

Report
to the
Canadian Human Rights Commission

on the
**Treatment of the Innu of Labrador
by the Government of Canada**

by
Professors Constance Backhouse and Donald McRae
Faculty of Law, University of Ottawa

26 March 2002

TABLE OF CONTENTS

Executive Summary		1
Background		9
The Innu of Labrador		11
The Innu and the Government		12
I	Implementation of the 1993 Recommendations by the Government of Canada	15
A.	The Formal Acknowledgement of the Government's Constitutional Responsibility	15
B.	The Abrogation of Funding Arrangements with Newfoundland and Labrador and the Commencement of Direct Arrangements with the Innu	16
	<i>The Continuing Role of the Province</i>	18
	<i>The Issue of Registration</i>	19
	<i>The Actual Funding Situation</i>	23
C.	Direct Negotiations with the Innu in Respect of Self-Government	25
D.	The Relocation of the Mushuau Innu	27
	<i>The Physical Environment</i>	29
	<i>The Financing of the Project</i>	30
	<i>The Management of the Project</i>	31
	<i>Innu Involvement in the Project</i>	32
	<i>The Social and Economic Aspects of Relocation</i>	33
E.	The Funding to Implement the Recommendations	37
II	The Implications of the Recommendations of the Royal Commission on Aboriginal Peoples	38
III	The Issue of Land Claims	41
IV	Canada's International Human Rights Commitments	43
V	The Implications of the Government's Failure to Provide the Innu with Treatment Equal to That of Other First Nations for the Period 1949 to 2001	46
VI	Recommendations	49
A.	Recognition, Registration and Self-Government	49
B.	Innu Education and Health	51

	<i>Education</i>	51
	<i>Health</i>	53
C.	The Relocation of the Mushuau Innu	57
D.	The Relationship Between the Innu and the Government	58
VII	Conclusion	60
	Summary of Conclusions	61
	Summary of Recommendations	62
	Annex A: Summary of Conclusions from the 1993 Report	64
	Annex B: List of Interviews Conducted for the 2002 Report	67
	Annex C: Biographical Notes on the Authors	68

EXECUTIVE SUMMARY

The 1993 Report

In 1993, the Canadian Human Rights Commission (the Commission) issued a report, prepared by Professor Donald McRae of the University of Ottawa, on issues relating to the treatment of the Innu of Labrador by the Government of Canada (the Government). The report concluded that the Government had failed in its constitutional responsibilities to the Innu by not recognizing them as status Indians; by failing to provide them with programs and services comparable to those received by other First Nations people; and by relocating the Innu of Davis Inlet to a location that was not suitable to their physical, social, cultural or political well-being.

The 1993 Report made five recommendations to the Government (see box). It also recommended that the Commission monitor the implementation of these recommendations and conduct a follow-up review.

The Current Report

The current report, co-written by Professors Donald McRae and Constance Backhouse, fulfills this latter recommendation. The Terms of Reference for this report were to:

- ! assess progress made by the Government in implementation of the 1993 recommendations;
- ! consider the recommendations of the Royal Commission on Aboriginal Peoples in relation to the implementation of the 1993 recommendations;
- ! examine the situation of the Innu in relation to international human rights commitments to which Canada is a party;
- ! review the situation of the Government's obligation to the Innu in light of its failure to provide treatment equal to that of other First Nations for the period 1949 to 2001; and

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 Sheshatshiu 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 people 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

! make recommendations as appropriate.

Implementation of the 1993 Recommendations

Acknowledgement of federal constitutional responsibility

The 1993 Report found that, due to circumstances relating to Newfoundland's entry into Confederation in 1949, the Government never acknowledged or assumed constitutional responsibility for the Innu of Labrador as provided under section 24(1) of the *Constitution Act, 1867*.

Consequently, the first recommendation of the 1993 Report was that the Government formally acknowledge its constitutional responsibility to the Innu. Our current review found that, through various statements and correspondence between 1994 and 1997, the Government gradually — albeit reluctantly — acknowledged and agreed to assume this responsibility.

CONCLUSION:

The Government has implemented the first recommendation of the 1993 Report that it formally acknowledge its constitutional responsibility to the Innu.

Funding arrangements

As a direct result of the Government's failure to assume its constitutional duty, the Innu were denied funding for programs and services in the same way that other First Nations people received such funding. Rather, program funding was provided through a series of federal-provincial cost-sharing agreements that allowed for very limited Innu input or participation in program delivery and design. As a result, the 1993 Report recommended that the Government abrogate these arrangements and ensure that the Innu communities were provided funding, programs and services on the same basis as other status Indians living on reserve.

The last agreement between the Government of Canada and the Province of Newfoundland and Labrador (the Province) was terminated in 1997. The Government has now put in place direct funding relationships with the Innu. However, our review shows that the Province remains involved in both funding and providing education, health and social services. This is because full federal assumption of funding is dependent on the Innu being registered as status Indians and lands being set aside for them as reserves under the *Indian Act*. The 1993 Report recommended against their registration under the *Indian Act*, suggesting instead that accelerated negotiation of a self-government agreement would

allow the Innu to operate under modern legislation. This option has proved unfeasible in the short term. Rather, the Government and the Innu have agreed to proceed with registration, although this process will take some time to complete.

The consequence of this decision is that, although the Innu receive funding for a wide range of programs and services, the role of the Province prevents them from having the same degree of involvement in and control over these programs that similar communities exercise and that was hoped would be the result of the 1993 recommendation. Moreover, special programs, such as the outposts program, which are designed to enable the Innu to preserve and promote their traditional way of living on the land, have not received adequate funding in recent years. It is our conclusion that, although the funding issue is moving towards the 1993 goal, it remains far from realizing it.

CONCLUSION:

The Government has entered into direct funding arrangements with the Innu. However, the Government has not yet provided the Innu with access to all federal funding, programs and services that are available to status, on-reserve Indian people in Canada. The process of registration and the creation of reserves, now belatedly underway, will ensure funding equity for the Innu. The Government has failed to preserve “the unique aspects” of the pre-1993 funding arrangement such as the outposts program.

Self-government

As recommended in the 1993 Report, self-government negotiations were launched in 1994. These broke off in 2000 and have remained in abeyance pending the completion of registration and the creation of reserves. The Innu are concerned that when discussions do recommence the Government will attempt to impose municipal-style government on them, rather than a structure that recognizes the Innu's independence.

CONCLUSION:

The Government did enter into self-government negotiations with the Innu as recommended. However, these negotiations are now in abeyance with no plan for recommencing them. As a result, we conclude that, although the Government appears still committed to negotiations, it has not fulfilled the 1993 recommendation.

Relocation of the Mushuau Innu of Davis Inlet

The 1993 Report recommended the relocation of the Innu of Davis Inlet to a new community, citing the unacceptable living conditions at Davis Inlet. The Royal Commission on Aboriginal Peoples (RCAP) subsequently described the conditions at Davis Inlet as being comparable to those found in the poorest of developing countries. In 1993, the Innu voted in favour of relocation, to which the Government agreed in 1994. Our review indicated that the relocation has been beset by delays and difficulties caused, in part, by the Government's lack of proper management, as noted by the Auditor General. The relocation is now expected to be completed by the summer of 2003.

The physical environment provided the greatest challenge to the relocation project, which is one of the largest of its type ever undertaken in Canada. Environmental factors such as a very short building season and the isolated location resulted in significant delays.

The financing of the project was complicated by inaccurate cost forecasts and the consequent need to repeatedly obtain financial authorization. This in itself resulted in significant project delays, as authorizations often came too late to transport supplies during the short building season.

The management of the project was to be jointly handled by the Innu and the Government. This arrangement was beset by problems often arising as a result of conflict between government requirements and the Innu's own sense of how best to do things. In the end, these difficulties were overcome, albeit at a cost.

Innu involvement in all aspects of the project was to be a guiding principle of the undertaking. This was seen as a means of building skills and developing capacity among the Innu to manage their own community. Although attempts were made to ensure Innu involvement, these were not uniformly successful. We found that Innu often ended up with the least skilled and most undesirable jobs. The Auditor General concluded that inadequate efforts had been made to ensure that the Innu had the ability to successfully manage the transition to the new community and ensure its good management in the future.

Social and economic aspects of relocation constitute another matter that appears to have received inadequate attention. Relocation in itself will not resolve long-standing social and cultural issues such as alcohol and substance abuse by both adults and youth and related high levels of family dysfunction. The development of viable opportunities for economic development and employment is also urgent. The need for an appropriate social and economic plan is apparent, although it seems to have received little government attention or priority to date.

CONCLUSION:

The Government is in the process of implementing its commitment to the relocation of the Mushuau Innu to the site chosen by them as proposed in the fourth recommendation in the 1993 Report. The relocation has been beset by difficulties, many of which might have been avoided if the Government had acted expeditiously.

Funding to implement the recommendations

Funding for the 1993 recommendations has been provided by the Government but, again, there have been problems. Delays in funding approvals and the decision by the Government to place the Innu under third-party financial management have stalled the relocation and other projects. Disputes have also arisen over the allocation of funding. For example, although the Innu strongly favoured continuing the outposts program, they have failed to receive adequate funding from the Government. Compensation for non-existent or inadequate funding from the Government since 1949 is an issue that must yet be addressed.

CONCLUSION:

The Government has gone a significant way towards funding implementation of the 1993 recommendations. However, the issue will remain open until all of the recommendations have been fully implemented.

The Royal Commission on Aboriginal Peoples

Our review of the recommendations of the RCAP indicates that many are relevant to the situation of the Innu, particularly those regarding housing, education, cultural identity and language, health and self-government. The RCAP emphasized that community health and well-being depend on an integrated and comprehensive approach to these issues, which are inter-related and interdependent within the framework of community control.

Housing conditions for the Mushuau Innu will improve significantly as a result of relocation although, as noted above, concerns remain in respect of the overall implementation of the project. Innu education remains under provincial control, with little opportunity for Innu involvement.

The revitalization of Innu-aimun, the Innu language, which is at risk of extinction over the long term, is of particular concern to the Innu. Despite this, it has received little government attention. Another important principle of the RCAP yet to be fully realized within Innu communities is the need for comprehensive strategies for family health and

healing. Self-government is seen by RCAP as the key to progress, yet self-government discussions with the Innu are currently in abeyance.

CONCLUSION:

Actions of the Government since 1993 have gone some way towards implementing key recommendations of the RCAP, especially with regard to the relocation project and certain aspects of health care. However, in many critical areas such as education and self-government, there is little evidence that the recommendations of the Royal Commission have been implemented at all in respect of the Innu.

Land Claims

Land claims negotiations have been in progress since 1991. The Province, which was previously a reluctant participant, is now fully involved. The Government continues to be supportive of resolving the issue and notes that current Innu claims are more realistic than previous positions. All the parties have been motivated by the economic opportunities arising from the Voisey's Bay development.

The already complex land claims process has been further complicated by the suspension of self-government negotiations and the registration and reserve creation process. Notwithstanding a current air of guarded optimism by all parties, after 11 years of negotiations, final resolution still appears to be a long way off.

CONCLUSION:

There is an opportunity for the Government to reach a comprehensive land claims settlement with the Innu. There is momentum on the Innu side, arising out of their new proposals and the opportunities provided by the Voisey's Bay development, that will be lost if the Government does not match that momentum. Progress requires a clear commitment by the Government and the early resumption of self-government negotiations.

International Human Rights Commitments

We found several international human rights instruments whose provisions may be relevant to the Government's relations with the Innu. Both the *International Covenant on Civil and Political Rights* and the *International Covenant on Social, Economic and Cultural Rights* provide that all peoples have the right to self-determination and the right to "freely pursue their economic, social and cultural development." Although the full scope

of this right as it applies to Aboriginal peoples has yet to be determined, self-government of Aboriginal peoples such as the Innu is clearly anticipated. Likewise, the *Draft Declaration on the Rights of Indigenous Peoples* also anticipates self-government of Aboriginal First Nations.

Another instrument relevant to the Innu is the *Convention on the Rights of the Child*, which provides that the “best interests” of the child should always be the first consideration of state parties when they take actions that may affect children.

As outlined above, significant steps have been taken to improve the situation of the Innu. Delays in the negotiation of a self-government regime are, however, an ongoing concern that must be addressed. Unless the Government acts to ensure that self-government is established, the risk remains that Canada may be violating its international obligations.

CONCLUSION:

Unless the Government acts to ensure that the Innu are able to take responsibility for their own affairs and are able to move to self-government, Canada is at risk of violating its international obligations under the *International Covenant on Civil and Political Rights* and the *International Covenant on Social, Economic and Cultural Rights*, and of acting inconsistently with the *Draft Declaration on the Rights of Indigenous Peoples*. Furthermore, in dealing with the children of the Innu communities of Davis Inlet and Sheshatshiu, Canada is under an obligation under the *Convention on the Rights of the Child* to have the well-being and best interests of the children as a primary consideration.

Equity in Treatment

The 1993 Report found that the Innu suffered significant economic and social disadvantages due to the failure of the Government to fund them on the same basis as other Aboriginal communities between 1949 and 1993. The 1993 Report recommended that, rather than redress the inequitable treatment of the Innu through financial compensation, the Government provide them with the resources necessary to place them on an equal footing with other Aboriginal communities. The Government has now taken responsibility for direct funding of the Innu, but the effects of their historic treatment remain, particularly in respect of the application of sales tax.

CONCLUSION:

Funding to the Innu should take account of the fact that they have been disadvantaged by the failure of the Government to exercise its fiduciary obligation to the Innu, and that any remission order in respect of taxes should be dated from 18 August 1993.

2002 Recommendations

Based on the above considerations we recommend the following.

Recognition, Registration and Self-Government

1. That the Government immediately resume self-government negotiations with the Innu, and that it complete such negotiations within the next five years.

Education and Health

2. That the Government enter into negotiations with the Innu with a view to enabling them, following registration, to take responsibility for education and health in their communities. The devolution of such responsibility to the Innu should be completed within two years.

Relocation of the Mushuau Innu

3. That the Government provide full and continuous funding for the outposts program and similar Innu-directed initiatives to enhance health and education through the preservation of Innu language, traditional skills and culture.

The Relationship Between the Innu and the Government

4. That the Government provide funding and training for the Mushuau Innu to enable an effective relocation to Natuashish and to ensure that the new community is able to function into the future.
5. That, if serious progress is not achieved in negotiations on self-government within two years, and serious progress is not achieved in the devolution of responsibility for education and health within one year, a mediator should be appointed to assist the parties.

Follow-Up

6. That the Canadian Human Rights Commission review the progress made in the implementation of the recommendations in the 1993 Report and this Follow-Up Report in five years' time.

**REPORT TO THE CANADIAN HUMAN RIGHTS COMMISSION
ON THE TREATMENT OF THE INNU OF LABRADOR
BY THE GOVERNMENT OF CANADA**

Background

In 1992, the Innu Nation brought a complaint to the Canadian Human Rights Commission (the Commission) alleging that the Government of Canada (the Government) had failed to exercise direct constitutional responsibility in respect of the Innu. Instead, the Innu Nation claimed, the Government had left the Innu to be dealt with by the Province of Newfoundland and Labrador (the Province) under an agreement with the Government. The Innu claimed that the refusal of the Government to recognize its constitutional obligations had resulted in a continuing governmental failure to provide them with the level and quality of services received by other Aboriginal people in Canada. The Innu also complained that the Government had subjected the Mushuau Innu of Davis Inlet to a series of relocations without meaningful consultation. The relocation of the Mushuau Innu to Davis Inlet in 1967 had left them without adequate housing or services, and had resulted in social dysfunction. The Innu sought compensation for the failure of the Government of Canada to recognize their Aboriginal constitutional status, and for breach of fiduciary duty.

