Native Claims

The paramount cry of the native people of the North is that their claims must be settled before a pipeline is built across their land. In this chapter, I shall outline the history of native claims in Canada. This history is important because the concept of native claims has evolved greatly in recent years: they have their origin in native use and occupancy of the land, but today they involve much more than land.

When treaties were signed during the 19th century, the settlement of the native people's claims was regarded primarily as surrender of their land so that settlement could proceed. The payment of money, the provision of goods and services, and the establishment of reserves – all of which accompanied such a surrender – were conceived in part as compensation and in part as the means of change. The government's expectation was that a backward people would, in the fullness of time, abandon their semi-nomadic ways and, with the benefit of the white man's religion, education and agriculture, take their place in the mainstream of the economic and political life of Canada.

The governments of the day did not regard the treaties as anything like a social contract in which different ways of life were accommodated within mutually acceptable limits; they gave little consideration to anything beyond the extinguishment of native claims to the land, once and for all. The native people, by and large, understood the spirit of the treaties differently; they regarded the treaties as the means by which they would be able to retain their own customs and to govern themselves in the future. But they lacked the power to enforce their view.

The native peoples of the North now insist that the settlement of native claims must be seen as a fundamental re-ordering of their relationship with the rest of us. Their claims must be seen as the means to the establishment of a social contract based on a clear understanding that they are distinct peoples in history. They insist upon the right to determine their own future, to ensure their place, but not assimilation, in Canadian life. And the Government of Canada has now accepted the principle of comprehensive claims; it recognizes that any settlement of claims today must embrace the whole range of questions that is outstanding between the Government of Canada and the native peoples.

The settlement of native claims is not a mere transaction. It would be wrong, therefore, to think that signing a piece of paper would put the whole question behind us. One of the mistakes of the past has been to see such settlements as final solutions. The definition and redefinition of the relationship with the native people and their place in Confederation will go on for a generation or more. This is because the relationship has never been properly worked out. Now, for the first time, the federal government is prepared to negotiate with the native people on a comprehensive basis, and the native people of the North are prepared to articulate their interests over a broad range of concerns. Their concerns begin with the land, but are not limited to it: they extend to renewable and non-renewable resources, education, health and social services, public order and, overarching all of these considerations, the future shape and composition of political institutions in the North.

Perhaps a redefinition of the relationship between the Government of Canada and the native people can be worked out in the North better than elsewhere: the native people are a larger proportion of the population there than anywhere else in Canada, and no provincial authority stands in the way of the Government of Canada's fulfilment of its constitutional obligations.

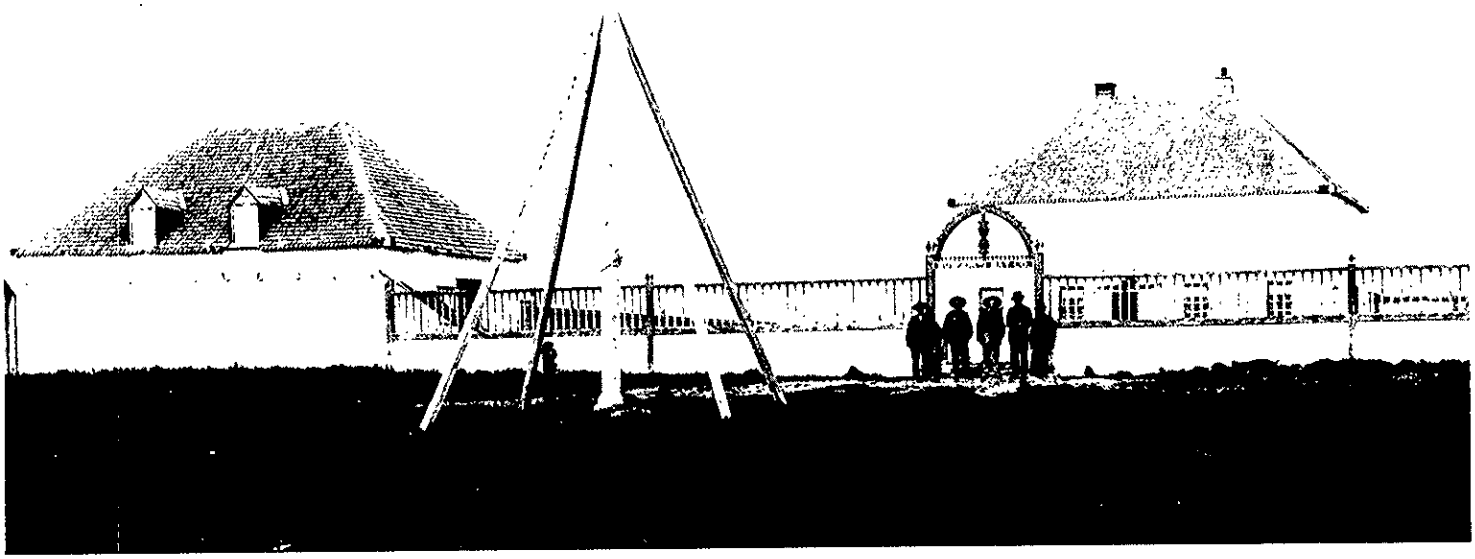
In considering the claims of the native people, I am guided primarily by the testimony that the Inquiry heard at the community hearings in the North. No doubt the native organizations will, in due course, elaborate these claims in their negotiations with the government but, for my own purposes, I have, in assessing these claims, relied upon the evidence of almost a thousand native persons who gave evidence in the Mackenzie Valley and the Western Arctic. Finally, I shall indicate what impact construction of the pipeline would have on the settlement of native claims and the goals that the native people seek through the settlement of these claims.

History of Native Claims

The Issue: No Pipeline Before Native Claims are Settled

All the native organizations that appeared at the hearings insisted that this Inquiry should recommend to the Minister of Indian Affairs and Northern Development that no right-of-way be granted to build a pipeline until native claims along the route, both in the Yukon and the Northwest Territories, have been settled. The spokesmen for the native organizations and the people themselves insisted upon this point with virtual unanimity.

The claims of the Dene and the Inuit of the North derive from their rights as aboriginal peoples and from their use and occupation of northern lands since time immemorial. They want to live on their land, govern themselves on their land and determine for themselves



what use is to be made of it. They are asking us to settle their land claims in quite a different way from the way that government settled native land claims in the past; government's past practice, they say, is inconsistent with its newly declared intention to achieve a comprehensive settlement of native claims.

Arctic Gas suggested that the native people should not be permitted to advance such an argument before the Inquiry because it did not fall within my terms of reference. The Order-in-Council stated that I am "to inquire into and report upon the terms and conditions that should be imposed in respect of any right-of-way that might be granted across Crown lands for the purposes of the proposed Mackenzie Valley pipeline." Those words, they argued, limit the Inquiry to the consideration of only the terms and conditions that must be performed or carried out by whichever pipeline company is granted a right-of-way.

