flying.
54. Siddon to Penashue, November 23, 1992.
55. Communiqué, of Minister of Indian Affairs and Northern Development, February 2, 1993.
56. See Communiqué of February 2, 1993, supra, note 55.
57. Registration under the Indian Act: Implications for the Innu and Consideration of Other Options, Report for the Innu Nation prepared by James Roche, April 1992.
58. This issue came up frequently in discussions with federal officials who ascribed the inability of the government of Canada to take certain measures in respect of the Innu to reluctance or refusal on the part of Newfoundland to act.
59. Ottawa Citizen, February 10, 1993. Referring to the site for relocation chosen by the Innu, the Minister is reported as saying that other sites would be considered only if that was the wish of the Innu or of the Newfoundland government.
60. Report of the Royal Commission on Labrador, February 1974, Vol. VI, p. 1196. In fact, the Commission revealed, the formula for Indians of northern Quebec had been, on a per capita basis, approximately one third of the funding given to Eskimos; ibid, p. 1185.
61. Ibid., p. 1184.
62. The Innu cite frequent occasions when they have been told by federal officials that they have no mandate to act, or they have been told by Newfoundland officials that it is a matter for the federal government.
63. Adrian Tanner, "History and Culture in the Generation of Ethnic Nationalism", manuscript for inclusion in Levin, ed., Aboriginality and Ethnicity, provided by author, ms. pp.19-21.
64. See letter from Atwan Penashue to Warren Allmand, March 16, 1977.

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65. Letter of Judd Buchanan to Vicky Santana, 4 December 1975.
66. Letter of Atwan Penashue to Warren Allmand, March 16, 1977.
67. A study of the Innu community of La Romaine in Quebec in 1985, indicates even that at that time the community was receiving from the federal government almost \$1 million for social services. The population of La Romaine then was 635. Centre D'Etudes Nordiques; "Emplois, Revenus et Activités Economiques", October 1985, p. 83.
68. An analogy might be drawn with the obligation placed on states granted mandates over dependent territories by the League of Nations. Article 22 of the League Covenant stated that the mandate formed a "sacred trust of civilization". In 1971 the International Court of Justice stated that "it is self-evident that the 'trust' had to be exercised for the benefit of the people concerned,...": Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion of 21 June 1971, para. 46.
69. The Inter-American Commission on Human Rights has said that "special protection for indigenous populations constitutes a sacred commitment of the states" and concluded that the failure of the government of Brazil to take "timely and effective measures in behalf of the Yanomami Indians", had "resulted in a violation of their rights to life, liberty, personal security, residence, movement, preservation of health, and well-being" under the American Declaration of the Rights and Duties of Man: Case 7615 (Brazil), [1985] Inter-American Yearbook on Human Rights 276 and 278. As Canada is a member of the Organization of American States, this Declaration is relevant to the determination of Canada's international obligations in respect of human rights.
70. However, for a period of time during the 1992 constitutional negotiations Newfoundland opposed the idea of an "inherent" right of aboriginal peoples to self-government.
71. See statement by Prime Minister Mulroney to the House of Commons, 25 September 1990, H.C. Debates, 13321. See also Indian Self-Government Community Negotiations, Indian and Northern Affairs Canada; a collection of background papers and documents, 1988-89.
72. The two aboriginal constables concerned have received training from an institute whose graduates are recognized in many provinces as being able to perform policing duties in aboriginal communities. To the Innu, having their own people to perform

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full-time policing duties is a much more effective arrangement than regular visits from RCMP officers stationed elsewhere. For the government of Newfoundland this involves recognition of a different set of qualifications for policing from those they are used to, and paying to provide a service for which they have already paid in their contract with the RCMP. At heart, the dispute is over the willingness of the province of Newfoundland to recognize within its jurisdiction a special status for the Innu as aboriginal people. Current discussions apparently involve the Office of the Solicitor-General for Canada.