The Commission appointed Professor Donald McRae of the University of Ottawa 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.” The Report, delivered in 1993, concluded that the Government had failed to acknowledge and assume constitutional responsibility for the Innu as Aboriginal people of Canada with a consequent impact on the level and quality of services received by the Innu and on their ability to achieve self-government. It also concluded that the Mushuau Innu had been relocated to the present village site in Davis Inlet without any meaningful consultation.¹ The Report made the following recommendations.

That the Government:

- (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 Sheshatshiu 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-

¹ The full text of the conclusions of the Report is set out in Annex A.

reserve Indian people 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.

It was also recommended that the Commission review the progress made in the implementation of the Report every five years.

In May 2001, the Commission requested that professors Constance Backhouse and Donald McRae, of the University of Ottawa, conduct a follow-up review of the 1993 Report. The Terms of Reference for the follow-up review were as follows:

1. to review progress made by the Government in the implementation of the recommendations of the 1993 Report...;
2. in relation to 1, to examine (a) the recommendations of the Royal Commission on Aboriginal Peoples, and the Government's response to it (*Gathering Strength*) and the implementation thereof; and (b) land rights claims of the Innu of Labrador;
3. to review the situation of the Innu in relation to international human rights commitments to which Canada is a party, and in particular with regard to:
 - (a) the *International Covenant on Civil and Political Rights*
 - (b) the *International Covenant on Economic, Social and Cultural Rights*
 - (c) the *Convention on the Rights of the Child*
 - (d) the *Draft Declaration on the Rights of Indigenous Peoples*;
4. to review the situation of Canada's obligation to the Innu in light of its failure to provide treatment equal to that of other First Nations for the period 1949 to 2001; and
5. to make such recommendations as are appropriate based on the findings of the above reviews.

During the course of this follow-up review, we have reviewed documents provided by the Innu Nation, the Department of Indian Affairs and Northern Development (DIAND), the Office of the Auditor General of Canada, and Health Canada. We visited the communities of Sheshatshiu, Davis Inlet and Natuashish in July–August and December 2001, where we met with representatives of the Innu Nation, the band councils and the Mushuau Innu Relocation Committee. We also met with members of the Innu land claims negotiating committee in Ottawa. We interviewed officials from DIAND in Ottawa, Amherst and Goose Bay, from Health Canada in Ottawa and Goose Bay, and from the Office of the Auditor General of Canada in Ottawa. We also met with the Chief Federal Negotiator for Labrador Innu Files, in Montreal.

The Innu of Labrador

The Innu comprise about 1500 people living in two communities in Labrador: Sheshatshiu 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 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 Davis Inlet as Naskapi. But Montagnais and Naskapi are the same people and they share a common language — Innu-aimun. The boundary between Quebec and Labrador divides the Innu of Quebec from the Innu of Labrador.²

Traditionally, the Innu hunted in the interior of Nitassinan and visited the coast only during the summer months.³ These visits became associated with the trading posts⁴ to which furs were sold and often coincided with the presence of a priest. Sheshatshiu and Davis Inlet were places to which the Innu came.⁵ The invasion of the Innu's traditional

² For background see Georg Henricksen, *Hunters in the Barrens* (1973). See also Peter Armitage, *Land Use and Occupancy Among the Innu of Utshimasits and Sheshatshiu* (prepared for the Innu Nation, July 1990).

³ 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 North West River as early as the mid-1700s; *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.*, p. 13.

⁴ In the case of Sheshatshiu, 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.

⁵ Voisey's 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 1920s on, one came every summer to Davis Inlet.

hunting grounds by white settlers also drove the Innu to the coast.⁶ 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 1920s on through the Hudson's Bay Company representative or the priest.⁷

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.

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

Housing began to be constructed for the Innu in Sheshatshiu in the 1950s. Between 1965 and 1968 housing in Sheshatshiu was substantially increased by the building of 51 new units.⁸ Housing was also begun in Davis Inlet, but not at the location on the coast where the settlement had existed for many years.⁹ A new settlement was established on Iluikoyak Island some two miles from the existing settlement and the Innu were relocated there.

The Innu and the Government

The Terms of Union under which Newfoundland entered Confederation made no reference to the Aboriginal people of Newfoundland and Labrador, although the matter had been discussed during the negotiations between the representatives of Newfoundland and the representatives of Canada. Following union, the Government paid costs incurred by Newfoundland in respect of the Aboriginal people of Newfoundland and Labrador, although

⁶ Armitage, *op. cit.*, pp. 5–6.

⁷ From 1927 on Davis Inlet was visited regularly by Mgrs. Edward O'Brien. Records of relief given are found in the *Letters and Papers of Msgr. Edward Joseph O'Brien, 1923–47* (held in the Newfoundland Room of the Queen Elizabeth Library, Memorial University, St. John's, Newfoundland).

⁸ Armitage, *op. cit.*, p. 10.

⁹ 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, *op. cit.*, p. 97.

the nature and extent of its responsibility or obligation to do so was the subject of substantial internal discussion.¹⁰

In 1954, the Government and the Province entered into an agreement by an exchange of letters:¹¹

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 Government would assume 66.7% 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,” assume the full costs of hospital treatment for Indians and Eskimos of northern Labrador during a 10-year period, and “undertake an aggressive anti-tuberculosis program” during the same period. For its part, the Province 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.

Ten years later a new agreement was entered into between the Government and the Province, again by an exchange of letters.¹² 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 Government would “reimburse Newfoundland for 90 percent of the province’s expenditures on Indians and Eskimos” up to a maximum of \$1 million per year.¹³ This agreement provided the financial basis for capital developments, particularly housing, in both communities.

The 1964 arrangement, which was to last for five 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 of Labrador Agreement was subsequently divided into two agreements, one relating to the Inuit and the

¹⁰ Richard Budgel, “Canada, Newfoundland, and the Labrador Indians 1949–69,” *Native Issues* 6, 1 (1984), p. 40.

¹¹ Letter of J.W. Pickersgill to H.L. Pottle, 12 April 1954; letter of Pottle to Pickersgill, 26 April 1954. The agreement was to come into effect on 1 April 1954.

¹² Letter of L.B. Pearson to J.R. Smallwood, 25 May 1965.

¹³ The limit under the 1954 agreement had been \$200,000 per year. In the 1965 agreement the 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.

other to the Innu communities of Sheshatshiu 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 Sheshatshiu and Davis Inlet, although these are identified as “supplementary programs and services.”¹⁴ The agreement identifies the amount of funding available,¹⁵ the purposes for which it can be used, the methods of payment and the mechanisms of accountability, and establishes a management committee composed of federal and provincial officials and representatives of the communities of Sheshatshiu and Davis Inlet.

Originally, the only funding of the Innu by the Government was through the agreements entered into between the Government and the Province. 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.¹⁶ In the late 1980s the 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.¹⁷ These sources of funding have been made available either by agreements between the Innu Nation and the Minister of Health or simply by the Government indicating that it will treat the Innu as eligible for certain programs.

In 1976, the Innu made enquiries of the Government about registration under the *Indian Act*,¹⁸ and in 1977 applied for registration.¹⁹ No such registration took place.

¹⁴ 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.

¹⁵ The shares are 90% for the Government and 10% for the Province.

¹⁶ Letter of Judith D. Ross, Health and Welfare Canada, to George Miller, Canadian Human Rights Commission, 24 February 1993.

¹⁷ It was suggested by officials in DIAND that this new activity by the Government was a consequence of the publicity the Innu were receiving over their opposition to low-level flying.

¹⁸ Letter of Penote Antuan to F. Campbell Mackie, ADM of Indian Affairs and Northern Development, 22 March 1976.

¹⁹ Letter of Atwan Penashue to Warren Allmand, Minister of Indian Affairs and Northern Development, 16 March 1977.

However, in July 1978, the Innu were recognized as having a land claim based on “traditional use and occupancy of lands in Labrador.”²⁰

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.”²¹

I Implementation of the 1993 Recommendations by the Government of Canada

A. The Formal Acknowledgement of the Government’s Constitutional Responsibility

The 1993 Report recommended that the Government “formally acknowledge its constitutional responsibility to the Innu.”

Despite initial indications that acknowledgement would be forthcoming, in fact the Government has never made a single acknowledgement of its constitutional responsibility to the Innu people. Instead, it has made separate acknowledgements about the status of the Mushuau Innu and the Sheshatshiu Innu.

On 25 February 1994, a Statement of Political Commitments was signed by four federal Cabinet Ministers (the Ministers of Indian Affairs and Northern Development, of Health and of Justice, and the Solicitor General) and the Mushuau Innu. The document included the following statement in its preamble: “Whereas the Government of Canada recognizes Innu as being Indians within the meaning of sub-section 91(24) of the *Constitution Act, 1867*.”²² Since the Sheshatshiu Innu were not a party to the Statement of Political Commitments, this was presumably a statement about the Mushuau Innu.

²⁰ Letter of J. Hugh Faulkner, Minister of Indian Affairs and Northern Development, to Penote Michel, 18 July 1978.

²¹ Letter of Tom Siddon to Peter Penashue, 23 November 1992.

²² The document also included a disclaimer: “This Statement of Political Commitments is not a legally binding document. It has been submitted on behalf of the Government of Canada and acknowledged by the Mushuau Innu by their duly authorized representatives.”

A similar statement about the Mushuau Innu was made in November 1996, when the Government (as represented by the Minister of Indian Affairs and Northern Development) and the Province (as represented by the Premier) signed the Mushuau Innu Relocation Agreement with the Mushuau Innu Band Council. The preamble included the following statement: “Whereas Canada and Newfoundland and Labrador recognize the Mushuau Innu people are Indians within the meaning of section 91(24) of the *Constitution Act, 1867*.”

Finally, on 19 March 1997 federal constitutional responsibility in respect of the Sheshatshiu Innu was acknowledged. An Order in Council that provided authority to treat both Mushuau and Sheshatshiu Innu as status Indians on reserve provided as follows:

Whereas the Government of Canada considers that the Sheshatshiu Innu people are Indians within the meaning of class 24 of section 91 of the *Constitution Act, 1867*...²³

Thus, although one might question the time it took for acknowledgement of federal constitutional responsibility for the Innu, and the rather contingent and episodic way in which it occurred, no one today — the Innu, the Province or the Government — doubts that the Government has in fact acknowledged its constitutional responsibility in respect of the Innu. Further evidence of the commitment of the Government to dealing directly with the Innu was the appointment by the Government, in April 2000, of Eric Maldoff, a lawyer with the firm of Heenan Blaikie in Montreal, as Chief Federal Negotiator for Labrador Innu Files. As Chief Negotiator Mr. Maldoff has overall responsibility for land claims negotiations, registration and all other issues concerning the Government’s relationship with the Innu.

CONCLUSION 1:

The Government has implemented the first recommendation of the 1993 Report that it formally acknowledge its constitutional responsibility to the Innu.

- B. The Abrogation of Funding Arrangements with Newfoundland and Labrador, and the Commencement of Direct Arrangements with the Innu

The 1993 Report recommended that the Government:

abrogate its funding arrangements with the Government of Newfoundland and Labrador in respect of the Innu communities of Sheshatshiu 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

²³ P.C. 1997-7/415, 19 March 1997, (T.B. Rec. 825105).

federal funding, programs and services that are available to status, on-reserve Indian people in Canada while preserving the unique aspects of existing arrangements such as the outposts program.

The 1993 Report had found that, although the Government had refused to accept constitutional responsibility for the Innu in the past, it had agreed to pay some of the costs incurred by the Province in respect of Aboriginal people. Agreements to give effect to this were signed (or renewed) by the Government and the Province in 1954, 1964, 1970, 1976 and 1981, and annually thereafter. During the 1980s, the Government also began to make a number of ad hoc arrangements directly with the Innu, including provision for some post-secondary education costs, and funding for alcohol and drug abuse programs, economic development and health services.²⁴ The 1993 Report also found that the Innu historically had not received the level of benefits received by status Indians elsewhere in Canada.

The Canada–Newfoundland Native Agreement, the most recent in the series of Canada–Newfoundland agreements relating to the Innu, was terminated in 1997, and the Government began to enter into direct funding agreements with the band councils in Sheshatshiu and Davis Inlet.

CONCLUSION 2:

The Government has implemented the first part of the second recommendation in the 1993 Report, that it enter into direct funding arrangements with the Innu.

However, the recommendation in 1993 was that the Innu were to have access to all federal funding, programs and services that were available to status, on-reserve Indian people in Canada. Furthermore, the 1993 Report had made clear that this should be accomplished without requiring the Innu to be registered under the *Indian Act*. To require the Innu to be so registered, the Report said, would be “nothing more than a symbolic act of subordination.”²⁵

It appears that the Government may initially have been prepared to carry out this recommendation. The 1997 Order in Council provided as follows:

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development and the Treasury Board, hereby authorizes the Minister of Indian Affairs and Northern Development and other Ministers, as appropriate, to consider the

²⁴ 1993 Report, p.8.

²⁵ 1993 Report, p. 53.

Innu People at the communities of Sheshatshiu and Davis Inlet as if they were Status Indians on reserve land, for the purpose of providing them with programs and services.

However, the reality is much more complicated. There are three matters to be considered. The first relates to the continuing role of the Province. The second is that, contrary to the terms of the 1997 Order in Council, the Government has required that the Innu be registered and on reserve before they can fully receive the benefits to which status Indians on reserve are entitled. The third relates to the actual funding situation.

The Continuing Role of the Province

Although the Canada–Newfoundland Agreement was abrogated, the Province did not disappear from the picture. Nor, in fact, could it. Until the courts determine otherwise, the Government cannot transfer land within the Province without its consent. The Province is involved in the provision of education, health and social services to the Innu, and it funds these at the same level it funds all such services in Newfoundland and Labrador. The Government “tops up” such funding to bring it to a level comparable to that provided to status Indians on reserve. Until the Innu change their status, or attain self-government, such a provincial role has to continue. Moreover, in the meantime, all negotiations affecting these matters also involve the Province.

Even after registration is complete, the Province will continue to be involved. The Government views the Province as continuing to provide education, and possibly other services, with a transfer of federal funds to cover the costs. The Government takes the position that the Innu have yet to develop the capacity to administer such programs on their own. Federal officials claim that substantial “capacity development” is required before the Government will move towards the devolution of such programs directly to the Innu. The long-term goal, concedes the Government, is to have the Innu assume control, but in the interim programs and services have to be provided to them. The Government has begun negotiations with the Province about the post-registration provision of those services. Federal officials advised us that there are parallel negotiations going on: one set of negotiations with the Province about the delivery of services to the Innu and another set of negotiations with the Innu on how services are being delivered and on “capacity development.” This latter set of negotiations appears to be in a very preliminary stage. The Innu have expressed concern that they have been excluded from discussions with the Province.