It is true that, according to the Pipeline Guidelines, any terms and conditions that the Minister decides to impose upon any right-of-way must be included in a signed agreement to be made between the Crown and the pipeline company. But the Order-in-Council does not confine this Inquiry to a review of the Pipeline Guidelines nor to the measures that the pipeline companies may be prepared to take to meet them. The Order-in-Council calls upon the Inquiry to consider the social, economic and environmental impact of the construction of a pipeline in the North. The effect of these impacts cannot be disentangled from the whole question of native claims. Indeed, the native organizations argue that no effective terms and conditions could be imposed on a pipeline right-of-way, with a view to ameliorating its social and economic impact, before native claims have been settled. It was essential, therefore, if the Inquiry was to fulfil its mandate, to hear evidence on the native organizations' principal contention: that the settlement of native claims ought to precede any grant of a right-of-way.

Only the Government of Canada and the native people can negotiate a settlement of native claims in the North: only they can be parties to such negotiation, and nothing said in this report can bind either side. Evidence of native claims was heard at the Inquiry to permit me to consider fairly the native organizations' principal contention regarding the pipeline, and to consider the answer of the pipeline companies to that contention.

Native Lands and Treaties in North America

When the first European settlers arrived in North America, independent native societies, diverse in culture and language, already occupied the continent. The European nations asserted dominion over the New World by right of their "discovery." But what of the native peoples who inhabited North America? By what right did Europeans claim jurisdiction over them? Chief Justice John Marshall of the Supreme Court of the United States, in a series of judgments in the 1820s and 1830s, described the Europeans' claim in these words:

> America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws.
>
> It is difficult to comprehend the proposition that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered which annulled the existing rights of its ancient possessors.
>
> Did these adventurers, by sailing along the coast and occasionally landing on it, acquire for the several governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil from the Atlantic to the Pacific; or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred these rights over hunters and fishermen, on agriculturists and manufacturers?
>
> To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all would acknowledge and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was "that discovery gave title to the government by whose subjects or by whose authority it was made, against all other European governments, which title might be consummated by possession."
>
> This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlements upon it. [*Worcester v. Georgia* (1832) 31 U.S. 350 at 369]

The Europeans' assumption of power over the Indians was founded on a supposed moral and economic superiority of European culture and civilization over that of the native people. But it was, nevertheless, acknowledged that the native people retained certain rights. Chief Justice Marshall said:

> [the native people] were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as

Hudson's Bay Company at Fort Resolution in the early days. (Alberta Archives)

Great Slave Lake Dene, 1903. (Alberta Archives)

Slavey Indians in the old days, Hay River. (Public Archives)

Hand-games and drums, Fort Good Hope, 1927. (Public Archives)

> independent nations, were necessarily diminished and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle that discovery gave exclusive title to those who made it. [*Johnson v. McIntosh* (1823) 21 U.S. 543]

The concept of aboriginal rights has a firm basis in international law, and we subscribe to it in Canada. During the last century, the Supreme Court of Canada in the St. Catherines Milling case and this century in the Nishga case affirmed the proposition that the original peoples of our country had a legal right to the use and occupation of their ancestral lands. The courts have had to consider whether, in given cases, the native right has been taken away by competent authority, and sometimes the courts have decided it has been. But original use and occupation of the land is the legal foundation for the assertion of native claims in Northern Canada today.

From the beginning, Great Britain recognized the rights of native people to their traditional lands, and acquired by negotiation and purchase the lands the colonists required for settlement and cultivation. That recognition was based not only on international law, but also upon the realities of the times, for in those early days the native people greatly outnumbered the settlers.

The necessity to maintain good relations with the native people led the British to formulate a more clearly defined colonial policy towards Indian land rights in the mid-18th century. The westward expansion of settlers from New England during this period had given rise to discontent among the Indian tribes and during the Seven Years War (1756-1763), the British were at pains to ensure the continued friendship of the Iroquois Confederacy lest they defect to the French. When the war ended, the British controlled the whole of the Atlantic seaboard, from Newfoundland to Florida, and the government promulgated the Royal Proclamation of 1763. This document reserved to the Indians, as their hunting grounds, all the land west of the Allegheny Mountains, excluding Rupert's Land, the territory granted in 1670 to the Hudson's Bay Company. The Proclamation stated that, when land was required for further settlement, it should be purchased for the Crown in a public meeting held for that purpose by the governor or commander-in-chief of the several colonies. This procedure for the purchase of Indian land was the basis for the treaties of the 19th and 20th centuries.

The Treaties

Following the Proclamation of 1763, the British made a series of treaties with the Indians living in what is now Southern Ontario. Many of these treaties were with small groups of Indians for limited areas of land, but, as settlement moved westward in the mid-19th century, there was a dramatic increase in geographical scale. The Robinson treaties, made in Ontario in 1850, and the "numbered treaties," made following Canada's acquisition from Great Britain in 1870 of Rupert's Land and the Northwestern Territory, covered much larger tracts of land.

The treaties concluded after 1870 on the prairies cleared the way for the settlement of Western Canada and the construction of the Canadian Pacific Railway. The government's instructions to the Lieutenant-Governor of the Northwest Territories in 1870, after the cession of Rupert's Land, were explicit:

> You will also turn your attention promptly to the condition of the country outside the Province of Manitoba, on the North and West; and while assuring the Indians of your desire to establish friendly relations with them, you will ascertain and report to His Excellency the course you may think the most advisable to pursue, whether by Treaty or otherwise, for the removal of any obstructions that might be presented to the flow of population into the fertile lands that lie between Manitoba and the Rocky Mountains. [Canada, Sessional Papers, 1871, No. 20 p. 8]

Treaties 1 to 7, made between 1870 and 1877, covered the territory between the watershed west of Lake Superior and the Rocky Mountains. In 1899, Treaty 8 covered territory northward to Great Slave Lake. Then, in 1921, Treaty 11 dealt with the land from Great Slave Lake down the Mackenzie River to the Mackenzie Delta. Treaties 8 and 11 together cover the whole of Northern Alberta and the western part of the Northwest Territories, including the Mackenzie Valley.

The treaties conform to a distinct pattern: in exchange for the surrender of their aboriginal rights, the Indians received annual cash payments. The amount varied with the treaty: under Treaties 1 and 2, each man, woman and child received $3 a year; under Treaty 4, the chiefs received $25, headmen $15, and other members of the tribe $12. In addition, the government established reserves for the use of the Indian bands: the area in some cases was apportioned on the basis of 160 acres of land for a family of five; in other cases, it was one square mile of land for each family. The treaties also recognized the continued right of the native people to hunt and fish over all the unsettled parts of the territories they had surrendered. Beginning with Treaty 3, the government agreed to supply the Indian bands with farm and agricultural implements, as well as with ammunition and twine for use in hunting and fishing.

The spirit of these clauses, together with

the guarantee of hunting and fishing rights and the establishment of reserves was, according to the understanding of the Indians, to support their traditional hunting and fishing economy and to help them to develop a new agricultural economy to supplement the traditional one when it was no longer viable.

White settlers soon occupied the non-reserve land that the Indians had surrendered, and their traditional hunting and fishing economy was undermined. Legislation and game regulations limited traditional activities yet further. The land allocated for reserves was often quite unsuitable for agriculture, and the reserves were often whittled away to provide additional land for white settlement. The government never advanced the capital necessary to develop an agricultural base for the Indians, and when the native population began to expand, the whole concept of developing agriculture on reserve lands became impractical.

These prairie treaties were negotiated in periods of near desperation for the Indian tribes. The decimation of the buffalo herds had ruined their economy, and they suffered from epidemic diseases and periodic starvation. Often they had no alternative to accepting the treaty commissioner's offers.