73. Letter of the Hon. Tom Siddon to Peter Penashue, November 23, 1992.

74. Indian Self-Government Community Negotiations, "Policy", September 1989, p. 2. Emphasis added.

75. Ibid., "Process", May 1989, p. 3. Emphasis added.

76. It appears that the actual practice of provincial government involvement in such negotiations across the country is mixed, relying on pragmatism rather than a uniform approach.

77. This was described in a letter from Father O'Brien to J.C. Puddester, Commissioner for Public Health and Welfare in Newfoundland, November 23, 1938. Apparently the Ranger involved had given the Innu relief only on the condition that they move to Voisey Bay. Father O'Brien was moved to write "... I am heartily sick of these nit wits wearing the symbolic dress of authority".

78. Albert Jones, "Emergence of Aboriginal-Governmental Relations In Newfoundland and Labrador" supra, note 32, p. 14.

79. K.J. Carter Northern Labrador Trading Operations, December 12, 1949.

80. Ralph Parsons to Secretary of Natural Resources, Newfoundland, March 11, 1944.

81. K.J. Carter to Parsons, letter of May 9, 1946.

82. H.M. Budgell to O'Brien, Letter of June 28, 1947 in which he stated that he expected the post to be closed in the Fall.

83. See Budgell to Carter, July 3, 1946.

84. Budgell to O'Brien, June 28, 1947.

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85. Budgell to Trade Supervisor, Department of Natural Resources, Newfoundland, June 21, 1947. In 1943, the Commissioner of the Newfoundland Rangers had reported to the Secretary for Natural Resources of Newfoundland, that it was "undesirable" that the Indians remain at the Davis Inlet post for any length of time; "the only alternative is to try to settle them on the coast where they might be given facilities for fishing, as is done in other cases": Report of November 16, 1943.

86. Budgell to O'Brien, June 28, 1947. In a recent communication Frank Peters, who was the priest at Davis Inlet during the 1960's, wrote of the 1948 relocation:

A survey of the Innu in Davis Inlet at that time reported to the government of Newfoundland conditions that were miserable and unacceptable. The government appointed Mr. Max Budgell to organize them in some way to improve their condition. (Personal communication of April 5, 1993).

However, even though he knew in June 1947 that he was to be posted to Nutak and that the depot at Davis Inlet was to be closed, Budgell did not seem to be aware of any plans to move the Mushuau Innu to Nutak.

87. In a letter to Father O'Brien in August 1933, Ralph Parsons of the Hudson's Bay Company spoke of such a plan by the International Grenfell Mission. Parsons, who noted that the natural occupation of the people was hunting, considered that any plan to take the people away from their present locations would be "disastrous" and that "the people will become demoralized". Letter of August 2, 1933.

88. Budgell to O'Brien, June 28, 1947.

89. Carter to Parsons, May 9, 1946.

90. Letter of August 31, 1948. The letter was apparently written by Max Budgell. Joe Rich had been designated as "Chief" by Father O'Brien.

91. Discussion with Mushuau Innu elders. See also, Evening Telegram, St. John's, June 8, 1949. According to Innu elders Budgell encouraged Joe Rich to support the move to Nutak because Budgell was having an affair with an Innu woman and this would enable her to follow him to Nutak.

92. They were "treated like dogs". one Innu said.

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93. This incident has led to the view among a number of Innu that the objective of moving them to Nutak was to isolate the fugitive on board the ship so as to enable his capture. I have seen no written record of this event, and while it seems unlikely that the whole of the relocation was carried out with this as the sole objective, it is not implausible that the opportunity that relocation provided to capture the individual concerned was in the minds of the Newfoundland Rangers.

94. Report on Northern Labrador Trading Operations, by K.J. Carter, September 12, 1949.

95. Letter Carter to R.J. Gibson 22 September 1949.

96. Recollections of Innu elders. Frank Peters recalls learning the same thing from Father Cyr (who later opened the Mission at Davis Inlet) and from the Mission diary (which apparently does not exist any more). Apparently, the Innu told Father Cyr that they wanted to return to Davis Inlet. Personal communication from Frank Peters, April 5, 1993.