There is a further way in which a provincial role continues. This relates to the provision of funds. At the time of the abrogation of the federal-provincial funding arrangement, a commitment was made by the then-Premier of Newfoundland and Labrador, Brian Tobin, that the money the Province had historically allocated to the Innu would remain for the benefit of the Innu and not revert to provincial coffers. This money is

generally referred to as the money that has been “left on the table.” This commitment was apparently seen by the Province as necessary to get the Government to agree to end the funding arrangements and take on its constitutional responsibility for the Innu. It was the only way to get the Government to bring an end to its “53-year holiday from its fiduciary responsibilities.”

There is no clear agreement between the Province, the Government and the Innu over how this money is to be spent. The Government would like to see the money used to underwrite some of its costs and the Innu themselves would like to control its expenditure. For its part, the Province takes the view that the money is to be allocated by it for such matters as infrastructure costs, and it has made allocations on a case-by-case basis.

The Issue of Registration

The issue of registration of the Innu under the *Indian Act* has a complex history. The Innu applied for registration in 1977. At that time, the Province opposed the move, and although the reasons are unclear, the Government did not accede to the Innu request.²⁶ In the late 1980s, the Government appears to have been prepared to register the Innu, but at that point the Innu did not wish to be placed under the *Indian Act*. In the early 1990s, the Innu continued to oppose the prospect of registration, and sought instead to obtain “equivalency” to “status” without actually engaging in the registration process. In 1997, the Government withdrew its offer of registration and reserve status prior to signing the relocation agreement with the Davis Inlet Innu.²⁷

The 1993 Report had recommended that the Innu not be required to register as status Indians under the *Indian Act*. The Report suggested that the Government should act directly without imposing a process of registration on the Innu.

When negotiations commenced after the 1993 Report, the Government initially appeared to be in agreement with the approach recommended in the Report. The Order in Council contemplated the provision of services without registration. And this was the position taken by the Deputy Minister of DIAND, who wrote to the Innu on 12 December 1997, stating: “[W]ith self-government currently under negotiation, it appears that registration and reserve creation is an unnecessary step to take and then undo under a self-government regime.”²⁸ In short, the approach appeared to be that the Innu would receive all of the benefits to which status Indians on reserve were entitled, that land claims

²⁶ 1993 Report, p. 17.

²⁷ Letter of Deputy Minister Scott Serson to Chief Paul Rich, 24 September 1997.

²⁸ Letter of Deputy Minister Scott Serson to Chief Paul Rich, 12 December 1997.

and self-government would be negotiated, and that in this way the Government would have fulfilled its constitutional responsibilities.

This position was reiterated on 24 November 1999 in an Agreement in Principle signed by the President of the Innu Nation, the band leaders of Sheshatshiu and of the Mushuau Innu, the Premier of Newfoundland and Labrador, Brian Tobin, and the federal Minister of Indian Affairs and Northern Development, Robert Nault. Under the Agreement in Principle, the Province was to facilitate the transfer of land for the settlement of Innu land claims, the Government and the Province were to work together to transfer control over education programs to the Innu, there was to be an agreement on Aboriginal policing, legal arrangements for Innu governance were to be put in place, and there was a commitment to the “expeditious conclusion” of an Innu land claims and self-government agreement.²⁹ In short, the November 1999 Agreement in Principle contemplated the assumption by the Government of its full constitutional responsibilities towards the Innu and the conclusion of land claims and self-government agreements.

However, it did not work out that way. The Government, it turned out, was not prepared to grant the Innu all of the benefits to which status Indians on reserve were entitled. The sticking point appears to have been tax exempt status, which the Government was not prepared to provide to the Innu. In 1997 Indian Affairs and Northern Development Minister Ron Irwin claimed that there had never been a commitment that equivalency for the Innu would include “taxation.”³⁰ The Innu took the view that since they were entitled to be registered and have reserves created, then “equivalency” meant that they were entitled to tax exemption. Tax exemption had implications not only for the Innu as individuals but also for the expenditures made by the Innu Nation and the bands at Sheshatshiu and Davis Inlet. From the Innu point of view, unless they received tax exempt status equivalent to that received by those who were registered under the *Indian Act*, they were not receiving the benefits to which they would be entitled if the Government was properly fulfilling its constitutional responsibilities towards them.

There were other complicating factors arising out of the fact that the Innu were not living on reserves. The “bands” at Sheshatshiu and Davis Inlet are simply incorporated entities under provincial laws. This means that they have been limited in their ability to enact by-laws and to regulate matters within their communities, including access to alcohol. Some felt that these matters could be worked out, and that it might be possible to create new mechanisms and legal vehicles outside the *Indian Act*, to establish equivalencies to those matters that followed automatically from registration under the

²⁹ The Agreement in Principle also provided that DIAND would establish an office in Labrador to assist the Innu in taking on their new responsibilities.

³⁰ Letter of Ron Irwin, Minister of Indian Affairs and Northern Development, to Chiefs Prote Poker and Paul Rich, 9 June 1997.

Indian Act, avoiding the process of registration. On the government side, it was felt that seeking to provide the Innu with equivalency in this latter way was too cumbersome.

In the end, Innu leaders concluded that registration under the *Indian Act* and the creation of reserves were the only ways they could achieve true “equivalency.” In March 1999, a referendum was held in Sheshatshiu and Davis Inlet on the following question:

In the interim until Innu rights and Innu government agreements are in place, I am in favour of the leadership of the Innu Nation and of the band councils taking whatever actions they determine as necessary to ensure equivalency of programs and services including taxation exemption. I also agree that as a last resort this mandate includes registration under the *Indian Act* and taking a reserve.

In Sheshatshiu, there was a 49% voter turnout, with 78.5% in favour of registration. In Davis Inlet, there was an 88% voter turnout, with 88.2% in favour of registration.

Notwithstanding these results, there appear to be several differing perspectives on the registration referendum. Some of the Innu concluded that if registration was the only way to get full recognition, programs, services and taxation provisions similar to those of other Aboriginal people, the community should positively support registration under the *Indian Act*. Others were less accepting of the registration process, and felt that the Innu had decided to “hold their noses” and accept the politically offensive route of registration under the Act because their good faith efforts to negotiate alternate avenues and procedures had not met with success. Some continued to resist registration, if only in principle, arguing that moving from being under the jurisdiction of Newfoundland and Labrador to being under the *Indian Act* was “no help” and describing it as a “step sideways.”

Nor from the federal side was registration regarded as necessarily a desirable process. Some officials, particularly within DIAND, felt that registration was being driven by a few Innu who wanted the personal benefit of tax exemption, a benefit that officials considered to be of marginal value to many low-income Innu. Others felt that applying the provisions of the *Indian Act* to a further group of Aboriginal people was regressive, and might set a precedent that would be seized upon by other groups wishing to be registered as well. They considered that it was contrary to the general policy of DIAND to create new relationships with Aboriginal people that did not move away from the “outdated and paternalistic” strictures of the *Indian Act*.

As a result of the delays and their concern that the issue of registration was going nowhere, in September 2000 the Innu threatened to march on Ottawa and set up their tents on Parliament Hill. On 8 September 2000, Minister of Indian Affairs and Northern Development Robert Nault offered to discuss the issue of Innu registration and reserve

creation with his Cabinet colleagues before the end of the year. Federal officials say that the Cabinet approval process became complicated by public revelations of the gas sniffing among Innu children in November 2000. The crisis provoked intervention by the Prime Minister and Health Canada, and caused Cabinet to ask for a comprehensive background report prior to issuing approval for the registration and reserve creation.

Thus it was not until June 2001, some two years after the Innu voted in favour of registration, that Cabinet formally approved the registration of the Innu under the *Indian Act*.³¹ In the end, the reluctance within the bureaucracy of DIAND to proceed with registration was overridden by the political decision of Cabinet.

In spite of this political support, the registration process continued to move slowly, and resulted in some degree of tension and acrimony between the Innu and the Government. Federal officials see much of this as inevitable. Registration, in their view, is inherently time consuming and complex. Criteria have to be developed as to who will be defined as "Innu," and the entire community needs to be enumerated. Individuals in Sheshatshiu and Davis Inlet can choose whether to register or not, and community meetings must be called to explain the meaning and implications of registration.

The creation of a reserve is equally complicated. The reserve lands need to be surveyed, title searched and environmentally assessed. Private interests must be bought out. The land has to be turned into provincial Crown land, and subsequently transferred to the Government. Where non-Innu families have built homes adjacent to Innu families, the lines of the new reserve will occasionally have to be drawn in a checkerboard fashion to recognize this. Although this is not an issue for the new Mushuau Innu community of Natuashish, it is a difficulty that faces Sheshatshiu, where non-Innu have been living in the community for many years.

The slowness of the registration process contributed to a good deal of suspicion from the Innu who believe that delays have in part been deliberate, to allow the Government to put pressure on the Innu in respect of other issues under negotiation. In fact, the Innu moved quickly on enumeration and saw delay essentially coming from the federal side. A substantial amount of time was spent determining the budget for the registration process.

By late 2001, the budget for the registration process was approved.³² Lists of those eligible for registration were then prepared, and consultations in the communities were completed in 2002. Although some estimated that the process of registration and reserve

³¹Letter of Robert Nault to Peter Penashue, President, Innu Nation, 8 September 2000.

³² However, the creation by the Government of additional negotiating "side tables" on registration, without an increased budget, raises questions of whether the earlier budget will continue to be adequate.

creation would be completed by June 2002, this has yet to occur. The matter has been referred to the federal Cabinet, and it is unclear when final approval might be anticipated.

The saga leading to registration is an unfortunate one that does not reflect well on the Government. The Innu were offered registration. The offer was subsequently withdrawn and then re-offered. The Innu were told they were getting equivalency without registration, but then told equivalency only applied to programs and services and not to taxation. They were then told they could get taxation exemption if they became registered. When a parallel was drawn with Conne River, the Innu were told that they were different from the Aboriginal inhabitants of Conne River, although an internal government memorandum provided to the Innu under an *Access to Information Act* request appears to indicate that the only real difference between the Innu and the Mik'maqs of Conne River was that whereas the Mik'maqs had sued the Government, the Innu had not.

Thus, for the Innu, registration will be the culmination of a long and tortuous process. In the words of Peter Penashue, "it should have been just so simple. Eight years later [since the 1993 Report] they are starting to do what they should have done in 1949."³³

The Actual Funding Situation

The Government takes the view that, with the exception of tax benefits, it is providing programs and services to the Innu as if they were status Indians under the *Indian Act*. The provincial government continues to provide education and social services, and the Government provides some additional funds "topping up" the provincial funding so that it is comparable to what is provided to Indians on reserves across the country. The Government also argues that since 1997, it has paid to the Innu of Labrador a "very significant capital catch-up," amounting to several million dollars annually.

The Innu concede that they are now getting direct funding from the Government, but many essential services remain with the Province, which continues to fund and control education, policing and social services, a situation that will not change after registration.

CONCLUSION 3:

The Government has not implemented that part of the second recommendation in the 1993 Report under which the Innu were to be provided with access to all federal funding, programs and services that were available to status, on-reserve Indian people in Canada. However, it has implemented part of this recommendation and it has, albeit belatedly, set in motion a process — registration and the

³³ Interview with Peter Penashue, Sheshatshiu, 30 July 2001.

creation of reserves — that will ensure the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian people in Canada.

The final aspect of the second recommendation in the 1993 Report was that, in providing these services, the Government preserve “the unique aspects of existing arrangements such as the outposts program.” That program covers the air travel expenses of the Innu families who go out to their hunting camps to live on the land for two to three months each fall and spring. The camps are very small, mostly confined to family groups and located many miles from each other. Many Innu see the program as central to the maintenance of traditional Innu culture and as one of the venues in which the elders are able to contribute to the passing down of knowledge and expertise. They repeatedly stress the importance of the outposts program to the retention of the Innu language — Innu-aimun — and to the strength of the community’s education, health and culture.

The 1994 Statement of Political Commitments indicated that the Government was prepared to “provide its share of funding for outpost activities” to assist the Innu to spend time in the country, and was to enter into negotiations “to discuss access to emergency and regular social support programs for Innu families when they are in the country.”³⁴ However, the commitment did not appear to continue in any consistent fashion.

The notion of providing the Innu with programs and services equivalent to those available to status Indians on reserve has come to be a double-edged sword as far as the outposts program is concerned. In 1997, the Deputy Minister of Indian Affairs and Northern Development wrote to Chief Paul Rich saying that the outposts program could not be funded under the direct funding arrangement because it was not a program available to status Indians on reserve.³⁵ Ad hoc funding has been made available and in 1997, approximately \$300,000 in extra funding was provided to Sheshatshiu in the operation and maintenance budget to fund an outposts program. In 2001, the Innu were advised that such funds were no longer available.

In the absence of direct government funding, the band councils of Davis Inlet and Sheshatshiu have attempted to cover outpost costs out of their own funds, and this has contributed to cost overruns. In 2001 no outposts program was conducted by Davis Inlet. Discussions have continued on an ad hoc basis to provide for outposts funding, but the Government does not appear to have any long-term commitment to the continuation of the outposts program.

³⁴ The Statement of Political Commitments indicated that the outposts would be funded up to a total of \$51,000 in fiscal 1994–1995.

³⁵ Letter of Deputy Minister Scott Serson to Chief Paul Rich, 24 September 1997.

CONCLUSION 4:

The Government has not implemented that aspect of the second recommendation in the 1993 Report that called on the Government of Canada to preserve “the unique aspects of existing arrangements such as the outposts program.”

C. Direct Negotiations with the Innu in Respect of Self-Government

The 1993 Report recommended that the Government “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.”

The 1994 Statement of Political Commitments indicated that negotiations on self-government would proceed “between the Government of Canada, the Innu Nation and their communities, and, where appropriate, the Government of Newfoundland and Labrador.” In fact, negotiations on self-government did commence, although the negotiations were essentially trilateral between the Government, the Innu and the Province. “Where appropriate,” it turned out, was “all the time.” Nevertheless, progress was made on self-government negotiations.

However, the self-government negotiations that commenced in 1997 came to a halt in October 2000 and have now been postponed indefinitely. Both parties appear to believe that the negotiations halted because the other party was unable to maintain negotiations on so many different tracks (registration, land claims, health issues, relocation). What registration has done, however, is set the Innu on a different track from self-government. The *Indian Act* will now provide the governing structure for the Innu — a structure that any self-government negotiations in the future will have to dismantle.

Placing self-government negotiations in abeyance has implications for land claims negotiations. Land and a financial package are only part of any final settlement. The institutions to give effect to a comprehensive land settlement have to be elaborated through self-government negotiations. This is cause for concern among the Innu, who continue to have reservations about the halting of self-government discussions. In their view, there is no reason why self-government issues cannot be negotiated simultaneously with the other matters under discussion. It is their view that negotiations based on the inherent right to self-government should take place in tandem with registration and reserve creation.

In contrast, federal officials believe they are following the normal process for registration. If registration leading to the granting of status and the creation of reserves is

to occur, then there are certain steps to be taken and things to be done. These must be done as a first step before moving to the further step of self-government. Federal officials take the view that the experience and expertise gained from the creation and operation of the institutions required for status Indians living on reserve will help the Innu build expertise for eventually taking over self-government responsibilities. They also consider that although the Innu appear to have a vision of what they want, it is not clear that they have yet developed a long-term, sustainable plan for self-government.