The recent settlement of native claims in Alaska and the James Bay Agreement follow the tradition of the treaties. The object of the earlier surrenders was to permit agricultural settlement by another race. The objects of the Alaska Native Claims Settlement Act and of the James Bay Agreement are to facilitate resource development by another race. The negotiators for the Province of Quebec stated that, if the native people refused to approve the James Bay Agreement, the project would go ahead anyway, and they would simply lose the benefits offered by the Province. This attitude parallels the position of the treaty commissioners a century ago: they said that if the Indians did not sign the treaties offered them, their lands would be colonized anyway.

Treaties in the Northwest Territories

Throughout the British Empire, the Crown, not the local legislature, was always responsible for the welfare of the aboriginal people. In 1867, therefore, the British North America Act gave the Parliament of Canada jurisdiction over Indian affairs and Indian lands throughout the new country. This jurisdiction encompasses the Inuit, and the Metis as well, at least to the extent that they are pressing claims based on their Indian ancestry. With Canada's acquisition of Rupert's Land and the Northwestern Territory, and the entry of British Columbia into Confederation, that jurisdiction extended from the Atlantic to the Pacific, from the 49th Parallel to the Arctic Ocean.

The constitutional documents that effected the transfer to Canada of Rupert's Land and the Northwestern Territory all refer to "aboriginal rights." The Imperial Order-in-Council, signed by Queen Victoria, that assigned Rupert's Land to Canada provided that:

> Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government: and the [Hudson's Bay] Company shall be relieved of all responsibility in respect of them. [Exhibit F569, p. 42]

It was upon these conditions that Canada achieved sovereignty over the lands that comprise the Northwest Territories and Yukon Territory, including the lands claimed today by the Dene, Inuit and Metis. After the transfer of these territories, the federal government enacted the Dominion Lands Act of 1872, the first statute to deal with the sale and disposition of federal crown lands. It stated:

> 42. None of the provisions of this Act respecting the settlement of agricultural lands, or the lease of timber lands, or the purchase and sale of mineral lands, shall be held to apply to territory the Indian title to which shall not at the time have been extinguished. [Exhibit F569, p. 43]

All of these instruments acknowledge the rights of the native people. They illustrate that the recognition of aboriginal title was deeply embedded in both the policy and the law of the new nation.

Treaties 8 and 11, made with the Indians of Northern Alberta and the Northwest Territories, continue both the philosophy and the form of earlier treaties. These two treaties are the subject of a recent book by Father René Fumoleau, *As Long as this Land Shall Last*. I cite his text for many official and historical documents related to these treaties.

In 1888, government surveyors reported that there was oil in the Mackenzie Valley, and that the oil-bearing formations were "almost co-extensive with the [Mackenzie] valley itself." The report of a Select Committee of the Senate on the resources of the Mackenzie Basin, in March 1888, has a familiar ring today:

> ... the petroleum area is so extensive as to justify the belief that eventually it will supply the larger part of this continent and be shipped from Churchill or some more northern Hudson's Bay port to England. ... The evidence ... points to the existence ... of the most extensive petroleum field in America, if not in the World. The uses of petroleum and consequently the demand for it by all Nations are increasing at such a rapid ratio, that it is probable this great petroleum field will assume an enormous value in the near future

Bishop Breynat testifying at First Dominion of Canada inquiry in the Far North, Fort Providence, 1928. (Public Archives)

Inspector Bruce of the RCMP, Indian Commissioner Conroy and Hugh Pearson, 1921 Treaty Party in Fort Providence. (Public Archives)

Dogrib Woman. (Public Archives)

René Fumoleau. (News of the North)

and will rank among the chief assets comprised in the Crown Domain of the Dominion. [cited in Fumoleau, op. cit., p. 40]

A Privy Council Report of 1891 set forth the government's intentions:

... the discovery [of] immense quantities of petroleum ... renders it advisable that a treaty or treaties should be made with the Indians who claim those regions as their hunting grounds, with a view to the extinguishment of the Indian title in such portions of the same, as it may be considered in the interest of the public to open up for settlement. [cited in Fumoleau, op. cit., p. 41]

No treaty was made, however, until the Klondike gold rush of 1898. It was the entry of large numbers of white prospectors into the Mackenzie Valley on their way to the Yukon gold fields and the desire of the government to ensure peaceful occupation of the land that led to the making of Treaty 8. The boundaries of Treaty 8 were drawn to include the area in which geologists thought oil or gold might be found; they did not include the area inhabited by the Indians north of Great Slave Lake because, in the words of the Indian Commissioner, Amédée Forget:

... their territory so far as it is at present known is of no particular value and they very rarely come into contact with Whites. [cited in Fumoleau, op. cit., p. 59]

Treaty 8 was signed at various points including Fort Smith in 1899 and Fort Resolution in 1900. While the treaty commissioners negotiated with the Indians, a Half-Breed Commission negotiated with the Metis. Following the procedure established on the prairies, the government gave the Metis the option of coming under the treaty with the Indians or of accepting scrip, which entitled the bearer either to $240 or to 240 acres of land. Many Metis chose to come under the treaty.

Treaty 8, like the prairie treaties, provided for an annual payment of $5 per head, the recognition of hunting and fishing rights, and the allocation of reserve lands. But these lands were not allocated then, and, with the sole exception of a small reserve at Hay River in 1974, none have been allocated to this day.

The Indian people did not see Treaty 8 as a surrender of their aboriginal rights: they considered it to be a treaty of peace and friendship. Native witnesses at the Inquiry recalled the prophetic words that Chief Drygeese spoke when Treaty 8 was signed at Fort Resolution:

If it is going to change, if you want to change our lives, then it is no use taking treaty, because without treaty we are making a living for ourselves and our families ... I would like a written promise from you to prove you are not taking our land away from us. ... There will be no closed season on our land. There will be nothing said about the land. ... My people will continue to live as they were before and no White man will change that. ... You will in the future want us to live like White man does and we do not want that. ... The people are happy as they are. If you try to change their ways of life by treaty, you will destroy their happiness. There will be bitter struggle between your people and my people. [cited in Fumoleau, op. cit., p. 91ff.]

In the years that followed, legislation was enacted restricting native hunting and trapping. In 1917, closed seasons were established on moose, caribou and certain other animals essential to the economy of the native people, and in 1918 the Migratory Birds Convention Act further restricted their hunting. The Indians regarded these regulations as breaches of the promise that they would be free to hunt, fish and trap, and because of them they boycotted the payment of treaty money in 1920 at Fort Resolution.