97. A report prepared for the Newfoundland government in October 1949, stated that during the three preceding years, two of which had been spent at Nutak, only seven children survived birth and that during the same period there had been seventy deaths (Report of Harold Horwood, M.H.A. to Newfoundland Government, October 1949, p.6.). That figure is clearly wrong and is accepted as so by the Innu. Another report in December 1949, stated that there had been five deaths since the move to Nutak. Carter, *op. cit.*, and Innu estimates range from three to seven deaths.

98. Elders have indicated that at this time as a group they tended to do what they were told by white authority whether it was government or church. Although the Innu acquiesced in the intermediary role played by Joe Rich without formally consenting to it, they were not unaware of what Joe Rich's role really was. Innu elders, including members of his family, have observed that Joe Rich always did what government officials asked him to do.

99. The report was apparently requested by Premier Smallwood.

100. Horwood, p. 3.

101. An October 13, 1948 memorandum recording a meeting of federal officials with K.J. Carter, states that the reason for the move was that "the fur had been trapped out around Davis Inlet".

102. Letter of Joe Rich to Father O'Brien, August 31, 1948.

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103. In fact, such reluctance might well have been contributed to by disease. Throughout the 1940's the Innu had been stricken with influenza.
104. Carter to Gibson, September 28, 1949.
105. Rowe to Smallwood: memorandum of May 6, 1951.
106. The Mission had opened in 1950 after the return of the Innu from Nutak with Father Cyr as a permanent priest.
107. W.G. Rockwood to Deputy Minister, Department of Public Welfare, Newfoundland: memorandum of May 23, 1952.
108. In a lengthy memorandum on "General Policy in Respect to the Indians and Eskimos of Northern Labrador", in 1955, W.G. Rockwood, Director of the Division of Northern Labrador Affairs, wrote:
- "Civilization is on the northward march, and for the Eskimo and Indian there is no escape... The only course now open, for there can be no turning back, is to fit him as soon as may be to take his full place as a citizen in our society.... For the fourteen or fifteen hundred Eskimos, Indians and half-breeds of Northern Labrador the days of the primitive hunting economy are numbered, and these minorities, already far along in the transition stage, must be prepared to pass over into the industrial society now ready to burst upon them."
- Perhaps the most outlandish suggestion was made in an April 16, 1955, memorandum from the Deputy Minister of Public Welfare of Newfoundland to the Deputy Minister of Natural Resources, that,
- "the Indians be organized along military lines into Conservation and Development Corps.... Under this arrangement the able-bodied men of the tribe would be put under the direction of a competent officer who would be assisted by the Chief and other important men of the tribe, acting in the capacity of non-commissioned officers....".
109. Rockwood to Deputy Minister, Public Welfare: memorandum May, 1955.
110. Deputy Minister of Education to Minister of Education: memorandum of May 18, 1956.
111. This is contained in a report of W.G. Rockwood following a visit to Sept-Iles and Schefferville.
112. Letter of March 26 1959, Hefferton to Fairclough.

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113. This information was provided by Father Peters, the priest at Davis Inlet, to S.M. Loder of the Division of Northern Labrador Affairs during a visit there in March 1966. Report of S.M. Loder, April 11, 1966. Father Peters apparently noted that eleven of these families had returned to Davis Inlet and the remaining six had stayed in North West River for health reasons.

114. Some Innu doubt that these families went to North West River for treatment of TB, as TB patients were treated at St. Anthony's. The movement of these peoples to North West River is regarded by them as a probable third relocation as set out in the complaint of the Innu Nation. I have not seen any documentary evidence on this issue nor were Innu elders able to throw any light on it.

115. Rockwood to Deputy Minister Public Welfare: letter of November 17, 1961.

116. Report of the Director of Northern Labrador Affairs for 1966, p. 244-245. The Innu report that a few years earlier a government official had come and seen their tents and decided that they should live in houses. As a result some plywood was sent which the Innu used to make sides for their dwellings. The roofs remained canvas.