Thus self-government negotiations appear to be in abeyance, not abandoned. Federal officials consider that the Government has committed itself to negotiating self-government for the Innu. The 1994 Statement of Political Commitments provided that the Government was prepared to negotiate “to devolve existing federal programs and funding delivered to the Innu, and to work with the Province to devolve such programs and funds administered under existing federal-provincial agreements for the provision of services to the Innu in a manner consistent with Canada’s current devolution policy...” Although that commitment contemplated all of this being done “prior to the expiration of the present Canada–Newfoundland and Labrador Agreement,” the commitment appears to remain.

The Innu express concern that even when negotiations resume, the Government’s view of self-government will be far too limited. They consider that to the Government self-government means a status akin to that of a town council, rather than true governance that recognizes the Innu’s independence as Innu people within Labrador.

Furthermore, we did not detect any degree of urgency by federal officials to recommence self-government negotiations. In part, they consider it to be up to the Innu to make a request to restart such negotiations. However, it did not seem that any such request would receive a very favourable federal response. Some federal officials take the view that self-government negotiations have to await progress on land claims negotiations. Moreover, the general view we heard from federal officials is that they consider that the Innu need experience operating under the *Indian Act* before embarking on self-government.

CONCLUSION 5:

Although the Government did enter into self-government negotiations with the Innu as proposed in the third recommendation in the 1993 Report, placing those negotiations in abeyance with no plan for recommencing them means that the third recommendation of the 1993 Report has not been implemented.

D. The Relocation of the Mushuau Innu

The 1993 Report recommended that the Government “make a commitment to the expeditious relocation of the Mushuau Innu to a site chosen by them.”

Details of the relocation of the Mushuau Innu in 1967 from the mainland to the site of the present village of Davis Inlet on Iluikoyak Island, the lack of running water and sewage facilities, the substandard conditions of the houses, the isolation from traditional caribou hunting grounds and the associated community dysfunction were set out in the 1993 Report. The conditions were later described in the Report on the Royal Commission on Aboriginal Peoples as akin to conditions in the poorest of developing countries.³⁶ Fatal fires, suicides, substandard living conditions, substance abuse and poor health brought the community to national and international attention and continue to do so.

On 8 June 1993 the Mushuau Innu voted overwhelmingly in favour of relocation to Little Sango Pond (Natuashish), which is located on the mainland of Labrador 15 kilometres from their current island site at Davis Inlet. The 1994 Statement of Political Commitments endorsed relocation, stating that the Government was prepared to “support relocation of the Mushuau Innu to Little Sango Pond.”

There were, however, several conditions attached to the Government’s commitment. The Innu were to adopt “a long-term social and economic reconstruction plan to address the social pathologies and high unemployment levels in the community, following discussions with and agreement by Canada.” Following the adoption of the plan, there was to be “reaffirmation of the new site through completion of a formal ratification process by the Innu people of Utshimasits.”

The Innu prepared and submitted the necessary socio-economic and technical studies to DIAND, and by December 1995 brought forward a social reconstruction plan that identified 131 intended initiatives. These included projects on Innu culture, health and social services, education and training, justice, and traditional and non-traditional economies. The requisite ratification vote was held within the Davis Inlet community in the early fall of 1996, and it resulted in an overwhelming 97% vote in support of the relocation to Natuashish.

The Statement of Political Commitments had set out further conditions for relocation. These included the following:

³⁶ See, for example, Report of the Royal Commission on Aboriginal Peoples, vol. 3 (Ottawa: Public Works and Government Services Canada, 1996), pp. 177–178.

Proof through the conduct of technical studies that the relocation site is capable of providing sufficient fresh water and other essential amenities to the community into the future.

Provision of the necessary land by the Government of Newfoundland and Labrador.

Environmental acceptability of the site, as demonstrated by the satisfactory completion of any required environmental assessment processes.

Construction and site development to appropriate federal and provincial government standards.

Reasonable costs that are acceptable to Canada.

By the end of 1996, it appeared that all of these conditions had been met. In November of that year the Mushuau Innu Relocation Agreement (MIRA) was entered into by the Government, the Province and the Mushuau Innu Band Council. The Province agreed to provide the land for the new community site through a 20-year renewable lease, with the potential of a future transfer of land to the Innu. The Government agreed to provide funding for relocation planning, design and construction at an estimated cost of \$82 million. It anticipated that the money would cover the cost of wood frame houses, water and sewer systems, roads, power station, school, nursing station, airport, wharf, post office, band council office, police and fire facilities, moving expenses and the decommissioning of the old Davis Inlet site.

The MIRA contemplated that the construction of the new community would take place over a period of five years and would be completed in the fall of 2001. A Mushuau Innu Relocation Committee was established to provide Innu input into the project. Under the terms of MIRA, the goal was to involve Innu in the construction, and to provide employment and training opportunities.

The community being built at Natuashish is impressive and ambitious. Once it is completed, the Mushuau Innu will have a community that is as modern as any contemporary community in Canada. At the physical level, the difference between the new community of Natuashish and the old community of Davis Inlet is simply overwhelming. However, the project has not met the fall 2001 deadline and current federal estimates are that it will not be completed before December 2002. There are many who have doubts about whether the project will be completed even on this schedule. Some suggest that the year 2003 is more realistic. Others speculate that the community may need to move in stages, with relocation of part of the community initially and the remainder later. At the time of the conclusion of this report, it was still unclear whether there would be any move in 2002.

The project has been beset by difficulties, some relating to the problems associated with construction on that scale in the physical conditions of northern Labrador, and others relating to financing and management of the project, the involvement of Innu in it, and the economic and social aspects of relocation.

The Physical Environment

No relocation or construction of a completely new community on this scale, or under these conditions, has apparently occurred before in Canada. The project is ambitious and the scale of obstacles daunting. The short construction season in northern Labrador, an unavoidable consequence of the harsh environment, poses substantial problems. Crews typically open camp in May or early June, and have to close down in November. Temperatures of -30 degrees and heavy snowfalls that make keeping the roads clear almost a full-time job have combined to hamper productive construction. Equipment and material have to be brought in by barge, and there have been difficulties finding barges to bring the construction material onto the site during the short summer period when water transport is possible. A delay of two months can mean a whole construction season is lost. In these circumstances, there seems to be a general consensus that those working on site have achieved much in the face of the conditions that confront them.

In order to try to complete the project in 2002, work was scheduled to start in March of this year. Sufficient material was brought in during the summer of 2001 to allow work to be commenced, although construction had never begun so early and it was not clear how feasible such an early start would be.

The Financing of the Project

The financing of the project was criticized by the Auditor General in 2000.³⁷ The Government chose to authorize financing only to a maximum of \$82 million although it was aware, even in 1996, that relocation costs might reach \$110 million. In fact, the Government had to move from its original commitment of \$82 million to \$113 million by 1999, and to \$150 million by 2001. DIAND has attributed the overruns to a series of items. These include an increase of 33% in the number of houses to be built, changes in technical standards for sewage lagoons and energy needs, increased costs of telecommunication services, and changes in standards and needs for various municipal and other buildings.

There are other factors. The Government apparently budgeted only \$50,000 per housing unit in the original plan. Federal officials advised the Mushuau Band Council that costs above \$50,000 per house would have to be covered by the Innu. As it turned out,

³⁷ Auditor General of Canada, "Other Audit Observations, Indian Affairs and Northern Development," Chapter 17, October 2000 Audit.

\$50,000 was sufficient to finance the construction only of housing shells, not the construction of the interiors. The full cost of each home would turn out to be approximately \$150,000. Clearly the Mushuau Band Council did not have the funds to cover this and the shortfall became the subject of ongoing negotiations between the Innu and the Government until eventually the Government came up with an arrangement to cover the shortfall.

Delays caused by the lack of funds also became a factor contributing to the escalation of costs. Having to negotiate for money all the way through “complicated and delayed the project.” The time required to obtain approval for the additional allocations from DIAND, and then from Treasury Board, often worked to the detriment of the whole project. As one Innu noted, “The cycle in Ottawa doesn’t work with the seasonal cycle here [in northern Labrador].” The Auditor General’s study acknowledged that it was not unusual for initial cost estimates to be revised but criticized the Government for not having anticipated such items more fully. In the Auditor General’s view, the approach taken by the Government in respect of the relocation project was “not consistent with sound project management.”

Others have argued that the piecemeal approach to funding was the only way the project could have been accepted by the Government. They claim that a relocation project costing over \$82 million would not have been politically feasible in 1996. The cost of relocation has taken the Innu from being a group neglected by the Government to a group receiving, it is said, more money per capita than is spent on any other reserve in Canada. The Innu suspect that such political factors have intruded on the relocation project. In general, it appears that from the outset the Government was not willing to face the financial reality of the commitment it had made to relocation. Earlier acceptance of this reality might well have expedited the project.

Continuing negotiations over the cost of relocation have at times become intertwined with other negotiations over registration, land claims and self-government. The Innu claim that they have been told that the cost of relocation is a barrier to their being able to get funding on other issues. Relocation was the “bait” used to hook them on other issues. It is a fear of the Innu that once relocation has occurred, the Government will start cutting back on funding because of the amount already spent on relocation. Federal officials, while recognizing the reality of the substantial cost of relocation, deny that there is any intention to make the Innu pay in the future for relocation or that there is a direct connection so that “a dollar spent there will mean a dollar not spent here.”

At the present time, it appears that sufficient funding has been approved and is in place to complete the project. However, delays beyond 2002 could, according to some estimates, cost another \$5–10 million beyond the amounts currently budgeted.

The Management of the Project

MIRA specified that a “team of Mushuau Innu and non-Mushuau Innu managers, designers and employees” was to be assembled “to deliver the project within a specified budget and time frame and to standards and design criteria agreed to by Canada and Mushuau Innu.” DIAND was designated the project leader for the relocation, with authority for all decisions pertaining to Canada’s interest in all matters relating to the planning, design and construction of the project. For their part, the Mushuau Innu were required to select a Project Manager in consultation with DIAND. The powers and duties of the Project Manager were to be determined jointly by the Mushuau Innu and DIAND, and were to include implementing the project; reviewing and updating cost estimates; monitoring project cost, quality and progress; and, where appropriate, recommending corrective action to the Mushuau Innu and DIAND.

Although at many levels the relationship of the Innu and the Government over the relocation project has worked effectively, it has not been without difficulties. Initially the Innu felt that although DIAND had been given a central role in the implementation of the relocation, it did not designate sufficient staff to work on the project on the ground. Only three employees from the regional office in Amherst, Nova Scotia, were given responsibility for the day-to-day work. The scope of the work became overwhelming. The Innu expressed surprise that although “this is one of the biggest projects ever in Indian Affairs...they only have three people working on it.”

Additional difficulties beset the project almost from the outset. The requirement that the new community be built in accordance with government regulatory specifications sometimes clashed with Innu perspectives regarding traditional cultural and community needs. Redesign was required for some of the facilities, such as the school and the nursing station, when it was determined that they needed to be larger than originally anticipated. There were problems selecting the Project Manager. The original plans had failed to factor in the cost of building an access road and a camp to house the construction crew during the building phase. There was disagreement over tendering practices for construction. There were unanticipated geographic and geological problems.

Ultimately these issues were worked out and there seem to be few problems today surrounding the management of the project.

Innu Involvement in the Project

MIRA contemplated the active involvement of the Mushuau Innu in the planning, design and construction of the new community. This included maximizing “training,

employment and contracting opportunities for [the] Mushuau Innu.”³⁸ Efforts to ensure that the Mushuau Innu are involved in the planning and activities of the relocation have, not surprisingly, rendered the project substantially more complicated.

The objective of ensuring that the Innu were employed as fully as possible in the actual work of constructing the houses and other facilities was an important and critical component. At the outset, certain preferences were given to the Innu. The contracts for the construction of houses were initially let to Innu contractors and the agreement provided that non-Innu contractors employ one Innu for every three other workers. Even if the Innu were not previously trained, the goal was to have them work alongside the trained workers, so that they could learn how to install electricity and plumbing, to construct and repair houses, and to run the water filtration plant, the sewage system, the wharf and the airstrip. According to those working on the site, some of the Innu training was extremely successful, with certain individuals becoming very efficient heavy equipment operators and carpenters.

However, not all of the optimistic objectives were realized. Although 30 houses were initially constructed by Innu contractors, only the shells were completed and the houses were not finished inside. The problem partly related to lack of funding, but it was also due to an inability on the part of the Innu contractors to complete the work on a timely basis. This led to subsequent housing being contracted out to non-Innu contractors. Language difficulties also created substantial barriers, as there were no words in Innu-aimun (the Innu language) for the equipment being used in the project. The time it took to train the Innu caused additional delay in construction, another factor that had not been fully taken into account in the planning. Contractors saw their profits eroding as a consequence of the additional time required to do proper training.

As the time crunch came to the forefront, the employment of Innu trainees was sacrificed. The Innu tended to get left out and in the view of some Innu, the construction of the new community failed to “provide the benefits for the Innu that we had hoped.” Although we received several different reports as to the number of Innu working on the site, it is clear that the total fell short of the goal to maximize Innu opportunities.³⁹ Many of the Innu employees on the construction site chose to live in tents with their families short distances away from the site, rather than to take up residence in the camp.

³⁸ MIRA, article 3.6.

³⁹ The Innu advised that in July 2001, 240 people were employed on the site. Of this number, between 40 and 60 Innu were actually working on the site at any particular time, and up to another 40 people from the Innu community were involved back at Davis Inlet on the administration of the project. DIAND reported that 85 out of 175 workers on site were Innu, and that there were more Innu than non-Innu working at off-peak times. Presumably the latter refers to the non-construction months when the workforce consisted primarily of positions such as caretakers.

The Auditor General's study criticized DIAND for its failure to evaluate "the capacity of the Innu to manage such a large and complex project," and recommended that DIAND become "more actively involved with the project to help ensure success, while supporting the role of the Innu." In response, the Government indicated that since 1999, it had "insisted on increased accountability by Innu leadership for funds provided for construction, healing and social projects." It also advised that it would be creating a new directorate within DIAND's Atlantic Region to manage all the Newfoundland and Labrador files, including the Davis Inlet relocation project. A DIAND office has been opened in Goose Bay to provide more efficient service, and the number of people working directly on the Innu files was expanded. In order to facilitate the coordination of the different government departments involved in the project, a steering committee was set up, composed of representatives from each federal department and the Province.

The Social and Economic Aspects of Relocation

From the outset, it was apparent that social, cultural and economic reconstruction issues were as critical to the relocation of the Mushuau Innu as the physical construction of the community. MIRA gave express recognition to this in article 3.6, which, although dealing with the rating of construction tenders, made some general statements about the "planning, design and construction of the project." This was to be carried out in a manner that respected the culture of the Mushuau Innu; was fully integrated with other healing measures of the Mushuau Innu, including those sponsored by the Innu Nation; and was coordinated with the efforts of Innu and non-Innu agencies and individuals to establish an adequate and sustainable economic base for the Mushuau Innu.

The foundation of the Innu approach to the social, cultural and economic aspects of relocation is contained in the report titled *Gathering Voices: Finding Strength to Help Our Children*, published in June 1992 and based on a comprehensive community inquiry in April of that year. The Innu have prepared many other reports. In addition to the December 1995 social reconstruction plan, the Innu submitted in 1995 a seven-point plan for recovery and healing, entitled *Hearing the Voices*, a follow-up to the earlier *Gathering Voices* report. In November 1998, the Innu submitted an eight-point plan for healing. In January 1999, the Mushuau Innu Healing Strategy was filed.