In 1907, and repeatedly thereafter, Henry Conroy, who accompanied the original treaty party in 1899 and who had charge of the annual payment of treaty money, recommended that Treaty 8 should be extended farther north. But, in 1910, the official position was still that:

... at present there is no necessity for taking that action. The influx of miners and prospectors into that country is very small, and at present there [are] no settlers. [cited in Fumoleau, op. cit., p. 136]

The official position remained unchanged until 1920, when the Imperial Oil Company struck oil on the Mackenzie River below Fort Norman. The government quickly moved to ensure that these oil-rich lands should be legally open for industrial development and free of any Indian interest. F.H. Kitto, Dominion Land Surveyor, wrote:

The recent discoveries of oil at Norman [Wells] have been made on lands virtually belonging to those tribes [of non-treaty Indians]. Until treaty has been made with them, the right of the Mining Lands and Yukon Branch [of the federal government] to dispose of these oil resources is open to debate. [cited in Fumoleau, op. cit., p. 159]

Treaty 11 was soon signed. During the summer of 1921, the Treaty Commission travelled down the Mackenzie River from Fort Providence to Fort McPherson, then returned to visit Fort Rae. In 1922, the treaty was made with the Dene at Fort Liard. As with Treaty 8, the Metis were given the option of taking treaty or accepting scrip. However, the parliamentary approval necessary to pay the scrip was delayed, and the Metis were not paid until 1924, when 172 Metis took scrip. The payments of $240 to each Metis represent the only settlement made with the Metis of the Northwest Territories who did not take treaty. Rick Hardy, President of the Metis Association,

told the Inquiry that the Metis do not consider that these payments extinguished their aboriginal rights.

The Dene do not regard Treaty 11, which followed the pattern of Treaty 8, as a surrender of their land, but consider it to be a treaty of peace and friendship. Father Fumoleau writes of Treaty 11:

> A few basic facts emerge from the evidence of documents and testimonies. These are: treaty negotiations were brief, initial opposition was overcome, specific demands were made by the Indians, promises were given, and agreement was reached....
>
> They saw the white man's treaty as his way of offering them his help and friendship. They were willing to share their land with him in the manner prescribed by their tradition and culture. The two races would live side by side in the North, embarking on a common future. [cited in Fumoleau, op. cit., p. 210ff.]

In 1921, as in 1899, the Dene wanted to retain their traditional way of life and to obtain guarantees against the encroachment of white settlers on their land. In fact Commissioner Conroy did guarantee the Dene full freedom to hunt, trap and fish, because many Dene negotiators were adamant that, unless the guarantee was given, they would not sign the treaty. To the Dene, this guarantee that the government would not interfere with their traditional life on the land was an affirmation, not an extinguishment, of their rights to their homeland.

It is important to understand the Dene's view of the treaty, because it explains the vehemence with which native witnesses told the Inquiry that the land is still theirs, that they have never sold it, and that it is not for sale.

Father Fumoleau has written an account of the Treaty negotiations at Fort Norman, based on the evidence of witnesses to the event:

> Commissioner Conroy promised the people that this was their land. "You can do whatever you want," he said. "We are not going to stop you...." This was the promise he made to the people ... that we could go hunting and fishing....
>
> Then the Treaty party, Commissioner Conroy ... said, "As long as the Mackenzie River flows, and as long as the sun always comes around the same direction every day, we will never break our promise." The people and the Bishop said the same thing, so the people thought that it was impossible that this would happen – the river would never reverse and go back up-river, and the sun would never go reverse. This was impossible, so they must be true. That is why we took the Treaty. [cited in Fumoleau, op. cit., p. 180ff]

Joe Naedzo told the Inquiry at Fort Franklin that, according to the native people's interpretation of the treaty, the government made "a law for themselves that as long as the Mackenzie River flows in one direction, the sun rises and sets, we will not bother you about your land or the animals." (C606)

When the treaty commissioners reached Fort Rae in 1921, the Dogrib people there were well aware that the promises the government had made to the Dogribs and Chipewyans, who had signed the treaty at Fort Resolution in 1900, had not been kept. The native people would not sign Treaty 11 unless the government guaranteed hunting and trapping rights over the whole of their traditional territory. This is Harry Black's account of the negotiations with the Dogribs:

> Chief Monfwi stated that if his terms were met and agreed upon, then there will be a treaty, but if his terms were not met, then "there will be no treaty since you [Treaty Officials] are on my land." ... The Indian agent asked Chief Monfwi ... what size of land he wanted for the band. Monfwi stated ... "The size of land has to be large enough for all of my people." ... Chief Monfwi asked for a land boundary starting from Fort Providence, all along the Mackenzie River, right up to Great Bear Lake, then across to Contwoyto Lake ... Snowdrift, along the Great Slave Lake, back to Fort Providence.
>
> The next day we crowded into the meeting tent again and began the big discussion about the land boundary again. Finally they came to an agreement and a land boundary was drawn up. Chief Monfwi said that within this land boundary there will be no closed season on game so long as the sun rises and the great river flows and only upon these terms I will accept the treaty money. [cited in Fumoleau, op. cit., p. 192ff]

The Government of the Northwest Territories had, by this time, begun to take shape. The first territorial government headquarters opened in Fort Smith in 1921, and its first session was the same year, with oil the main item on the agenda. The duties of the new administration included inspection of the oil well and of the country to see if it was suitable for a pipeline.

The Dene had signed Treaties 8 and 11 on the understanding that they would be free to hunt and fish over their traditional territory, and that the government would protect them from the competition and intrusion of white trappers. Yet, contrary to treaty promises, an influx of white trappers and traders into the country was permitted to exploit the game resources almost at will, and soon strict game laws were necessary to save certain animal populations from extinction. The enforcement of these game laws caused hardship to the native people who depended on the animals for survival.

The encroachment of white trappers on lands that the native people regarded as their own led them to demand the establishment of game preserves in which only they would be permitted to hunt and trap. Frank

Treaty Indians at Fort McPherson. (Alberta Archives)

Margaret Blackduck baking outdoors during Treaty Days in Rae, 1975. (Native Press)

Jim Sittichinli of Aklavik broadcasting in Loucheux language for Canadian Broadcasting Corporation. (Native Press)

Graveside service in the North. (R. Fumoleau)

T'Seleie told of such a request made by Father Antoine Binamé on behalf of the people of Fort Good Hope in 1928:

> At the present time the Indians are in fear of too many outside trappers getting into the districts outlined ... and should these preserves be granted ... the Indians would be more likely to endeavour to preserve the game in their own way. They at present are afraid of leaving the beaver colonies to breed up as the white man would in all likelihood come in and hunt them. [C1773]

The request was never granted, although some game preserves were established in other areas.

Wood Buffalo National Park was established in 1922 and enlarged in 1926. Shooting buffalo was strictly forbidden, although Treaty Indians were allowed to hunt other game and to trap furbearing animals in the park. These regulations were strictly enforced, and the protection of buffalo took precedence over the protection of Indian hunting rights.

In 1928, the government imposed a three-year closed season on beaver in the Mackenzie District. This regulation came at the worst possible time for the Dene, for that year they were decimated by an influenza epidemic. Other furbearing animals were scarce, and without beaver they were short of meat. The Dene at Fort Rae protested and refused to accept treaty payment until they had been assured that they could kill beaver. Bishop Breynat had appealed to the government on their behalf, and some modifications to the closed season were made. Despite continuing protests about the activities of white trappers, they received no protection from this threat. In 1937, the Indians of Fort Resolution again refused, as they had in 1920, to accept treaty payment in protest against their treatment by the government.

Finally, in 1938, legislation was passed to regulate the activity of white trappers and to restrict hunting and trapping licences only to those white persons who already held them. But, as Father Fumoleau told us, by this time most of the white trappers had turned from trapping to mining. At the same time that the native people had been restricted in their traditional activities, oil and mineral exploration and development had proceeded apace. In 1932, the richest uranium mine in the world began operation at Port Radium on Great Bear Lake. Gold was discovered in Yellowknife in 1933. In 1938, Norman Wells produced 22,000 barrels of oil, and in 1938-1939 the value of gold mined in the Northwest Territories exceeded for the first time the total value of raw furs produced.