117. Report of S.M. Loder, April 11, 1966. Personal communication from Frank Peters, April 5, 1993.

118. Report of S.M. Loder, April 11, 1966. Letter of Father Peters to R.S. King. April 13, 1966.

119. Gathering Voices, p.15.

120. On April 12, 1966, R.S. King wrote to the Deputy Minister of Public Welfare in Newfoundland stating that they would not make definite plans for a housing program at Davis Inlet until they knew of the Mission's plans for the Davis Inlet area. On April 21, 1967, King wrote to the Bishop of Labrador's representative, Rev. Gerard Boulanger saying, "We had already decided to go ahead with our Davis Inlet project, but were waiting until we had heard from you before really committing ourselves". See also Peters to King: letter of August 25, 1966; Peters to King: letter of March 8, 1967.

121. Telegram M.H. Tiller to Director Northern Labrador Services, April 10, 1966. The Innu apparently indicated that if attempts were made to move them south, they would migrate to Voiseys Bay. Frank Peters recalls that the Innu were very much aware of forced relocations from Hebron in 1956 and Nutak in 1959. Personal communication of April 5, 1993.

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122. Gathering Voices, p.15.

123. Gathering Voices, p.16.

124. However, the "Annual Report" of the Division of Northern Labrador Affairs for 1966-67, indicates that members of the Division and the priest visited every possible site within a two-mile radius; Newfoundland Department of Public Welfare, Annual Reports, 1952-69, pp. 226-227.

125. In fact government documents indicate that the site was chosen as early as January 1966, even though the "vote" on whether to move to North West River did not take place until April 1966: King to Evans, January 21, 1966; King to Deputy Minister, February 25, 1966. Innu began clearing the site in the summer of 1966.

126. Personal communication of April 5, 1993.

127. Ross King is usually mentioned as one who was centrally involved.

128. Gathering Voices, (p. 16) records one elder as saying that her husband was opposed to the move.

129. Personal communication from Frank Peters, April 5, 1993.

130. Report of Director, Northern Labrador Services, 1968, p.226.

131. Personal communication from Frank Peters, April 5, 1993. Ironically, the Innu claim that the cod fishery near old Davis Inlet was at the time much better than at the new site.

132. The group was apparently chosen because they were not drinking at the time. Innu elders claim that Father Peters always favoured the non-drinkers in the community.

133. Innu elders confirm that government officials generally only spoke to Frank Peters and Joe Rich. When government officials were at Davis Inlet parents were told to keep their children inside away from these officials.

134. Peters to King, March 8, 1967.

135. Peters to King, August 21, 1967.

136. Report for 1968, p. 224.

137. Meeting of July 6-7, 1965.

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138. Meeting of June 21, 1966.

139. Meeting of December 13-14, 1966.

140. The primary concern of federal officials may have been the possibility of increased costs to the federal government. In this regard they were assured by Mr. King, representing the province, that "with the favourable conditions at the new site, relocating the Indians would be much more satisfactory and economical." Meeting of June 7, 1967.

141. Evans to King, February 6, 1968.

142. Biakie, "Tuberculosis in Northern Labrador", 1 Grenfell Clinical Quarterly p. 37 (1985).

143. Scott and Conn, "The Failure of Scientific Medicine: Davis Inlet as an Example of Sociopolitical Morbidity", Canadian Family Physician, Vol 33, July 1987 at 1650.