The Auditor General questioned the adequacy of the Government's response. The October 2000 Report noted the following.

[W]e found little evidence that the Department had adequately assessed the December 1995 Innu social reconstruction plan to determine its potential contribution to an effective remedy. Nor did the Department have an overall action plan to specifically address the reported issues, despite its requirement that the Innu conduct and report such studies to it. The Department indicated in August 2000 that a plan for remediating the health and social ills will be developed in concert with other federal and provincial

departments. The delay in developing a plan is particularly disturbing since the issues have been well known to the Department for many years. We believe that a significant risk remains that the pathologies afflicting the Innu community will simply be transferred to the new location at Little Sango Pond, despite spending some \$113 million.⁴⁰

In response to the Auditor General's Report, the Government undertook to develop "a new plan for remediating the health and social problems" in consultation with the Mushuau Innu and federal and provincial government departments. The Innu, however, were sceptical. They pointed out they had initiated comprehensive healing and recovery plans in consultation with federal, provincial and non-governmental experts at least four times in the past decade. "The plan already exists, we don't need a new one," claimed the Innu. "What we need is federal action."⁴¹

In the past there have been divisions among the Mushuau Innu, as the community has struggled with the question of whether individuals who were abusing alcohol and other substances should be allowed to move to the new community or should be required to stay back in Davis Inlet. When it became clear that all members of the Mushuau Innu would be given the right to move to the new location, some groups who wished to establish a "dry community" considered staying behind and trying to build new homes on the old Davis Inlet site. Referenda were held, and eventually the tensions within the community were resolved. As of the summer of 2001, all of the Mushuau Innu were committed to relocating together and there appeared to be a positive feeling about relocation. Nevertheless, there remains a possibility that when the time for moving comes some Innu will want to stay.

Regardless of whether it is a full or partial move to the new site, the need for an appropriate social and economic plan is clearly apparent. Even on the most basic level, there will be a need to prepare the Innu for the transition to the modern housing development. Most of the Innu have no experience with running water and modern heating systems. They will need to learn how to run and maintain the new homes. From the Innu perspective nothing has been done in this area and they are doubtful if anything will be done in time for relocation. Federal officials say that plans are now in place to train the Innu before the move on matters such as house maintenance, plumbing and garbage disposal. Individuals have apparently been identified to provide elementary courses for Innu moving into new houses.

⁴⁰ Auditor General of Canada, "Other Audit Observations, Indian Affairs and Northern Development," Chapter 17, October 2000 Audit, clauses 17.116 and 17.117.

⁴¹ "Critical of Ottawa's Handling of Davis Inlet; Innu Nation agrees with Auditor General's report," *The Labradorian* (Happy Valley-Goose Bay), 28 October 2000, p.8A.

Beyond this is the question of running a new community with a hydro-electric plant, an airport, a wharf and roads to be maintained. There are few Innu qualified to carry out these tasks, yet after relocation the construction and maintenance crews currently operating on the site will disappear. Nothing has been done to resolve this problem. However, federal officials advise that Public Works and Government Services Canada is contracting a company to manage the community and to train the Innu to take over that role. Although the terms have yet to be worked out, it appears that Newfoundland Hydro will take over and run the generating plant.

As for economic development, there are some preliminary ideas about eco-tourism, hunting and fishing lodges, but no plans have been developed. The Innu consider that there has been little assistance from the Government. On the government side, it appears that this is an issue that has still to be addressed. There is some feeling that if the Voisey's Bay project goes ahead there will be significant economic opportunities for the Mushuau Innu. Negotiations on this issue appear to be ongoing, but no information has been provided on what those opportunities might be.

In contrast, the opportunities for economic development appear greater for the Sheshatshiu Innu. Proximity to Goose Bay and North West River is undoubtedly a positive factor. Business ventures include providing catering services in Churchill Falls and on ferry services between Lewisport and the north coast, joint venturing with provincial airlines on the Mikun-Innu airline and holding a shrimping licence. Although some Mushuau Innu participate in these ventures, proximity provides advantages to Sheshatshiu.

The issue of economic development involves a further complicating factor. Some Innu feel that economic development will take away from traditional Innu culture, to the ultimate detriment of the Innu people and the Innu Nation.

As to evaluate whether the relocation to Natuashish will actually make a positive difference to the lives and future of the Innu, opinions vary. Some Innu point to the considerable material improvements over Davis Inlet. They note that there will be sewers, water in the homes and heating from sources other than wood stoves. They note that there is a lot of money being spent and a lot of work being expended on the relocation by both the Innu community and the Government. They concede that mistakes were made along the way and offer hope that all parties had learned from those mistakes. Some described the relocation as "the last chance."

The delay in relocation has posed an undue burden and hardship on the Mushuau Innu, who continue to live under seriously deteriorating conditions in substandard dwellings in Davis Inlet. With the move looming on the horizon, there has been little interest in maintaining the Davis Inlet buildings or funding to do so. This all helps to make already substandard conditions even worse, something that has been a particular source of frustration to the Mushuau Innu Chief Simeon Tshakapesh. Moreover, the delays have had

a more particular and personal impact. As Cajetan Rich, Director General for the Innu for the relocation project, has said, "Some of the people who were very active in trying to get the project going have now passed away. They never saw the project finished. They're the ones who got hurt in the relocation. We built houses for them over there, but they didn't get to benefit from it."⁴²

Federal officials also have varying opinions about the implications of the relocation. Some complain that the Innu have not done enough to move their own community forward and to prepare for the relocation. Some suggest that the Innu need to "take ownership" of the problems and solutions themselves, and stop "blaming the Government." The situation in Davis Inlet was described by some as "among the worst in Canada" in terms of its historical record, the health of the community, and its isolation, dysfunction and instability. They worry that no move could redress the depth of the problem, that the relocation might ultimately be designated a failure and that future governments will refuse to spend these kinds of exceptional funds on community relocation for other Aboriginal groups who may need similar assistance.

On the other hand, some are cautiously optimistic. There is a view that something is going to happen. There will be a new community, which is the first concrete thing that has happened for a long time for the people of Davis Inlet. There is the view that, despite potential problems, the Government is in for the long haul to work with the community to do what it can to make the relocation a success.

Notwithstanding the delays, complications and difficulties, there is now no doubt that relocation will occur even though the exact date for relocation remains uncertain.

CONCLUSION 6:

The Government is in the process of implementing its commitment to the relocation of the Mushuau Innu to the site chosen by them as proposed in the fourth recommendation in the 1993 Report.

E. The Funding to Implement the Recommendations

The 1993 Report also recommended that the Government "provide the funding necessary to implement [the Report's] recommendations."

The funding to complete the relocation project has apparently been approved by Treasury Board and is now available. Once registration has been completed and reserves created, the Innu will be receiving funding from the Government equivalent to that of status Indians on reserve. However, the funding problems are threefold.

⁴² Interview with Cajetan Rich, Davis Inlet, 31 July 2001.

First, the delays in obtaining funds have contributed to the delay in relocation and its cost. For the Innu, funding negotiations are interminable, complex and bureaucratic. On the government side, officials often see the Innu asking for funds without accountability and proceeding on the assumption that if they just got money their problems would be solved. In addition to the continuous contact across a range of issues, there are clear problems of communication between the Innu and the Government.

The process has been complicated because the Government has placed the funding under third-party management. Concerned about overruns in band council spending and increasing deficits, the Government put the funds granted to the band councils of Davis Inlet and Sheshatshiu under the third-party management of the firm KPMG. Expenditures have to be approved against budgets by the third-party manager. In practice, this appears to have worked without significant friction, since most expenditures are routinely approved. What appears to be missing is training for band councils on financial management, to ensure that they can manage their funds in an accountable way after third-party management has come to an end. Federal officials have said that it is the responsibility of the third-party manager to do this. The Innu say that it has yet to be done. Nor is it clear that either the full implications of relocation or the funding consequences have been thought through. Whether the new community of Natuashish can function on the basis of the funding received by the Mushuau Innu Band Council is an open question.

Second, from the Innu perspective, funding is not necessarily for the right thing. Funding for the outposts program has been a particular source of contention. To many Innu this program is essential for the preservation of their culture and for the education of their children in that culture. But it falls through the gaps and receives funding only on an ad hoc basis. It is fundamentally important that the particular cultural needs of the Innu receive full financial support through the operation of the outposts program as well as other traditional activities.

Third, the Innu retain a long-standing grievance that they have never been properly compensated for the years since 1949 in which they were not acknowledged as Aboriginal people to whom the Government had any constitutional responsibility. In short, they have never received compensation for the breach by the Government of its fiduciary duty towards them. By contrast, there is a feeling among some officials, who focus on recent years and the money allocated for relocation, that the Innu have received far more funding than equivalent Aboriginal communities in Canada.

CONCLUSION 7:

The Government has gone a significant way towards implementing the fifth recommendation in the 1993 Report that it provide the funding necessary to implement the Report's recommendations.

However, the issue will remain open until all of the recommendations have been fully implemented.

II The Implications of the Recommendations of the Royal Commission on Aboriginal Peoples

The Terms of Reference for the follow-up review require us to examine “the recommendations of the Royal Commission on Aboriginal Peoples, and the Government’s response to them (*Gathering Strength — Canada’s Aboriginal Action Plan*) and the implementation thereof” and to consider them in relation to the recommendations of the 1993 Report.

Many of the Royal Commission’s recommendations in Volume 3 of its report are relevant to the Innu as Aboriginal people, and many of the problems faced by the Innu are precisely those discussed in the Royal Commission’s report. In the present context, those recommendations relating to housing, education, cultural identity and language, health and self-government are relevant.

In respect of housing, the Royal Commission recommended that the Government ensure adequate housing for Aboriginal people within 10 years. The new community being built for the Mushuau Innu clearly responds to that recommendation. The Royal Commission considered that housing “should be a key part of community healing and of cultural revival and self-definition among Aboriginal peoples.” The report noted that “Aboriginal design and environmental technologies could reflect the rich history and the deep environmental sensitivity of communities and regions.” It described the Cree community of Oujé-Bougoumou, Quebec, an Aboriginal community that had been moved seven times over five decades to make way for mining developments. By 1986 their living conditions had degenerated to a point described by the Grand Council of the Crees of Quebec as “the worst in the developed world.” A new community constructed to house 525 community members was built, taking account of concerns about cultural renewal, economic development, environmental sustainability and social healing. Ultimately designated as a major success, the newly constructed village was chosen by the United Nations as one of 50 exemplary communities around the world, and a vivid example of how traditional values and culture could be combined with modern design and technology.⁴³

The Oujé-Bougoumou example shows what is possible in the regeneration of Aboriginal communities. The architectural design of the new Oujé-Bougoumou Cree village reflected traditional teepee shapes and Cree settlement patterns, with a longhouse-style

⁴³ *Report of the Royal Commission on Aboriginal Peoples*, vol. 3 (Ottawa: Public Works and Government Services Canada, 1996), pp. 419–421.

meeting place, and a school that functioned as a place for learning and recreation, and a centre of village life. The new Mushuau Innu community of Natuashish reflects to some extent Innu cultural and traditional concerns. There has, however, been considerable tension between the desire of the Government to build in accordance with standard specifications and the desire of the Innu to have the community built in a way that would respond to their particular needs. This played itself out in a debate over the design of the school, which ultimately was resolved by compromise.

The challenge for the Mushuau Innu is to adapt their new community to their particular needs, a problem that is made much more complicated by the problems of health and social dysfunction that will be referred to later.

In respect of education, the Royal Commission noted that control over education delivered to Aboriginal people remained primarily in the hands of provincial or territorial governments, with few mechanisms for effective accountability to Aboriginal parents and students. There was insufficient opportunity for Aboriginal people to transmit their linguistic and cultural heritage to the next generation. The report recommended that Aboriginal controlled educational systems be developed and that Aboriginal language be assigned priority in Aboriginal educational systems.

The area of education is one that has become critical in respect of the Innu, and there is little evidence of any progress towards giving effect to either the letter or the substance of the Royal Commission's recommendations.

In respect of the preservation of Aboriginal arts and heritage, the Royal Commission recognized the importance of conserving and revitalizing Aboriginal languages. Innu-aimun continues to function as the language in daily use among the families and households in Sheshatshiu and Davis Inlet. Given the potential extinction of so many other Aboriginal languages, the vibrancy of the Innu-aimun language in Labrador is cause for pride. Yet the language of instruction in the schools is essentially English. Equally, the dominance of television in the communities creates serious concerns about the future of the language. Even more critically, the Innu note that if their community is not able to maintain its traditional connections with life in the country, through programs such as the outposts program, the richness of the language will dissipate. The future of Innu-aimun is at a critical stage. Now is the time to take active steps to ensure that it retain its richness and strength. For a country such as Canada, where the interconnections between language, culture and national identity are central, this ought to rank as a concern of the highest order.

The Royal Commission focused as well on issues relating to family, health and healing. The concerns raised in the report — regarding the elimination of violence against women, children, elders and persons with disabilities; the need to involve women, youth, elders and persons with disabilities in governing councils and decision-making bodies; the

need to transform current programs into more holistic delivery systems in culturally appropriate forms; the importance of the provision of clean water, basic sanitation facilities and safe housing; and the need for the development of Aboriginal healing lodges, controlled by the communities themselves, and reflective of traditional and spiritual values underlying Aboriginal culture — all resonate with the problems faced by the communities of Sheshatshiu and Davis Inlet.

Finally, at the most fundamental level, the Royal Commission saw a key role for Aboriginal self-government as providing “the affirmation and conservation of Aboriginal cultures and identities as fundamental characteristics for Canadian society.”⁴⁴ The vision of self-government set out by the Royal Commission was not, however, the municipal council model that the Innu fear the Government wishes to impose on them. Rather:

It should be understood that self-government does not mean bringing Aboriginal nations into line with predetermined Canadian norms of how people should govern themselves. It is the reinstatement of a nation-to-nation relationship. It is the entrenchment of the Aboriginal right of doing things differently, within the boundaries of a flexible *Canadian Charter of Rights and Freedoms* and international human rights standards.⁴⁵

The issue of self-government remains one of the key outstanding issues to be resolved in the new relationship that is evolving between the Government and the Innu.

CONCLUSION 8:

Although the actions of the Government in respect of the Innu conform to some of the recommendations of the Royal Commission on Aboriginal Peoples, such as the building of the community at Natuashish and in some respects health reform, in many critical areas such as education and self-government there is little evidence that the recommendations of the Royal Commission have been implemented at all in respect of the Innu.

III The Issue of Land Claims

The Terms of Reference require us to examine the “land rights claims of the Innu of Labrador” in light of the 1993 Report.

⁴⁴ *Report of the Royal Commission on Aboriginal Peoples*, vol. 3, p. 665.

⁴⁵ *Report of the Royal Commission on Aboriginal Peoples*, vol. 3, p. 665.