The Dene insist the history of broken promises continues today. Jim Sittichinli, at the very first community hearing, held in Aklavik, related the recent experience of the native people:

> Now, at the time of the treaty ... 55 years ago ... they said, "As long as the river runs, as long as the sun goes up and down, and as long as you see that black mountain up there, well, you are entitled to your land."
>
> The river is still running. The sun still goes up and down and the black mountain is still up there, but today it seems that, the way our people understand, the government is giving up our land. It is giving [it up] to the seismic people and the other people coming up here, selling ... our land. The government is not keeping its word, at least as some of us see it.
>
> Now, there has been lots of damage done already to this part of the northland, and if we don't say anything, it will get worse....
>
> The other day I was taking a walk in Yellowknife ... and I passed a house there with a dog tied outside. I didn't notice it and all of a sudden this dog jumped up and gave me a big bark, and then, after I passed through there, I was saying to myself, "Well, that dog taught me a lesson." You know, so often you [don't] see the native people, they are tied down too much, I think, by the government. We never go and bark, therefore nobody takes notice of us, and it is about time that we the people of this northland should get up sometime and bark and then we would be noticed. [C87ff.]

So far I have been describing treaties made with the Indians and Metis. No treaties were ever made with the Inuit, although the boundaries of Treaty 11 include part of the Mackenzie Delta that was occupied and used by the Inuit. They were not asked to sign the treaty in 1921 and, when they were invited to do so in 1929, they refused.

The absence of a treaty has made little difference to the Inuit, although they have been spared the invidious legal distinctions introduced among the Dene by treaty and non-treaty status. The Inuit witnesses who spoke to the Inquiry made clear that they, no less than the Dene, regard their traditional lands as their homeland. They also demand recognition of their rights to the land and their right to self-determination as a people. At Tuktoyaktuk, Vince Steen summarized the historical experience of the Inuit:

> A lot of people seem to wonder why the Eskimos don't take the white man's word at face value any more.... Well, from my point of view, it goes way back, right back to when the Eskimos first saw the white man.
>
> Most of them were whalers, and the whaler wasn't very nice to the Eskimo. He just took all the whales he could get and never mind the results. Who is paying for it now? The Eskimo. There is a quota on how many whales he can kill now.
>
> Then next, following the whalers, the white traders and the white trappers. The white traders took them for every cent they could get. You know the stories in every history book where they had a pile of fur as high as your gun. Those things were not fair. The

natives lived with it – damn well had to – to get that gun, to make life easier for himself.

Then there was the white trapper. He came along and he showed the Eskimo how to use the traps, steel-jawed traps, leg-hold traps. They used them, well they're still using them today, but for the first 70 years when they were being used, there were no complaints down south about how cruel those traps are – as long as there was white trappers using them. Now for the last five years they are even thinking of cutting us off, but they haven't showed us a new way of how to catch those foxes for their wives though.

After them, after the white trappers and the fur traders, we have all the settlements, all the government people coming in and making settlements all over, and telling the people what to do, what is best for them. Live here. Live there. That place is no good for you. Right here is your school. So they did – they all moved into settlements, and for the 1950s and 1960s they damn near starved. Most of them were on rations because they were not going out into the country any more. Their kids had to go to school.

Then came the oil companies. First the seismographic outfits, and like the Eskimo did for the last 50 or 60 years, he sat back and watched them. Couldn't do anything about it anyway, and he watched them plough up their land in the summertime, plough up their traps in the wintertime. What are you going to do about it? A cat [caterpillar tractor] is bigger than your skidoo or your dog team.

Then the oil companies. Well, the oil companies, I must say, of all of them so far that I have mentioned, seem to ... have the most respect for the people and their ways; but it is too late. The people won't take a white man's word at face value any more because you fooled them too many times. You took everything they had and you gave them nothing. You took all the fur, took all the whales, killed all the polar bear with aircraft and everything, and put a quota on top of that, so we can't have polar bear when we feel like it any more. All that we pay for. Same thing with the seismic outfits....

Now they want to drill out there. Now they want to build a pipeline and they say they're not going to hurt the country while they do it. They're going to let the Eskimo live his way, but he can't because ... the white man has not only gotten so that he's taken over, taken everything out of the country ... but he's also taken the culture, half of it anyway....

For the Eskimo to believe now that the white man is not going to do any damage out there ... is just about impossible, because he hasn't proven himself. As far as I'm concerned he hasn't proven himself worthy of being believed any more....

The Eskimo is asking for a land settlement because he doesn't trust the white man any more to handle the land that he owns, and he figures he's owned for years and years. [C4199ff.]

Because the native people of the North believe the pipeline and the developments that will follow it will undermine their use of the land and indelibly shape the future of their lives in a way that is not of their choosing, they insist that, before any such development takes place, their right to their land and their right to self-determination as a people must be recognized. They have always held these beliefs, but their articulation of them has seldom been heard or understood.

Entrenchment, Not Extinguishment

Canadian policy has always contemplated the eventual extinguishment of native title to the land. The native people had to make way for the settlement of agricultural lands in the West, and now they are told they must make way for the industrial development of the North. But the native people of the North do not want to repeat the history of the native peoples of the West. They say that, in the North, Canadian policy should take a new direction.

Throughout Canada, we have assumed that the advance of western civilization would lead the native people to join the mainstream of Canadian life. On this assumption, the treaties promised the Indians education and agricultural training. On this assumption, the federal government has introduced programs for education, housing, job training and welfare to both treaty and non-treaty Indians. Historical experience has clearly shown that this assumption is ill-founded, and that such programs do not work. The statistics for unemployment, school drop-outs, inadequate housing, prison inmates, infant mortality and violent death bespeak the failure of these programs. George Manuel, President of the National Indian Brotherhood, told the Inquiry that the programs failed because the native people were never given the political and constitutional authority to enforce the treaty commitments or to implement the programs. Every program has assumed, and eventually has produced, greater dependency on the government. Manuel told the Inquiry:

> We, the aboriginal peoples of Southern Canada, have already experienced our Mackenzie Valley pipeline. Such projects have occurred time and time again in our history. They were, and are, the beginnings of the type of developments which destroy the way of life of aboriginal peoples and rob us of our economic, cultural and political independence....
>
> Developments of this kind can only be supported on the condition that the [native] people must first be assured economic, political and cultural self-reliance. [F21761]

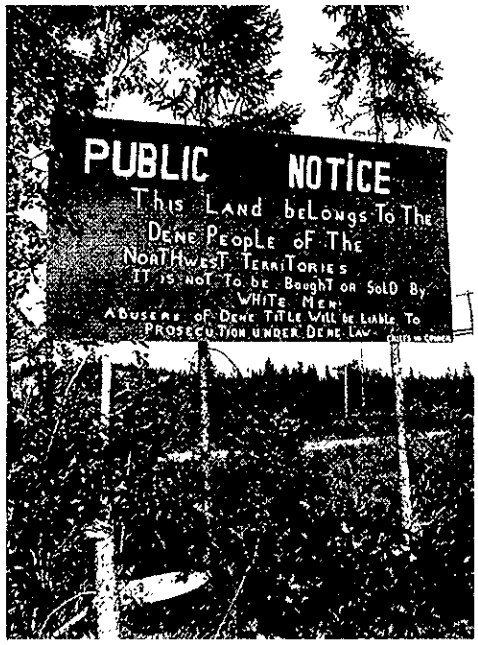
Manuel argued that the settlement of native claims in the North must recognize the native people's rights to land and to political authority over the land, as opposed to cash