144. Memorandum of April 23, 1992.

145. Georg Henricksen, Hunters in the Barrens, (1973), Chap. 5.

146. The Innu remain to be convinced of this, particularly in the light of statements about the Innu in official documents of the 1950's such as, "in my opinion it would be more merciful to let them die off quickly than to merely prolong the process with inadequate help", (Deputy Minister, Newfoundland Department of Natural Resources to Deputy Minister Newfoundland Department of Public Welfare, April 16, 1955) and "there is no easy, short-term solution, unless it be the solution found for the aborigines of Newfoundland more than a century ago. They, the Beothucks, have been no bother since June 6, 1829. The writer does not advocate this solution for the Labrador Indians...", (Rockwood, Departmental Organization for the Administration of Labrador, June 1959, p.4). Such comments are viewed as evidence of a callous insensitivity to the Innu that belies a real policy of discrimination if not genocide.

147. The Assembly of First Nations has also argued that the relocations were undertaken without any statutory authority and hence they should be regarded as actions that were illegal; supra, note 1, pp. 34-35.

148. The move to Nutak took place before Newfoundland entered confederation and was thus the action of the Commission of Government of Newfoundland and not that of the government of Canada. It can be argued, nevertheless, that the obligation of

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the Crown to aboriginal peoples was no different than the obligation of the Crown in Canada.

149. Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" Canadian Human Rights Yearbook, 1989-1990, 3, at 33 (1990).

150. In fact, the Innu have given considerable thought to the question of relocation and of the structure of their new community. Some of this is illustrated in study of Terpstra and Associates, Davis Inlet (Utshimassit) Service Infrastructure, Socio-Economic Study, October 1992.

151. Transcript Royal Commission on Aboriginal Peoples, Hearing, Davis Inlet, 1 December 1992, pp. 125-126.

152. The phenomenon was described by the anthropologist Georg Henricksen who conducted research among the Innu in the 1960's, Hunters in the Barrens (1973), and was reiterated in the recollections of a doctor who was based in the Labrador coastal communities in the 1960's "Bygone life: A look back at Davis Inlet", Globe and Mail, February 1993.

153. The document Gathering Voices provides a moving illustration of this.

154. Transcript Royal Commission on Aboriginal Peoples, Hearing, Davis Inlet, 1 December 1992, pp. 68-69.

155. One argument against such direct action is that it might create a precedent for other groups. But if there are other groups who can claim a similar disadvantage to the Innu, then their concerns should be addressed as well.

SUMMARY OF CONCLUSIONS**In respect of Complaint No. 1:**

- (i) That in 1949 the Government of Canada failed to acknowledge and assume its constitutional responsibility for the Innu as aboriginal people in Canada.
- (ii) That the direct consequence of this failure was that the Innu were not given the opportunity at that time to become registered under the Indian Act and to have reserves created for the communities of Sheshatshit and Davis Inlet.
- (iii) That to this day the Government of Canada has not acknowledged in an unequivocal way its direct constitutional responsibility for the Innu as aboriginal people in Canada.

In respect of Complaint No. 2:

- (iv) That the failure of the Government of Canada to acknowledge and assume direct responsibility for the Innu as aboriginal people which resulted in the failure in 1949 to apply the provisions of the Indian Act to them, has meant that the Innu have not received the same level and quality of services as are made available by the federal government to other aboriginal peoples in Canada.
- (v) That the failure of the Government of Canada to provide a level or quality of services to the Innu similar to that provided to other aboriginal peoples in Canada constitutes a breach of its "fiduciary obligation" to the Innu as aboriginal people in Canada.

In respect of Complaint No.3:

- (vi) That the failure of the Government of Canada to assume responsibility for the Innu as aboriginal people in Canada has impaired the ability of the Innu to move towards self-government and to obtain control over programs and services that affect them. The existing arrangements will inhibit future negotiations on self-government and devolution of programs and services.