Unlike the self-government negotiations, which have been placed in abeyance, the negotiations on land claims have continued, despite a series of temporary suspensions, since 1991. Negotiations have been undertaken on behalf of the Innu of both communities, Sheshatshiu and Davis Inlet, by the Innu Nation. The Innu, the Government and the Province are all parties. The negotiations are complicated because some of the areas claimed by the Innu are also claimed by the Labrador Inuit, who have separate land claims negotiations with the Government. Moreover, the Voisey's Bay and Lower Churchill projects also have land claims implications. This means that there have been separate negotiations between the Innu and the private interests developing Voisey's Bay and Lower Churchill, as well as discussions on these projects within the land claims negotiations. As a result, land claims negotiations have been divided into parts, with separate discussions centred on reaching mini-agreements on the land issues affecting Voisey's Bay and Lower Churchill. The Labrador Inuit's interest in Voisey's Bay also adds complications. The Innu and the Labrador Inuit negotiated separately on Voisey's Bay with the private companies planning the development.

From the Innu point of view there have been discernible changes in the negotiating process. The Province had historically taken the position that there was nothing to negotiate, that the Innu had no more claim to land than other Newfoundland residents. Today, the Province is going through the process of land claims negotiations seriously.⁴⁶ Indeed, when in 2000 the Government suspended land claims negotiations with the Innu and seriously contemplated abandoning them, the Province played a key role in ensuring that the Government came back to the table. From the Province's point of view, resolution of land claims issues is central to its ability to move ahead on important economic development at Voisey's Bay and Lower Churchill.

Federal officials currently express a firm desire to negotiate the land claims with the Innu, but both the Innu and the Province worry whether the Government will in fact be prepared to resolve the land claims issue. The suspension of the negotiations in 2000 was necessary according to federal officials because the Innu claim was not in their view a serious claim. It was simply made up of the best element of every land claim negotiated by Aboriginal people across the country and was "out of the ball park." In addition to the pressure it exerted by suspending the negotiations, the Government stopped payment of most of the Innu negotiating costs in the winter of 2001, and when negotiations recommenced they were with a reduced negotiating budget.

It is widely accepted that the substantially modified proposal put forward by the Innu in 2000 has provided a boost to the negotiating process. Some now describe the process as well on the way. However, agreement has yet to be reached on the issue of the size of the land embodied in the settlement and the amount of the compensation package.

⁴⁶ In the Agreement in Principle of 24 November 1999, the Province of Newfoundland and Labrador agreed to facilitate the transfer of land that would be necessary to implement any land claims settlement.

Federal officials say that these are commonly the last items to be completed in land claims negotiations.

Some federal officials consider that their suspension of negotiations and cutting off of funds to the Innu negotiators was the impetus for the Innu bringing forward a realistic set of proposals. Some Innu consider that the Government used extortionist tactics to force them into adopting different standards for their claim. In their view, the whole notion of Innu claiming land is backwards. It is their land and they are struggling to have the Government acknowledge this. Others, while sharing these views, see the situation from a somewhat different perspective. They recognize the pressure exerted by the Government in the suspension of negotiations and reduction of funds and in the linkages that are used with other issues, such as registration, relocation and the health crisis in the communities. However, they see the new Innu position as reflecting more an assessment of the needs of their people and the opportunities that they wish to provide for their children. They are trying to be practical and achieve a balance that will maximize the interests of their people rather than stand on principle. It is fundamentally an economic survival issue; in their view, “you can’t eat principles.”

There is guarded optimism about the process of land claims negotiations, and a belief that an agreement in principle may be very near. All parties recently reached a side agreement on the Voisey’s Bay development. However, the ending of self-government negotiations means that a critical part of any comprehensive land claims settlement — the institutions to administer the new land and rights — is in abeyance while registration and the creation of the institutions required under the *Indian Act* proceed. Moreover, some federal officials express concern that the resolution of the land claims may cause more problems than it resolves. They query whether the Innu have the capacity to manage the autonomy they will receive over a substantial land territory or the funds that would come with a compensation package. This type of reservation in part fuels apprehensions that the Government is not really prepared to settle a comprehensive land claim with the Innu. In this regard, some Innu are concerned that the completion of the side agreement on Voisey’s Bay, and the prospect of completing one in the future on the Lower Churchill project, will cause the Government to lose interest in completing the full land claims negotiations. The Innu are apparently not prepared to conclude an agreement on Lower Churchill until land claims negotiations are completed.

CONCLUSION 9:

There is an opportunity for the Government to reach a comprehensive land claims settlement with the Innu. There is momentum on the Innu side, arising out of their new proposals and the opportunities provided by the Voisey’s Bay development, that will be lost if the Government does not match that momentum. Progress

requires a clear commitment by the Government and the early resumption of self-government negotiations.

IV Canada's International Human Rights Commitments

The Terms of Reference require us to “review the situation of the Innu in relation to international human rights commitments to which Canada is a party, and in particular with regard to:

- (a) the *International Covenant on Civil and Political Rights*
- (b) the *International Covenant on Economic, Social and Cultural Rights*
- (c) the *Convention on the Rights of the Child*
- (d) the *Draft Declaration on the Rights of Indigenous Peoples*.”

Canada is a party to the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child*. The *Draft Declaration on the Rights of Indigenous Peoples* was adopted by the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities on 26 August 1994, but it has not been transformed into a treaty. Nevertheless, it provides important guidance on the current thinking of states and constitutes part of the broader context for the interpretation of the international covenants.⁴⁷

Rather than deal with each convention separately, we will consider the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* together, along with the *Draft Declaration on the Rights of Indigenous Peoples*, and then turn to the *Convention on the Rights of the Child*.

The provision applicable to the situation of the Innu is found in article 1 of both the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. Those articles provide in identical terms:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The question of who constitutes a “people” is controversial in international law and the scope of the right to self-determination has never been precisely determined. We see

⁴⁷ Article 31 of the *Vienna Convention on the Law of Treaties* provides that a treaty is to be interpreted in accordance with the ordinary meaning of the terms used, in their context, and in light of the object and purpose of the treaty.

no necessity for the purposes of this report to enter this debate. We simply note that the United Nations Human Rights Committee has viewed article 1 of the *International Covenant on Civil and Political Rights* as covering the cultural rights of groups,⁴⁸ and that the *Draft Declaration on the Rights of Indigenous Peoples* relates the right of self-determination specifically to Aboriginal peoples, adopting essentially the language of the international covenants. Article 3 provides:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

In the context of this report, the question, in our view, is whether Canada's treatment of the Innu might be viewed as failing to allow them to "freely pursue their economic, social and cultural development" as contemplated in article 1 of the covenants and article 3 of the Draft Declaration. Some idea of the extent of this right to economic, social and cultural development may be gathered from the provisions of the Draft Declaration, which refer to the right of indigenous peoples "to participate fully, if they so choose, in all levels of decision-making in matters which may affect their rights" (article 19), the right "to maintain and develop their political, economic and social systems" (article 21), and the right to "determine and develop priorities and strategies for exercising their right to development," which includes such matters as "health, housing and other social and economic programmes" (article 23). Furthermore, article 31 recognizes, as an aspect of the right of self-determination, the right to "autonomy or self-government."

In short, the general tenor of the right of indigenous peoples to "freely pursue their economic, social and cultural development" is that indigenous peoples must be given the opportunity to take responsibility for their own affairs. This means some degree of autonomy and control over matters such as education, language, health, housing, economic development and the governance of their own affairs. There is thus an obligation on governments to ensure that indigenous peoples are able to exercise these rights.

It is difficult at the present time to make a definitive determination of whether Canada is in compliance with its international obligations in this regard in respect of the Innu. Much depends on what will happen in the future. Registration is underway and land claims are being negotiated. Whether through these processes the Innu will reach the stage where they will be able to exercise the rights that the international agreements provide remains to be seen. In this regard, there are conflicting indications. The events that are currently occurring could lead eventually to the degree of autonomy and control that Canada's international obligations require. However, the lack of negotiations on self-government, the apparent reluctance of the Government to move toward Innu autonomy in

⁴⁸James Anaya, *Indigenous Peoples in International Law* (1996), p. 157.

respect of education and health matters, and what may be a lack of enthusiasm for a comprehensive land claims settlement on the part of federal authorities cast some doubt on whether there is any real likelihood of compliance with these international obligations.

Suffice it to say, if the process that is underway does not lead to the Innu being able to manage their own affairs in respect of economic, social and cultural development, touching such matters as education, housing, health and development, and if the Innu are unable to move to self-government, then Canada will be in violation of the obligations set out in these human rights instruments.

In the case of the *Convention on the Rights of the Child*, the primary consideration in dealing with children, as set out in article 3 of the Convention, is that of the “best interests of the child.” The article also provides that states have an obligation to “ensure the child such protection and care as is necessary for his or her well-being.”

The Innu claim that the Government has not lived up to its obligations in this regard. They cite the crisis involving gas sniffing by children in Davis Inlet in November 2000. At the time, they claim, Health Canada made a commitment to reach agreement on an appropriate treatment plan for the affected children and to develop a “culturally appropriate family centred treatment plan for both parents and children.” However, they claim that once media attention moved away from the gas sniffing incident, the development of a treatment plan got lost in departmental in-fighting over who was to pay, and in a general reluctance to spend more money on the Innu. The point made by the Innu is that the “best interests” of the Innu children and their “well-being” had simply faded into the background.⁴⁹

It is beyond the mandate of this report to make a full investigation of such allegations. What is clear, however, is that Canada’s obligations as a party to the *Convention on the Rights of the Child* represent a standard to which Canada has an international legal obligation to conform. It is also an appropriate standard for judging Canada’s conduct in the treatment of Innu children. Thus, Canada’s conduct in the treatment of the Innu should be directed to ensuring that it does fall below the standards set out in its international obligations under the *Convention on the Rights of the Child*.

CONCLUSION 10:

Unless the Government acts to ensure that the Innu are able to take responsibility for their own affairs and are able to move to self-government, Canada is at risk of violating its international obligations

⁴⁹ The Innu also cite another incident in which the Director of Child and Family Services of the Health Labrador Corporation refused to comply with an order of the provincial court placing a child under the care of a parent in Davis Inlet, and sought to have the order stayed. The provincial court order had apparently been based on a consideration of the best interests of the child.

under the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *Draft Declaration on the Rights of Indigenous Peoples*. Furthermore, in dealing with the children of the Innu communities of Davis Inlet and Sheshatshiu, Canada is obliged under the *Convention on the Rights of the Child* to have the well-being and best interests of the children as a primary consideration.

V The Implications of the Government's Failure to Provide the Innu with Treatment Equal to That of Other First Nations for the Period 1949 to 2001

The Terms of Reference require us to “review the situation of Canada’s obligation to the Innu in light of its failure to provide treatment equal to that of other First Nations for the period 1949 to 2001.”

In 1993, the complaint of the Innu to the Canadian Human Rights Commission had included the request that they be compensated for the failure of the Government to recognize their status since 1949. The 1993 Report had indicated that while the payment of compensation would be appropriate, it would not remedy the wrong that had been suffered by the Innu as a result of the failure of the Government to carry out its fiduciary obligations. Instead, the Report stated that a real remedy in this case would be for the Government to address the problems faced by the Innu today and noted that the remedy had to 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.”⁵⁰

Measured by that test, although the Government has now engaged in a relationship with the Innu that will lead to their being treated in the same way as other First Nations in Canada, it is a long way from remedying or even addressing issues that are key to the economic, social and spiritual future of the Innu. Indeed, as far as Innu culture is concerned, on key issues such as education in language and culture, and the preservation of unique cultural programs such as the outposts program, there are major deficiencies.

The Innu make further specific complaints. Without claiming that they should be compensated for precisely the amounts they would have received had they been properly recognized by the Government in 1949, they claim that even if they were to receive equivalent funding today, this would not recognize the disadvantage they have suffered from not receiving equivalent funding in the past. The Innu take the position that the federal

⁵⁰ 1993 Report, p. 51.

claim of “general fairness in funding”⁵¹ can only be a reference to recent years and ignores the inequity of the past. Thus, in their view, funding to the Innu from the Government should include an appropriate amount of “catch-up funding.” The Innu claim that this is necessary to enable them to get to the level of programs and services that other First Nations have achieved, and to provide for the healing that is necessary after so many years of neglect.

In addition, on the issue of taxation, the Innu point out that they have been paying HST on goods and services. As non-profit organizations, the band councils are entitled to a remission of half of that amount, but that is not available for individuals. Once the registration and status processes have concluded, and reserves have been created, the problem will be solved as far as the future is concerned. But what of the past?

There seems to be no debate that the Innu have been financially disadvantaged in comparison to other First Nations by having to pay HST.⁵² The Government is apparently considering an order under section 23 of the *Financial Administration Act* to remit those taxes for the Innu going back to November 2000, the time at which a commitment was made to register the Innu as status Indians. It is not clear, however, why this date is the appropriate date for the remission order. In the 1994 Statement of Political Commitments the Government began the process of recognizing the Innu as Indians within the meaning of the *Indian Act*. That date seems more appropriate for a remission order. A remission order constitutes recognition that entitlement occurred at an earlier date than the date on which the Innu will obtain future taxation exemption. It could even be argued that entitlement to any benefit that would have flowed from recognition of the Innu as Indians within the meaning of the *Indian Act* should go back to 1949. However, even the Innu accept that there would be major practical difficulties in making taxation benefits retroactive to 1949.

In our view, the most appropriate date for the remission order is the date of the 1993 Report, 18 August 1993. That was the date when the Government was put formally on notice of what it in reality knew all along — that the Innu were Indians within the meaning of the *Indian Act* for whom the Government had fiduciary responsibilities. Any delays since that time in granting the Innu the benefits that flow from that fiduciary responsibility are delays attributable to the Government. Those delays should not disadvantage the Innu.

Moreover, in providing funding to the Innu, the Government cannot ignore the fact that it had a 50-year “holiday” from its obligations in respect of the Innu. This has to be taken into account in future funding provided to the Innu. Funding the Innu today on the basis of equivalency, without reference to the needs that result from the fact that

⁵¹ Letter of James Wheelhouse, Regional Director General, Newfoundland and Labrador Secretariat, Indian Affairs and Northern Development (Atlantic), to Chief Paul Rich, Sheshatshiu Innu Band Council, 30 October 2001.

⁵² This is acknowledged in the letter of James Wheelhouse to Chief Paul Rich, *op. cit.*

equivalency was not provided in the past, does not constitute the remedy contemplated in the 1993 Report of ensuring that the Innu are put in the position they would have been in had government responsibilities been exercised properly in the past.

CONCLUSION 11:

Funding to the Innu should take account of the fact that they have been disadvantaged by the failure of the Government to exercise its fiduciary obligation to the Innu, and any remission order in respect of taxes should be dated from 18 August 1993.

VI Recommendations

The Terms of Reference invite us to “make such recommendations as are appropriate” on the basis of our findings. Our findings and conclusions are set out under each of the preceding sections. We now draw some more general conclusions and make certain recommendations.

A. Recognition, Registration and Self-Government

At the time of the 1993 Report, the Government had not accepted that it had constitutional responsibility for the Innu as Indians within section 91(24) of the *Constitution Act, 1867*. That has now changed. The Government has acknowledged its constitutional responsibility and is acting accordingly. The real question, however, is whether this has made any practical difference to the situation of the Innu.

The first issue relates to the question of equivalency. In reality, this has always been the issue. If in 1949 the Innu had been treated like other Indians in Canada, they would have been treated in the same way as Indians for whom the Government had constitutional responsibility. They would, no doubt, have been granted status and reserves would have been created for them. The Innu would have been funded in the same way that other Indians in Canada are funded. This was the original intention of the Canadian and Newfoundland negotiators in establishing the Terms of Union but, as the 1993 Report pointed out, the relevant provisions were “pencilled out.”