People of Holman assemble for community hearing. (P. Scott)

Swearing in of witnesses Douglas Sanders, George Manuel and René Fumoleau. (D. Gamble)

Sign at Fort Good Hope airstrip. (N. Cooper)

Chief Billy Diamond, Premier Robert Bourassa, Hon. Judd Buchanan, Northern Quebec Inuit Association President, Charlie Watt and John Ciaccia at signing of James Bay Agreement, 1975. (DIAND)



compensation for the purchase of their land. The object of negotiations, he said, should be the enhancement of aboriginal rights, not their extinguishment. Only through transfer to them of real economic and political power can the native people of the North play a major role in determining the course of events in their homeland and avoid the demoralization that has overtaken so many Indian communities in the South. The determination to arrest this historical process, which is already underway in some northern communities, explains the native people's insistence on a settlement that entrenches their right to the land and offers them self-determination.

The demand for entrenchment of native rights is not unique to the native people of the North. Indians in Southern Canada, and aboriginal peoples in many other parts of the world, are urging upon the dominant society their own right to self-determination. As Manuel said:

> Aboriginal people everywhere share a common attachment to the land, a common experience and a common struggle. [F21760]

James Wah-Shee, voicing a sentiment shared by virtually all of the native people in the North, said:

> The general public has been misinformed on the question of land settlement in the North. What is at issue is land not money.
>
> A land settlement in the Northwest Territories requires a new approach, a break in a historical pattern. A "once-and-for-all" settlement in the tradition of the treaties and Alaska will not work in the Northwest Territories. What we are seriously considering is not the surrender of our rights "once and for all" but the formalization of our rights and ongoing negotiation and dialogue. We are investigating a solution which could be a source of pride to all Canadians and not an expensive tax burden, for ours is a truly "developmental" model in the widest and most human sense of the word. It allows for the preservation of our people and our culture and secures our participation as equals in the economy and society of Canada. [*Delta Gas: Now or Later*, speech presented in Ottawa, May 24, 1974, p. 14]

The treaties already made with the Dene do not stand in the way of a new settlement. The Dene maintain that Treaties 8 and 11 did not extinguish their aboriginal rights, and the government, for its part, has agreed to negotiate settlement of native claims without insisting on whatever rights it may claim under the treaties. Since no reserves were ever set aside under the treaties (except one at Hay River), federal policy, therefore, is not impeded by the Indian Act, the provisions of which relate primarily to the administration of reserve lands.

In the case of the non-status Indians – treaty Indians who for one reason or another have lost their treaty status – the Indian Act has no application, and the federal government has agreed to negotiate with them on the footing that they are entitled to participate in a settlement in the same way as treaty Indians. The government has made the same undertaking to the Metis. The government is not, therefore, arguing that the payment of scrip by the Half-Breed Commissions in the past extinguished the aboriginal rights of the Metis. In the case of the Inuit, there are neither treaties nor reserves, and the provisions of the Indian Act have never been applied to them.

There is, therefore, no legal or constitutional impediment to the adoption of a new policy in the settlement of native claims. The federal government, in dealing with the claims of the northern people, has recognized both that there are new opportunities for the settlement of claims and that such claims must be treated as comprehensive claims. The Honourable Judd Buchanan, in addressing the Territorial Council of the Northwest Territories on February 13, 1976, described the claims, as the government saw them:

> First, the claims involved are regarded as comprehensive in the sense that they relate to all native claimants residing in the area concerned, and the proposals for settlement ... could include the following elements: categories of land, hunting, trapping and fishing, resource management, cultural identity, and native involvement in governmental evolution. [p. 7ff.]

The native people of the North, for their part, also wish the settlement of their claims to be a comprehensive settlement. They, like the federal government, see their claims as the means of opening up new possibilities. Robert Andre, at Arctic Red River, articulated for the Inquiry the native people's view of the objectives of their claims:

> We are saying we have the right to determine our own lives. This right derives from the fact that we were here first. We are saying we are a distinct people, a nation of people, and we must have a special right within Canada. We are distinct in that it will not be an easy matter for us to be brought into your system because we are different. We have our own system, our own way of life, our own cultures and traditions. We have our own languages, our own laws, and a system of justice....
>
> Land claims ... [mean] our survival as a distinct people. We are a people with a long history and a whole culture, a culture which has survived. ... We want to survive as a people, [hence] our stand for maximum independence within your society. We want to develop our own economy. We want to acquire political independence for our people, within the Canadian constitution. We want to govern our own lives and our own lands and its resources. We want to have our own system of government, by which we can control and develop our land for our benefit. We want to have the exclusive right to hunt, to fish and to trap. [C4536ff.]

We are saying that on the basis of our [aboriginal] land rights, we have an ownership and the right to participate directly in resource development. [C4536]

We want, as the original owners of this land, to receive royalties from [past] developments and for future developments, which we are prepared to allow. These royalties will be used to fund local economic development, which we are sure will last long after the companies have exhausted the non-renewable resources of our land. The present system attempts to put us into a wage economy as employees of companies and governments over which we have no control. We want to strengthen the economy at the community level, under the collective control of our people. In this way many of our young people will be able to participate directly in the community and not have to move elsewhere to find employment.

We want to become involved in the education of our children in the communities where we are in the majority. We want to be able to control the local schools. We want to start our own schools in the larger centres in the North where we are in the minority....

Where the governments have a continuing role after the land settlement, we want to have a clear recognition as a distinct people, especially at the community level. Also at the community level, powers and control should lie with the chief and band council. To achieve all this is not easy. Much work lies ahead of us....

We must again become a people making our own history. To be able to make our own history is to be able to mould our own future, to build our society that preserves the best of our past and our traditions, while enabling us to grow and develop as a whole people.

We want a society where all are equal, where people do not exploit others. We are not against change, but it must be under our terms and under our control. ... We ask that our rights as a people for self-determination be respected. [C4539ff.]

Robert Andre was speaking only of the Dene land claims, but the evidence I have heard indicates that the claims of the Inuit coincide in principle with those of the Dene. The Metis Association of the Northwest Territories originally indicated its agreement with the Dene position, but they are now developing a claim of their own. I am satisfied that the position Andre articulated represents the concept of native claims held by the majority of the people of Indian ancestry in the Mackenzie Valley.

Self-Determination and Confederation

The Claim to Self-determination

Why do the native people in the North insist upon their right to self-determination? Why cannot they be governed by the same political institutions as other Canadians? Many white people in the North raised these questions at the Inquiry. Ross Laycock at Norman Wells put it this way:

> I don't see why ... we say Dene nation, why not a Canadian nation? The Americans in coping with racial prejudice have a melting pot where all races become Americans. We have a patchwork quilt, so let us sew it together and become Canadians, not white and Indians. [C2149]

But all of our experience has shown that the native people are not prepared to assimilate into our society. The fact is, they are distinct from the mass of the Canadian people racially, culturally and linguistically. The people living in the far-flung villages of the Canadian North may be remote from the metropolis, but they are not ignorant. They sense that their determination to be themselves is the only foundation on which they can rebuild their society. They are seeking – and discovering – insights of their own into the nature of the dominant white society and into the relationship between that society and their own. They believe they must formulate their claims for the future on that basis.