In respect of Complaint No. 4:

- (vii) That the relocation of the Mushuau Innu to Nutak was undertaken without any real consultation with the Innu and without their consent..
- (viii) That there was very little knowledge or understanding of who the Innu were as people at that time and government officials assumed that they could make decisions for the Innu.
- (ix) That there is no evidence of a serious comparison of the conditions the Innu would face at Nutak with those that existed at Davis Inlet.
- (x) That the decision to relocate the Mushuau Innu was motivated by the fact that the government depot was to be closed at Davis Inlet and by the belief that the Moravian Mission at Hopedale would be opposed to the Innu coming to the government depot at Hopedale.
- (xi) That the decision to relocate the Mushuau Innu was taken against a background of an assumption that white officials knew what was in the interests of the Innu and of a policy that sought to turn the Innu into "white men" and to integrate them into the economy primarily through fishing.
- (xii) That the Mushuau Innu were relocated to their present site on Iluikoyak Island without any meaningful consultation about the move.

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- (xiii) That the particular location was chosen primarily because it fulfilled the needs for a harbour and wharf to sustain the government store.
- (xiv) That the interests of the Innu were assumed to be those identified by the priest and government officials who dealt with the Innu.
- (xv) The relocation was also motivated by an interest in directing the Innu towards fishing as an economic activity and was not focused on preserving traditional Innu practices such as returning to the country and caribou hunting.
- (xvi) That although the Innu were not opposed to the move, their views were formed by the understanding that they would be receiving houses that would have running water and sewage disposal and this understanding is supported by records of the time and by the construction of amenities in the houses that presupposed the existence of running water and sewage disposal.
- (xvii) That there has been a failure since 1967 either to provide the Innu with the living conditions they understood they were to get when they moved to their present location or to remedy the fundamental deficiencies of a lack of running water or of any sewage disposal system.
- (xviii) That the living conditions at Davis Inlet are an important contributor to the standard of health in the community and the widespread social dysfunction that exists there.
- (xix) That the actions of the authorities in relocating the Mushuau Innu to Nutak in 1948 failed to meet the appropriate standard of conduct for a fiduciary.
- (xx) That the relocation of the Innu to Iluikoyak Island in 1967 and the failure to remedy the living and social condition of the Mushuau Innu on Iluikoyak Island since that time are a breach of the fiduciary obligation of the Crown for which the Government of Canada under its constitutional mandate in respect of aboriginal peoples bears responsibility.

SUMMARY OF RECOMMENDATIONS**That the Government of Canada,**

- (i) formally acknowledge its constitutional responsibility towards the Innu;
- (ii) abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshit and Davis Inlet and enter into direct arrangements with the Innu as aboriginal people in Canada. Such arrangements should ensure that the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian peoples in Canada while preserving the unique aspects of existing arrangements such as the outposts program;
- (iii) enter into direct negotiations with the Innu in respect of self-government and for the devolution of programs and services, involving the Government of Newfoundland and Labrador where appropriate in accordance with the principle of mutual consent set out in the September 1989 Policy Statement on Indian Self-Government in Canada;
- (iv) make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them; and
- (v) provide the funding necessary to implement these recommendations.

That the Canadian Human Rights Commission review every five years progress made in the implementation of the recommendations in this report.

APPENDIX I**Innu Nation**

Main Office
P.O. Box 119
Sheshatshiu, Labrador
A0P 1M0

General Delivery
Davis Inlet, Labrador
A0P 1A0

Bus: (709) 497-8398
Fax: (709) 497-8396

Bus: (709) 478-8943
Fax: (709) 478-8833

Canadian Human Rights Commission
Place de Ville tower A
15th Floor 320 Queen St.
Ottawa, Ontario
K1A 1E1

July 16, 1992

Attn: Max Yalden, Commissioner

Dear Mr. Yalden:

RE: The Innu of Nitassinan

The Innu Nation is pleased that you have agreed to consider our complaint with respect to the discriminatory policies of Canada and Newfoundland. This letter is to outline our complaint. We will be pleased to meet with you to further discuss this matter and give you additional information and material.

The Innu are a distinct aboriginal nation, and have been recognized by the Canadian government as having a valid "comprehensive claim" based upon unextinguished aboriginal title. Nonetheless, the policies of the Canadian and Newfoundland governments regarding the delivery of most services to the Innu does not recognize them as an aboriginal people. We are of the view that this constitutes discrimination, and an infringement of the human rights and aboriginal rights of the Innu.