Even today that equivalency has yet to be achieved. Although the Government initially seemed prepared to grant equivalency without going through the process of registration, in the end it insisted on a registration process before granting full equivalency, notwithstanding the fact that many, both inside and outside of the Government, considered registration a retrograde step. Within the Government, it appears that the precedent of granting tax benefits to people who were not registered was ultimately regarded as worse than the precedent created by registration.

For the Innu, it seemed that registration was the only option that the Government was prepared to offer to grant them equivalency. In the end, the Innu decided to take that option. While many Innu recognize that there are advantages and disadvantages to being placed under the *Indian Act*, some take the view that registration will allow them to decide on advantages and disadvantages themselves, which they would have been able to do had the Government fulfilled its responsibilities to them in 1949. In short, they are simply getting to where they should have been 50 years ago.

The registration issue appears to be a result of inflexibility and failed imagination. The Government could have taken the administrative, regulatory and (if necessary) legislative steps to grant the Innu equivalency without registration. It chose not to do so.

Instead, it has required the Innu to embark on a process that simply postpones the granting of equivalency and that has had the effect of placing negotiations on self-government on indefinite hold.

There are, of course, issues such as reserve creation and band council powers that will be regularized through registration. But these matters could have been dealt with separately through self-government negotiations. That would appear to have been the position contemplated in the 24 November 1999 Agreement in Principle. A lack of flexibility has placed the Innu on a track that pushes self-government even further into the future. In short, the opportunity to recoup the time that was lost to the Innu during 50 years of federal failure to accept responsibility for the Innu has not been taken.

In terms of giving effect to the recommendations of the 1993 Report, although the Government has not yet granted to the Innu the programs, benefits and services to which status on-reserve Indian people are entitled, there is now a process in place that will result in their getting that equivalency. The cost of doing this is postponement of self-government.

Furthermore, it is not clear that the federal or provincial governments see self-government for the Innu in the foreseeable future. There is a strong sense among some officials that the Innu do not have the capacity to engage in self-government or to manage education or health services. Some consider that a period of operating under the *Indian Act* will be a valuable “capacity-developing” experience for the Innu. Under this view, self-government is postponed even further into the future, perhaps indefinitely.

The move to self-government was a principal recommendation of the 1993 Report. Self-government was recognized by the Royal Commission on Aboriginal Peoples to be a step of vital importance to Aboriginal peoples more generally. Rapid action by the Government towards Innu self-government was a way in which the Government could have made up for its past failure in its fiduciary duty. Unfortunately, this opportunity of forging a new and more creative relationship with the Innu has not been taken.

The pace of self-government negotiations has simply been too slow. Nine years after the release of the 1993 Report, one might have assumed that the process would be complete, or at the very least close to completion. Instead, negotiations have halted and no resolution is in sight. There is no justification for letting another eight years trickle by without results. In our view, a strict time-line is overdue. Given the eight years that have elapsed so far, and that some progress has been made already, a period of five more years would seem more than reasonable to complete self-government negotiations.

RECOMMENDATION 1:

That the Government immediately resume self-government negotiations with the Innu, and that it complete such negotiations within the next five years.

In doing this, the Government should not abandon registration, which is now well underway. Rather, it should adapt the registration process into a self-government process in order to avoid creating institutions for governance under the *Indian Act* that will have to be changed, altered or abolished as a result of self-government.

B. Innu Education and Health

The second issue relates to the question of whether the Government's assumption of its responsibilities has led to any improvement in the lives of the Innu. In 1993, outside the area of health, there were few federal officials dealing with issues affecting the Innu or with any experience of the communities of Sheshatshiu and Davis Inlet. Today the situation is remarkably different. There are officials in Ottawa in DIAND and Health Canada and in the DIAND regional office in Amherst who are dealing directly with Innu issues and who have spent time in the communities. There are DIAND and Health Canada officials located in Goose Bay. There also appears to be a marked change of attitude on the part of many government officials, who appear to be much more knowledgeable about Aboriginal claims, traditions and culture than their predecessors. By comparison with 1993, there is now substantial federal activity on Innu issues. The number of "main tables" and "side tables" for negotiating issues relating to registration, land claims, health and relocation seems to be growing exponentially. Much appears to be happening.

But what does it all lead to? Have things really changed? Two issues will be considered — education and health.

Education

At the time that the 1993 Report was completed the state of education in the Innu communities was little short of disastrous. Attendance at schools was irregular, the drop-out rate was high and few Innu ever completed high school. Today the situation is generally regarded as the same, if not worse. Attendance at the high school level can be as low as 10% — and not always the same 10%. Students who do stay in school suspect that their educational level is not the same as those at the same grade in other schools in Newfoundland and Labrador. Remuneration of teachers in the provincial system is structured in such a way that the Innu schools are unlikely to attract experienced teachers, and once they gain experience, they are likely to leave. Some years, it is difficult even to obtain a full complement of teachers. Recently, the school in Davis Inlet was unable to open at the beginning of the school year because of a lack of teachers.

The schools in both Sheshatshiu and Davis Inlet are in extremely poor physical condition. The school in Davis Inlet has had to be closed on at least one occasion because leaking oil had caused an environmental hazard. There is agreement that it is necessary to construct a new school in Sheshatshiu, but there is no consensus as to who will fund the

construction, nor whether the new school will be built to federal or provincial standards. No one claims that the schools provide any kind of effective mechanism for conserving and revitalizing Innu language and culture. Some Innu parents have lost faith in the capacity of the schools to offer education either in the Innu language and culture or in the basic skills offered under the provincial curriculum. A number of Sheshatshiu parents have responded by sending their children across the bridge to the school in North West River.

Education remains in the hands of the Province, and discussions between the federal and provincial governments appear to contemplate that even after registration the Province will continue to provide education services to the Innu under an agreement with the Government. In short, the financial arrangement will change but there will be no fundamental change in what is being delivered.

The inability to control education in their communities has been an issue for the Innu for many years. They express frustration with the fact they have no control over curriculum and that Innu language and culture, generally provided by teaching assistants and not fully qualified teachers, lose out if anything has to be sacrificed. Given that the preservation of Innu-aimun is at a critical juncture, Innu control over Innu education becomes increasingly urgent. Nor have the schools been sympathetic to Innu who wish to take their children into the country for extended periods. Alternate educational programs initiated by the Innu, one of the most promising of which was conceived in the fall of 2001, tend to fall through complex bureaucratic regulations and priority funding limitations.⁵³

The Innu consider that they should be in a position to manage education, to engage teachers and to have a say in the curriculum. In Innu hands, the schools would give priority to Innu-aimun and would give central focus to culturally appropriate education. At the same time, the Innu are not unrealistic about the growing connections between their community and the outside world. They recognize that their children are being educated in a broader provincial and national context. They wish to offer a curriculum that would make their children's education portable, so they could move to other schools within the Newfoundland and Labrador school system. The situation in Conne River is often cited as an example in which the band is responsible for schooling in accordance with provincial standards.

Paragraph 2 of the 24 November 1999 Agreement in Principle provided that "Canada and the Province will work together with the Innu to transfer control for [education] programs to the Innu." This has not happened. Federal officials say that discussions on

⁵³ Former Mushuau Innu Chief Katie Rich and a group of other Innu women from Davis Inlet formulated the Next Generation Guardians Proposal in the fall of 2001. Concerned about the large number of Innu high school drop-outs, they proposed to develop an alternate and parallel educational program that would focus on this sub-group of students, and concentrate primarily on Innu skills and language. Based in Davis Inlet (and after relocation in Natuashish), the program was designed to operate separately from the provincially operated high school. Attempts to achieve appropriate funding appear to be mired in complex and unwieldy bureaucratic requirements.

devolution of control over education can take place when the Innu come up with a plan, an odd requirement given that there is no alternative governmental plan except to continue a system that patently does not work. In fact, there is a widespread view among federal and provincial officials that the Innu do not have the capacity to manage education in their communities. Some officials suggest that the Innu will not be able to take responsibility for education until they can provide that education themselves. If it is expected that the Innu are to come up with a plan to solve the problems of Innu education — something that the Government and the Province have been unable to do — before they are given responsibility for Innu education, then this is tantamount to a refusal to devolve education to the Innu.

In the immediate term, after the Innu are registered as status Indians, the schools in the Innu communities will continue under the Newfoundland schooling system. Thus, although relocation will provide the Mushuau Innu with excellent physical facilities for schooling, the delivery and content of education will not change in either community as a result of registration.

It is difficult to see how the continuation of a system that clearly does not work will improve education in the Innu communities. And it is difficult to understand why giving the Innu the opportunity to take responsibility for the education of their children could make anything worse.

Health

The situation in respect of health is more complex. There is a longer history of federal involvement in health issues in the two communities. Yet some parallels can be drawn with education. At the time of the 1993 Report there was a crisis of children gas sniffing in Davis Inlet that drew national and international attention. Some children were taken away from the community for treatment and then returned. Later there were reports that several of those children had returned to gas sniffing.

In November 2000, there was a crisis of gas sniffing by children in both Sheshatshiu and Davis Inlet that received national and international attention. Children were removed from both communities and provided with treatment. Subsequently there were reports that children who had received treatment had returned to their communities and had continued gas sniffing.

There are, of course, many differences between these two incidents, but the overall impression remains the same. Notwithstanding the substantial efforts that have been made to deal with health and social issues in the Innu communities, on the surface it appears that fundamentally little has changed.

In fact, much has changed. In the incident in November 2000 it was the Innu leadership in Sheshatshiu that took the initiative and called on the provincial authorities to apprehend the children in that community under relevant child welfare laws. In Davis Inlet the leadership took the matter to Health Canada and the children were dealt with under voluntary care arrangements. The children from Sheshatshiu were treated in Goose Bay and the children from Davis Inlet were sent to Grace Hospital in St. John's.⁵⁴ Some children remain in treatment.

The November 2000 incident demonstrates the jurisdictional nightmare that exists in respect of Innu health. The differing arrangements with the two communities led to serious difficulties over which level of government should be paying for which service. Health is a provincial responsibility, exercised in respect of the Innu through the provincial Health Labrador Corporation. Health Canada nevertheless funds health care programs and DIAND provides funding for health as well. The Innu manage health issues through health commissions in each of the communities. Coordination between these groups is a major problem. Within the Government an interdepartmental committee was established at the behest of the Chief Federal Negotiator for Labrador Innu Files to try to bring some coordination at the federal level. This has resulted in better communication but it has not prevented each department from carrying out its mandate as it sees fit, and friction between DIAND and Health Canada continues. The problem between the two departments is described by officials as a "national problem."

There is no doubt that the resources devoted by the Government to issues of health in the Innu communities are significantly greater today than in 1993. The Innu themselves speak favourably of the role played by Health Canada. Yet there is still the concern that this has not resulted in a corresponding improvement in health in the communities. As Innu Nation President Peter Penashue observed at a circumpolar health conference in 1994: "The arrival of an elaborate health care system among the Innu has coincided with a rapid worsening of Innu health." President Penashue did not see this as a matter of cause and effect. Rather he considered that Innu health and ill-health were determined largely by factors such as social and economic considerations, rather than the health care system itself. He suggested that improvement in Innu health could only occur alongside the development of healthy socio-economic and cultural systems. Under this view, control of the Innu over their own lives becomes critical to Innu health.

The view expressed by President Penashue is widely shared among the Innu, who see experts with experience with problems in other communities, including other Aboriginal communities, being brought in to consider Innu problems. What is lacking, from the Innu perspective, is experience with the Innu themselves. There seems widespread consensus among the Innu that the programs that work best for them are the family healing programs, in which families go to the country and seek to come to terms with alcohol, gas

⁵⁴ In 1992, the children from Davis Inlet were taken to Alberta.

sniffing and other problems of social dysfunction. However, on the return to the communities many of the problems resurface, and at the present there is little to provide the essential in-community follow-up. Proposals to link cultural awareness and health, like the outposts program, tend to fall through the funding gaps.

The Innu also express concern that even after they become registered they will not gain any further autonomy over health care. Discussions between the federal and provincial governments over the role to be assigned to the Health Labrador Corporation after the Innu are registered, and the belief among federal and provincial officials that the Innu do not have the capacity to manage health care, suggest that the Innu are correct in their perception. In November 2001, the DIAND regional office confirmed to the Chiefs of Sheshatshiu and Davis Inlet that the Government would enter into an agreement with the Province and the Health Labrador Corporation for the provision of child and family services to the Innu by the Health Labrador Corporation.⁵⁵ Federal officials also express concern over accountability in the management of funds. As mentioned earlier, Innu finances are currently under third-party management.

As in the case of education, it is difficult to see how the Government can justify continuation of the present arrangements. They are currently managing crises in Innu health but have not been successful in addressing the underlying problems. They are not responding to Innu requests that the Innu be allowed to take more responsibility for their health. This is not to suggest that one should ignore the substantial efforts by both levels of government on matters relating to Innu health or to question the well-meaning intentions of those involved in providing programs and funding. It is simply to say that in light of the history of health in the communities, a point has been reached where the request of the Innu to take responsibility themselves for health care — and to be able to make their own mistakes — becomes compelling.

During our discussions we heard much talk of “capacity building” but saw little evidence of real training, which is what the term “capacity building” denotes. The role of the federal and provincial governments should be to provide training that will allow the Innu to exercise their responsibilities in respect of education and health effectively. The assumption that the Innu do not have the capacity to manage education and health in their communities, and that if they were granted that responsibility they would fail, is easy to make given the educational, health and management experience of the Innu compared with the vast resources of the federal and provincial governments. But, as the Innu point out, the incentive for them not to fail is enormous. It is the education and health of their own people that are at stake. And, at least in the education field, failure is what already exists. The bar for measuring success could hardly be lower.

⁵⁵ Letter of Ian Gray to Chiefs Simeon Tshakapesh and Paul Rich, 30 November 2001.

What is needed, therefore, is a reversal of relationship. Instead of the Government and the Province taking responsibility for education and health in cooperation and consultation with the Innu, the Innu need to take responsibility for education and health in cooperation and consultation with federal and provincial authorities. This is not a fundamental change in direction, but simply a shift in the allocation of control.

Furthermore, as with the need for a time-line on negotiations for self-government, there is a parallel need to impose deadlines on the process of devolution of responsibility for education and health. The Government and the Province have begun to move in the right direction, but nine years after the 1993 Report, there is insufficient progress to show for it. It should take no more than another two years to complete negotiations to devolve responsibility to the Innu.

RECOMMENDATION 2:

That the Government enter into negotiations with the Innu with a view to enabling them, following registration, to take responsibility for education and health in their communities. The devolution of such responsibility to the Innu should be completed within two years.

This responsibility should be exercised in close cooperation with the federal and provincial governments, who should make it a high priority to provide training that will enable the Innu to exercise their responsibilities effectively.

With the successful resolution of self-government and devolution of responsibility for education and health, the Innu will regain control and autonomy over their own affairs. In the interim, as such negotiations proceed, time remains of the essence in terms of the preservation of Innu language, traditional skills and culture.

RECOMMENDATION 3:

That the Government provide full and continuous funding for the outposts program and similar Innu-directed initiatives to enhance health and education through the preservation of Innu language, traditional skills and culture.