Native leadership can come only from the native people, and the reasons for this lie deep within man's soul. We all sense that people must do what they can for themselves. No one else, no matter how well-meaning, can do it for them. The native people are, therefore, seeking a fundamental reordering of the relations between themselves and the rest of Canada. They are seeking a new Confederation in the North.

The concept of native self-determination must be understood in the context of native claims. When the Dene people refer to themselves as a nation, as many of them have, they are not renouncing Canada or Confederation. Rather they are proclaiming that they are a distinct people, who share a common historical experience, a common set of values, and a common world view. They want their children and their children's children to be secure in that same knowledge of who they are and where they come from. They want their own experience, traditions and values to occupy an honourable place in the contemporary life of our country. Seen in this light, they say their claims will lead to the enhancement of Confederation – not to its renunciation.

It is a disservice to the Dene to suggest that they – or, for that matter, the Inuit or the Metis – are separatists. They see their future as lying with and within Canada, and they look to the Government of Canada, to the Parliament of Canada, and to the Crown itself to safeguard their rights and their future. Indeed it is this Inquiry, established

Support for the Dene Declaration, Fort Simpson, 1975. (Native Press)

James Arvaluk, former President of Inuit Tapirisat, and Ewan Cotterill, Assistant Deputy Minister of Indian Affairs and Northern Development. (Inuit Today–T. Grant)

NWT Metis Association President, Rick Hardy. (Native Press)

Fitz-Smith band office, Fort Smith. (Native Press)

by the Government of Canada under the Territorial Lands Act, a statute enacted by the Parliament of Canada, which they have chosen to be a forum for the presentation of their case before the people of Southern Canada.

Self-determination and the Canadian Constitution

Can a settlement that embraces the native people's claim to self-determination be accommodated within our constitutional tradition and framework?

The roots of most Canadians lie in Europe, but the cultures of the native peoples have a different origin: they are indigenous to North America. The Fathers of Confederation provided in the constitution that the Parliament of Canada should protect the native people of our country. There is no such provision in the constitution for any other people.

Parliament has exclusive legislative jurisdiction in relation to the native peoples of Canada, but the British North America Act does not prescribe any particular legislative arrangements for them. There is nothing in the constitution that would preclude the kind of settlement the native people of the North are seeking.

Under the constitutional authority of Parliament to legislate for the peace, order and good government of Canada, there has been a wide range of administrative arrangements in the Northwest Territories, beginning with the Act of 1869 (S.C. 32-33 Victoria, Ch.3), which established a temporary system of administrative control for Rupert's Land and the Northwestern Territory, right up to 1970 with the establishment of the contemporary Territorial Council under the Northwest Territories Act (R.S.C. 1970, Ch. N-22). It is certainly within Parliament's power to reorganize the territorial government to permit a devolution of self-government to Dene and Inuit institutions. Parliament is competent, in the exercise of its jurisdiction under Section 91(24) of the British North America Act, to restrict participation in such institutions to persons of a certain racial heritage.

Could the native people's claims to self-determination, to the land, and to self-governing institutions be accommodated constitutionally within any future legislation that might establish a province in the Territories? Under our constitution, specific limitations and conditions could be attached to the powers of a new province. Constitutionally, there is no bar to the native ownership of land nor to a guarantee of native institutions of self-government in a new province.

I think such special guarantees would be in keeping with the Canadian tradition. Lord Durham, in his report of 1839, looked toward the assimilation of all Canadians into the British culture. The Act of Union in 1840 established a framework of government designed to promote this solution: one province and one legislature for both the French-speaking people of Lower Canada and the English-speaking people of Upper Canada. But the people of Quebec would not be assimilated. Thus, in 1867, as Dr. Peter Russell wrote, "it was Cartier's ideal of a pluralistic nation, not Durham's ideal of a British nation in North America, that prevailed." The Dene, the Inuit and the Metis call for the extension to Canada's native people of the original spirit of Confederation.

Canada has not been an easy nation to govern, but over the years we have tried to remain true to the ideal that underlies Confederation, an ideal that Canada and Canadians have had to affirm again and again in the face of continuing challenges to their tolerance and sense of diversity. Why should the native people of Canada be given special consideration? No such consideration has been offered to the Ukrainians, the Swedes, the Italians, or any other race, ethnic group or nationality since Confederation. Why should the native people be allowed political institutions of their own under the Constitution of Canada, when other groups are not?

The answer is simple enough: the native people of the North did not immigrate to Canada as individuals or families expecting to assimilate. Immigrants chose to come and to submit to the Canadian polity; their choices were individual choices. The Dene and the Inuit were already here, and were forced to submit to the polity imposed upon them. They were here and had their own languages, cultures and histories before the arrival of the French or English. They are the original peoples of Northern Canada. The North was – and is – their homeland.

Special Status

Experience has shown that our concept of universal assimilation cannot be applied to the native people. Dr. Lloyd Barber, Commissioner of Indian Claims in Canada, has said:

> ... native people are seriously talking about a distinctly different place within Canadian society, an opportunity for greater self-determination and a fair share of resources, based on their original rights. No doubt this will require new and special forms of institutions which will need to be recognized as part of our political framework. [Speech to the Rotary Club in Yellowknife, 1974]

The idea of new political institutions that give meaning to native self-determination should not frighten us. Special status for the

native people is, and has been since Confederation, an integral part of our constitutional tradition. Their special status has, however, often led them into a state of enforced dependency. The self-determination that the native people of the North are now seeking is an extension of the special status they have always had under the constitution. In working out the nature and scope of that special status and of the political institutions that it will have, the native people of the North see an opportunity to break the cycle of dependency and to regain their sense of integrity and self-reliance. Barber had this to say about the importance of native self-determination:

> The old approaches are out. We've been allowed to delude ourselves about the situation for a long time because of a basic lack of political power in native communities. This is no longer the case, and it is out of the question that the newly emerging political and legal power of native people is likely to diminish. We must face the situation squarely as a political fact of life but more importantly, as a fundamental point of honour and fairness. We do, indeed, have a significant piece of unfinished business that lies at the foundations of this country. [ibid.]

I have used the expression "special status," and I do so advisedly. A special status for the native people is embodied in the constitution and reflected in the Indian Act and the treaties. In 1969, the Government of Canada proposed to end special status for the native peoples, and the native peoples throughout Canada opposed that idea so vigorously that the government abandoned it.

The Honourable Judd Buchanan, then Minister of Indian Affairs and Northern Development, in a statement of policy issued on July 26, 1976 – a statement of policy approved by the Cabinet and described as "the foundation for future policy" – reaffirmed the idea of special status. The statement of policy foresees "that there would continue to be recognition for Indian status, treaty rights and special privileges resulting from land claims settlements." This, of course, would apply to the treaty Indians in the Mackenzie Valley and the Western Arctic. But it must, in the Northwest Territories, entail also some form of special status for non-treaty Indians, Metis and Inuit because their aboriginal rights have been also recognized. The government cannot admit special status for treaty Indians, yet deny it to those living in the same village, even in the same houses. Special status for the native people has always been federal policy in Canada: the time has now come to make it work.