The Canadian government, of course, has responsibility, within the framework of the present Canadian Constitution, for aboriginal peoples. In general, it has exercised that responsibility by recognizing a Nation to Nation relationship with various aboriginal nations through treaties, by shielding aboriginal peoples and lands from provincial jurisdiction (albeit by purporting to subject them to federal jurisdiction rather than by recognizing inherent aboriginal jurisdiction), by providing various services to aboriginal communities, and recently, by enabling the management and delivery of these services at the local community level. In some parts of Canada, the Canadian government together with provincial governments is engaged in negotiations about how to implement self-government for First Nations.

With regard to the Innu, however, the Canadian and Newfoundland governments have yet to come to a clear understanding or agreement about the status of the Innu. As a reflection of this,

the Canadian government does not provide the services to the Innu that it provides to "status Indians", rather the Newfoundland government provides some of these kinds of services. The federal commitment represents only a commitment to assist and supplement the provincial programs and services. This degree of underlying ambiguity appears to be unique for aboriginal peoples in Canada. As a result of this, the Innu are not able to make the same arrangements for local control of various services that can be made by most other aboriginal communities in Canada. Examples of this kind of service would be education and social assistance. The Innu have not been able to make arrangements with Newfoundland for the same degree of local control over these services that are available to most aboriginal communities by negotiation with the Canadian government. Nor, since the status of the Innu has not been clarified by the Canadian and Newfoundland governments, are the Innu able to enter negotiations for implementing self-government.

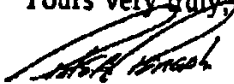
The cause of this stalemate would appear to be the fact that the Canadian government has yet to clearly and specifically acknowledge that it has jurisdiction, within the bounds of the Canadian Constitution, for the Innu, and more particularly, for recognizing and enabling the inherent jurisdiction of the Innu Nation. This omission on the part of the Canadian government detrimentally affects the ability of the Innu to manifest their culture and peoplehood by means of institutions of self-government.

An additional complaint by the Mushuau Innu at Utshimasits is that they were forcibly resettled at Okkak Bay in 1947. Then, in the period between 1950 and 1965 the government of Newfoundland attempted a second experiment at resettling the Mushuau Innu to North West River. Then again, in 1967 the people were moved to the present site of Davis Inlet.

We hope that the Canadian Human Rights Commission will investigate these complaints and make suitable representations in support of the Innu to the Canadian and Newfoundland governments, or take other appropriate action, after consultation with the Innu.

We look forward to hearing from you.

Yours very truly,



Peter Penashue
 President
 Innu Nation

Chief Commissioner's Office REC'D	
JUL 16 1997	P D C C P
REÇU LE Bureau du Président	

Innu Nation

Main Office
P.O. Box 119
Sheshatshiu, Labrador
AOP 1M0

General Delivery
Davis Inlet, Labrador
AOP 1A0

Bus: (709) 497-8398
Fax: (709) 497-8396

Bus: (709) 478-8943
Fax: (709) 478-8833

July 27, 1992

Mr Harvey Goldberg
Canadian Human Rights Commission
15th Floor, 320 Queen St.
Ottawa, Ontario
K1A 1E1

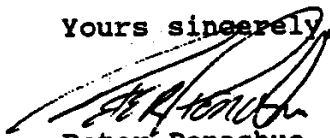
Dear Mr. Goldberg:

On Monday July 20, 1992 we released our study of Canada Newfoundland Agreement and their impact on the Innu People. I have asked that a copy of this report be sent to your office. It is our hope that it will be of assistance to you in examining our complaint with respect to the discriminatory policies of Canada and Newfoundland.

Having completed this report, we are now considering the possibilities of seeking compensation from government for breach of its fiduciary duty and responsibilities since 1949. I would ask that the Commission consider this matter in its study of our complaint.

Should you require any additional material or information, we would be pleased to meet with you again.