C. The Relocation of the Mushuau Innu

There is no doubt that the commitment to the relocation of the Mushuau Innu and the building of the new community of Natuashish is one of the most significant actions taken by the Government for the Innu. Notwithstanding the delays, the cost overruns and the disappointing results in terms of Innu training, relocation offers the Mushuau Innu a substantial opportunity and will provide them with a community and resources that bear practically no comparison whatsoever to their present conditions in Davis Inlet.

Relocation provides an incredible opportunity; it also poses an enormous challenge. It could change the future for the Mushuau Innu or it could fail. This could be an opportunity for the transformation of the community, or it could result in the social dysfunction of Davis Inlet simply being moved to Natuashish. In part, that is a matter for the community itself, as many Innu recognize. The issue of whether the new community will be a “dry” community has been debated. And there is recognition among the leadership that relocation is not a panacea for the substantial social problems that the community faces. Equally, the consequences of relocation rest on the willingness of the Government to continue with the project, and not to relocate the Innu and conclude that the task is done.

Until very recently nothing was being done to prepare the Innu for the relocation.⁵⁶ The Mushuau Innu Relocation Committee had been taking community members to the site each year to familiarize them with the construction and with what the community would be like when it was finished. Individuals have been able to see where their houses were to be built or in some cases see their houses under construction. What must be addressed are the physical and social implications of moving to a new place; of living in new homes that have facilities that did not exist in Davis Inlet; and of moving from pedestrian, ATV and snowmobile transportation to a community with roads that can accommodate cars and trucks, and with distances that require motor vehicle transportation.

What is needed is a commitment to a planning process for the future of the Mushuau Innu after relocation. The Government needs to work with the Innu on this issue, instead of leaving the Innu with the strong impression that nothing is being done. At present, there is a widespread view among the Innu that the Government will show no interest in the Mushuau Innu after relocation.

RECOMMENDATION 4:

That the Government provide funding and training for the Mushuau Innu to enable an effective relocation to Natuashish and to ensure that the new community is able to function into the future.

This training should enable the Innu to adapt to their new location, and to function fully and independently in the new community.

C. The Relationship Between the Innu and the Government

The difference between the amount of contact between the Innu and the Government at the time of the 1993 Report and the amount of contact today is remarkable.

⁵⁶ When we commenced this project, we were told that nothing had been done. In the latter stages of our investigation we were told that these matters were now being planned and that programs were to be put in place.

Yet, notwithstanding this increased, continuing contact, the level of mistrust and the lack of communication between the Innu and the Government is high. On a range of issues Innu and government perceptions vary widely. The Innu feel that significant progress is being made on land claims, but federal officials consider a comprehensive land claims settlement to be a long way off. Federal officials consider that issues relating to education and health are being addressed. The Innu feel that particularly in the area of education, essentially nothing is being done. Federal officials insist that the Innu demonstrate their “capacity” to manage their own affairs by exhibiting facility in complex bureaucratic procedures that require expertise in government terminology, extensive written documentation, and participation in time-consuming, multi-level meetings. The Innu respond that “capacity development” of this sort is not the type of expertise that gets to the heart of the major social, health and spiritual problems that beset their communities, and that participating in these activities displaces time and energy sorely needed to address more fundamental matters.

The Innu claim that the Government brought self-government negotiations to an end because it claimed that it did not have the capacity to negotiate with the Innu on so many fronts. Some federal officials say that it was the Innu lack of capacity to negotiate that led to the termination of self-government negotiations. The Innu suspect that, after the relocation of the Mushuau Innu and completion of the side agreement on Voisey’s Bay, the Government will lose interest in the Innu. Federal officials claim that this is not so. Both sides claim that the real issues at stake are the health, education and well-being of the Innu communities, and particularly the future for Innu children. Each side, however, doubts that the other side is seriously interested in these issues.

In part, the differing perceptions of the Innu and the Government are fuelled by the starting assumptions of each side. Federal officials believe they are doing what the Innu have been asking be done. They are treating the Innu as other Indians in Canada by registering the Innu under the *Indian Act*. However, the Innu also want recognition of the fact that they have not been treated properly by the Government for the past 50 years. For them, whatever is done in the future has to be in light of, and cannot ignore, the past. Moreover, some federal officials tend to view who the Innu are and what they might be through an urban lens that seems disconnected from the reality of the coast of northern Labrador.

In the past few years, the Innu have seen a hardening of federal positions, resulting in the relationship becoming more adversarial. Federal officials see the period as one in which they have managed to inject some reality into the negotiations. But to the extent that negotiations between the Innu and the Government are adversarial, it is a relationship in which the cards are held by one side. Whether there are to be negotiations and whether the Innu are to be funded so they can negotiate are matters determined by the Government. It is a negotiation where one side has time, but the other side has everything else.

The lack of communication and mutual understanding has clearly had an impact on negotiations between the Innu and the Government. In fact, this level of mistrust raises serious questions about the prospects for a successful and timely conclusion of negotiations on self-government, land claims, and devolution of responsibility for education and health. The Innu and the Government both need to reflect seriously on how to remould their relationship in more positive directions.

For example, meetings routinely held in Ottawa and Montreal could instead be held in Goose Bay, Sheshatshiu, Davis Inlet or Natuashish in the future. This would both relieve Innu budgets and provide federal officials with a better sense of the reality of Innu lives.

In areas where miscommunication has become endemic, both sides might also consider the appointment of a mediator. Indeed, if no progress is made on self-government negotiations or on the devolution of education and health, the parties should appoint a mediator to deal with these issues.

RECOMMENDATION 5:

That, if serious progress is not achieved in negotiations on self-government within two years, and serious progress is not achieved in the devolution of responsibility for education and health within one year, a mediator should be appointed to assist the parties.

At the same time, both sides also acknowledge that progress is being achieved, and of course such progress is critical. Notwithstanding the difficulties that face the communities, this is perhaps a time of unheralded opportunity. The relocation of the Mushuau Innu, the economic development currently occurring, the potential of projects such as Voisey's Bay and the commitment of the current Innu leadership all provide an opportunity that must not be lost. It is incumbent on the Government not to let this opportunity pass, or to mire progress in another eight years of start-stop-start and change of direction. Implementation of the recommendations made in this report will ensure that progress is maintained.

VII Conclusion

The 1993 Report suggested that what was needed was a dramatic gesture of confidence by the Government — a new initiative from the Government that would acknowledge constitutional responsibility and place relations between the Innu and the Government on a new footing. The acknowledgement of constitutional responsibility that eventually came was neither dramatic nor one to inspire confidence. It came piecemeal, and seemingly grudgingly, and was accompanied by doubts, steps backwards and significant concerns over the financial implications of the new relationship. Moreover,

progress was often the result of political intervention, although from the Innu point of view, political commitments often seemed to be forgotten once the matter returned to the bureaucratic level.

There is no doubt that the Government has responded in terms of funding and in terms of the numbers of people in the federal system now dealing with Innu issues. However, the machinery of the governmental bureaucratic processes does not always seem attuned to responding to Innu needs and problems. On the positive side, relocation of the Mushuau Innu presents a major opportunity. At the same time, ensuring its success represents a major challenge. Equally, the transition to registration and reserve creation, the comprehensive settlement of land claims and the negotiation of self-government arrangements represent both opportunities and challenges for the Innu and the Government.

The future does not lie solely in institutional arrangements, although they play a key role in ensuring that the Innu can take responsibility for their own lives. The test of the relationship between the Innu and the Government over the next five to 10 years has to be measured in terms of the health of Innu children, women, men and families; in terms of the education that Innu children are receiving; and in terms of the preservation of Innu language and culture. Those are the true tests of whether the Government is fulfilling its fiduciary responsibility towards the Innu. Indeed, those issues should be the specific subject of the next review by the Canadian Human Rights Commission of the relationship between the Innu and the Government.

RECOMMENDATION 6:

That the Canadian Human Rights Commission review the progress made in the implementation of the recommendations in the 1993 Report and this Follow-Up Report in five years' time.

Summary of Conclusions

1. The Government has implemented the first recommendation of the 1993 Report that it formally acknowledge its constitutional responsibility to the Innu.
2. The Government has implemented the first part of the second recommendation in the 1993 Report, that it enter into direct funding arrangements with the Innu.
3. The Government has not implemented that part of the second recommendation in the 1993 Report, under which the Innu were to be provided with access to all federal funding, programs and services that were available to status, on-reserve Indian people in Canada. However, it has implemented part of this recommendation and it has, albeit belatedly, set in motion a process — registration and the creation of

reserves — that will ensure the Innu have access to all federal funding, programs and services that are available to status, on-reserve Indian people in Canada.

4. The Government has not implemented that aspect of the second recommendation in the 1993 Report that called on the Government of Canada to preserve “the unique aspects of existing arrangements such as the outposts program.”
5. Although the Government did enter into self-government negotiations with the Innu as proposed in the third recommendation in the 1993 Report, placing those negotiations in abeyance with no plan for recommencing them means that the third recommendation of the 1993 Report has not been implemented.
6. The Government is in the process of implementing its commitment to the relocation of the Mushuau Innu to the site chosen by them as proposed in the fourth recommendation in the 1993 Report.
7. The Government has gone a significant way towards implementing the fifth recommendation in the 1993 Report that it provide the funding necessary to implement the Report’s recommendations. However, the issue will remain open until all of the recommendations have been fully implemented.
8. Although the actions of the Government in respect of the Innu conform to some of the recommendations of the Royal Commission on Aboriginal Peoples, such as the building of the community at Natuashish and in some respects health reform, in many critical areas such as education and self-government there is little evidence that the recommendations of the Royal Commission have been implemented at all in respect of the Innu.
9. There is an opportunity for the Government to reach a comprehensive land claims settlement with the Innu. There is momentum on the Innu side, arising out of their new proposals and the opportunities provided by the Voisey’s Bay development, that will be lost if the Government does not match that momentum. Progress requires a clear commitment by the Government and the early resumption of self-government negotiations.
10. Unless the Government acts to ensure that the Innu are able to take responsibility for their own affairs and are able to move to self-government, Canada is at risk of violating its international obligations under the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Draft Declaration on the Rights of Indigenous Peoples*. Furthermore, in dealing with the children of the Innu communities of Davis Inlet and Sheshatshiu, Canada is obliged under the *Convention on the Rights of the Child* to have the well-being and best interests of the children as a primary consideration.

11. Funding to the Innu should take account of the fact that they have been disadvantaged by the failure of the Government to exercise its fiduciary obligation to the Innu, and any remission order in respect of taxes should be dated from 18 August 1993.

Summary of Recommendations

1. That the Government immediately resume self-government negotiations with the Innu, and that it complete such negotiations within the next five years.
2. That the Government enter into negotiations with the Innu with a view to enabling them, following registration, to take responsibility for education and health in their communities. The devolution of such responsibility to the Innu should be completed within two years.
3. That the Government provide full and continuous funding for the outposts program and similar Innu-directed initiatives to enhance health and education through the preservation of Innu language, traditional skills and culture.
4. That the Government provide funding and training for the Mushuau Innu to enable an effective relocation to Natuashish and to ensure that the new community is able to function into the future.
5. That, if serious progress is not achieved in negotiations on self-government within two years, and serious progress is not achieved in the devolution of responsibility for education and health within one year, a mediator should be appointed to assist the parties.
6. That the Canadian Human Rights Commission review the progress made in the implementation of the recommendations in the 1993 Report and this Follow-Up Report in five years' time.

Annex A: Summary of Conclusions from the 1993 Report

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 Sheshatshiu 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 Government to other Aboriginal people 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 people 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 toward 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.

(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) That 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 the 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 the 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 people bears responsibility.

Annex B: List of Interviews Conducted for the 2002 Report

Persons interviewed in preparation for writing the 2002 Report included the following:

Gregory Andrew	Eric Maldoff
Leila Andrew	Joe Matire
Mary Jane Andrew	Joe McKinnon
Daniel Ashini	Ben Michel
Jerome Bertholet	Jim Nui
Clara Blake	John Nui
Patrick Borbey	Mary Ann Nui
Brian Doré	John Olthuis
Anik Dupont	Bob Pelley
Sean Dutton	Elizabeth Penashue
Marie Fortier	Peter Penashue
Al Garman	Sebastian Piwas
Leila Gillis	Cajetan Rich
Ian Gray	Joseph Rich
Joseph Gregoire	Katie Rich
Rose Gregoire	Paul Rich
Shirley Guy	Brian Torrie
Terry Hann	Louise Trépanier
Kathleen Hobbs	Simeon Tshakapesh
Larry Innes	Jim White

Annex C: Biographical Notes on the Authors

Constance Backhouse

B.A. (Man.), LL.B. (Osg. Hall), LL.M. (Harvard), of the Ontario Bar, Full Professor, Director of the Human Rights Research and Education Centre

Constance Backhouse is Professor of Law at the University of Ottawa, where she teaches in the areas of criminal law, human rights, and women and the law. She is the Director of the Human Rights Research and Education Centre.

Professor Backhouse is the author of *Colour-Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: University of Toronto Press, 1999), and *Petticoats and Prejudice: Women and the Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), which was awarded the 1992 Willard Hurst Prize in American Legal History by the (U.S.) Law and Society Association. Another of her books, *Challenging Times: The Women's Movement in Canada and the United States* (Montreal and Kingston: McGill-Queen's University Press), co-edited with David H. Flaherty, was named the 1993 Outstanding Book on the Subject of Human Rights in the United States by the Gustavus Myers Center for the Study of Human Rights in the United States.

From 1988 to 1992, Professor Backhouse served as a member of the Steering Committee for the Complainants' Group in the human rights complaint concerning Mary Jane Mossman, styled as Mary Lou Fassel *et al. v. Osgoode Hall Law School, York University and Harry Arthurs*. Since 1982, she has been a member of the board of directors of the Women's Education and Research Foundation of Ontario, Inc. In 1981, she was awarded the Augusta Stowe-Gullen Affirmative Action Medal by the Southwestern Ontario Association for the Advancement of Learning Opportunities for Women.

In 1998, she received the Law Society Medal. In 1999, the Bora Laskin Human Rights Fellowship provided funding to enable her to conduct a study of the history of sexual assault law and child custody law in Canada and Australia, a project in which she is currently engaged.

Donald M. McRae

LL.B. (Otago), LL.M. (Otago), Dipl.Int.Law (Cant.), of the Bars of New Zealand and Ontario, Full Professor

Professor McRae holds the Hyman Soloway Chair in Business and Trade Law and is a former Dean of the Common Law Section. He was formerly Professor and Associate Dean at the Faculty of Law at the University of British Columbia. He specializes in the field of international law and has been an Advisor to the Department of External Affairs of the

Government of Canada and Counsel for Canada in several international fisheries and boundary arbitrations. He was Chair of the first dispute settlement panel set up under Chapter 18 of the Canada-U.S. Free Trade Agreement, and sat on subsequent panels under chapters 18 and 19 of the Free Trade Agreement. He was also Chair of the first dispute settlement panel set up under the U.S.–Israel Free Trade Agreement. He is currently on the roster of panellists under Chapter 19 of NAFTA and on the Indicative List of Panellists of the World Trade Organization. In 1998 he was appointed the Chief Negotiator for Canada for the Pacific Salmon Treaty. His publications are principally in the field of international law and he is Editor-in-Chief of the *Canadian Yearbook of International Law*. Professor McRae teaches contracts, international law and international trade law at the University of Ottawa.