Yours sincerely



Peter Penashue
Innu Nation President

APPENDIX II**TERMS OF REFERENCE****An Independent Assessment of the Allegations
Made by the Innu of Labrador**

OBJECTIVE

To act as a Special Investigator for the CHRC to examine the grievances of the Innu of Labrador against the governments of Canada and Newfoundland and to recommend such corrective measures as may be warranted.

BACKGROUND

In June 1992, the Innu Nation and the Mushuau Band Council completed a report entitled "Gathering Voices: Finding Strength to Help Our Children". The report analyses the social and cultural malaise which characterises the community of Utshimasits, and presents a number of recommendations to ameliorate conditions there. Paramount among these recommendations is a proposal for self-government.

On June 16, 1992 the Chief Commissioner met with Peter Penashue, President of the Innu Nation, representatives of the Innu people and Grand Chief O. Mercredi. The Innu requested that the Commission carry out an investigation into their allegations. The Chief Commissioner agreed to appoint a Special Investigator.

On July 16, 1992 Mr. Yalden received a letter from Mr. Penashue further outlining the issues the Innu Nation wished the inquiry to examine (copy attached).

ISSUES TO BE INVESTIGATED

The Innu Nation's main concerns are outlined in Mr. Penashue's letter of July 16. The specific issues to be investigated are as follows:

1. Federal Recognition of the Innu

The Innu allege that due to circumstances relating to the nature of Newfoundland's entry into Confederation they do not receive the same level and quality of services as other aboriginal peoples in Canada.

The Innu believe the federal government has abrogated its responsibilities to them by entering into a series of agreements that gives primary responsibility for the delivery of the of programs and services to the

- 2 -

provincial government. In their view this is tantamount to a refusal by both governments to fully recognize their constitutionally protected status as aboriginal peoples.

The Innu are seeking funding and programs directly from the federal government on a basis comparable to other Inuit and Indian communities.

2. Self-Government

The Innu maintain the current arrangement denies them the opportunity to take control of their own affairs. For example, their attempts to gain control over their local school and policing have been rebuffed.

The Innu are seeking a self-government agreement that would give them control over the management of health, housing, welfare, education, policing, infrastructure and other essential programs. An essential element of such an agreement must be recognition of their inherent right to self-government.

3. Relocation

The Innu allege that the three "forced" relocation of the Mushuau Innu since 1947 have disastrous consequences.

The terrain of their present community at Utshimasits is ill-suited for modern housing. Consequently service levels are minimal. Their location on an island prevents them from pursuing their traditional pursuits for much of the year.

The community is isolated and does not have the resources necessary to help the Innu cope with modern life. On the other hand, they can no longer pursue their traditional ways. This has resulted in high levels of social dysfunction.

The Innu believe that relocation to a new community would enable them to rebuild both socially and physically. A planned community, in a less isolated locale, would facilitate resolving the social problems they face.

.../3

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4. Compensation

In a July 27, 1992 letter to the Commission the Innu indicate that they are "seeking compensation from government for breach of its fiduciary duty and responsibilities since 1949" and asked the CHRC to consider this matter in the investigation.

REQUIREMENTS

The Contractor shall undertake:

- to submit to the client a proposed workplan and schedule within 10 days of signature of this contract;
- to undertake a review of the reports and other documentation collected by the CHRC;
- to obtain and examine other documents if necessary;
- to interview individuals with direct knowledge of the matters under study including representatives of the governments of Canada and Newfoundland, the Innu Nation and residents of the communities concerned;
- to visit the Innu communities and such other locations as may be relevant to carrying out a full investigation;
- to analyze all available data and incorporate the findings in a final typewritten report;
- to make recommendations for the resolution of the issues identified above.

ASSISTANCE TO BE PROVIDED BY THE CHRC

The Commission will make available all research material and analysis collected to date. Policy and Planning Branch officers will be available to assist the contractor in carrying historic and legal research and analysis.