Local, regional, or territorial political entities may evolve that have a predominantly native electorate, an electorate in which a native majority might be entrenched by a suitable residency clause. Or political instruments may be developed by which the native people can, under an ethnic franchise and within a larger political entity, control matters that are, by tradition and right, theirs to determine. One approach would be geographical, the other functional. I am not attempting here to list all of the political possibilities. The native people and the Government of Canada must explore them together. I am saying that the Constitution of Canada does not necessarily require the imposition of existing political forms on the native people. The constitution offers an opportunity to deal comprehensively with native claims in the North, unfettered by real or imagined constitutional constraints. I express no opinion on the various options: I simply want it understood that all of them are open.

The claim by native people for institutions of their own is not going to be abandoned. In the North – indeed, all over Canada – it is gaining strength. It may seem odd – and out of keeping with liberal notions of integration and assimilation – but it is an ethnic strand in our constitutional fabric going back to 1867 and before. The European settlement of this country was an heroic achievement, but that history should not be celebrated in a way that fails to recognize the presence and history of the original inhabitants. We may take pride in the achievements of ancestors who settled the Atlantic coast, the St. Lawrence Valley, and then pushed on to the West and to the Pacific, but we should never forget that there were already people living in those lands. These peoples are now insisting that we recognize their right to develop political institutions in the North that will enable them to build on their own traditions and on their own past so they can share more fully in our country's future.

Evolution of Government in the Northwest Territories

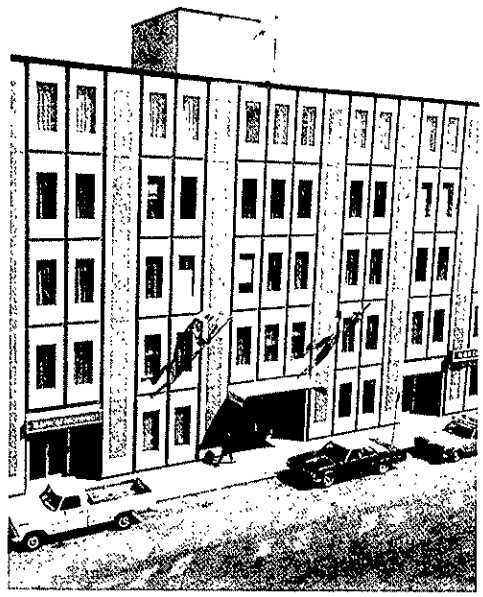
The concept of native self-determination is antithetical to the vision of the future held by many white people in the Northwest Territories, who believe that, in due course, the Territories should become a province like the other provinces. They see no place for native self-determination in such a future. It is not surprising they should feel this way, because their vision of the future is a reflection of what occurred during the settlement of the West. Agricultural settlers moved into Indian country, and when they were well enough established, they sought admittance to Confederation as a province. In 1870 Manitoba was carved out of the Northwestern Territory; in 1880 a large area

NWT Indian delegates meeting to choose a new leader, Fort Norman, 1976. (N. Cooper)

Fort Resolution Settlement Council. (GNWT)

Laing Building, Yellowknife, 1970, headquarters of the Government of the Northwest Territories. (NFB–McNeill)

John Steen, member from Tuktoyaktuk, addressing the Territorial Council. (GNWT)



of the Northwestern Territory was transferred to Ontario; in 1905 Alberta and Saskatchewan were created; and in 1912 a large area was added to the Province of Quebec. Many white northerners expected the Northwest Territories, following this process, to become a province like the others; a province in which white men govern a land that once belonged to others. Some witnesses have urged me to recommend to the federal government the granting of additional powers to the Territorial Council in order to bring the Northwest Territories closer to provincial status.

In fact, the evolution of political institutions in the Northwest Territories since 1905 has followed the pattern of the provinces. The Territorial Council is modelled after the provincial legislatures, although because it is the creation of Parliament, it has no standing under the constitution.

In 1966, the Carrothers Commission recommended that local municipal bodies should be the basis for the development of self-government in the Northwest Territories. As a result, institutions of local government were established following the model of municipal institutions as they exist in Southern Canada. In the larger centres, local government has a tax base founded on private property. The same system, whereby increased responsibility for local affairs is tied to the evolution of a tax base, was established in native communities. Even though there is virtually no private property in these communities, the assumption seems to have been that they would progress in time from settlements and hamlets – the most limited forms of local government – to the status of villages, towns and cities, like Fort Simpson, Inuvik and Yellowknife.

Settlements and hamlets, the highest levels of local government that the native communities have so far achieved, have very limited authority. In practice, this authority relates only to the day-to-day operations of the community, such as roads, water, sewage and garbage. In the native communities, most members of the local council are natives, but the native people made it quite clear to me that these councils have no power to deal with their vital concerns, such as the protection of their land and the education of their children. These important decisions are still made in Yellowknife and Ottawa. The native people regard local government, as it exists at present, as an extension of the territorial government, not a political institution of the community itself. Paul Andrew, Chief of the Fort Norman Band, had formerly worked as settlement secretary at Fort Norman. He described local government in this way:

> It was quite obvious that this whole Settlement Council system has never worked and never will work because it is a form of tokenism to the territorial government. . . . [It is] an Advisory Board whose advice [is] not usually taken. . . .
>
> The frustrations that I found for the position was that I was told that I was working for the people. But I was continuously getting orders from the regional office. They were the ones that finally decided what would happen and what would not happen. [C875ff.]

Though there is a majority of native people on the Territorial Council, it is not regarded as a native institution. The bureaucracy of the territorial government, concentrated in Yellowknife and the other large centres, plays a far more important part than the Territorial Council in shaping the lives of the native people and their communities. The native people see the Government of the Northwest Territories as a white institution; indeed, of the persons who hold the position of director in the Government of the Northwest Territories, all are white. For the most part, native employees hold clerical and janitorial positions. Noel Kakfwi expressed to the Inquiry at Fort Good Hope the native people's sense of non-participation in the existing government:

> In Yellowknife last week I spent about eight days. Out of curiosity I went into the offices and I was exploring the building in different places. All I seen was those white people with the brown hair, white collar, neckties, sitting on the desk. I looked around if I could see one native fellow, one Dene. Nothing doing. [C1923ff.]

In developing institutions of government in the North, we have sought to impose our own system, to persuade the native people to conform to our political models. We have not tried to fashion a system of government based on the Dene and Inuit models of consensus, or to build on their traditional forms of local decision-making. So long as the native people are obliged to participate in political institutions that are not of their making or of their choosing, it seems to me their participation will be half-hearted. Indeed, two Dene members withdrew from the Territorial Council last year on the ground that such membership was inconsistent with the furtherance of the claims of the Dene.

To understand why Dene and Inuit models have not been used to develop local and regional government in the North, we have to look closely at our own assumptions about the native people. During the past few years, the native people have challenged the validity of these assumptions.

We have assumed that native culture is static and unchanging, and we have not seriously considered the possibility that the native people could adapt their traditional social, economic and political organization to

deal with present realities. The native people are seen as a people locked into the past. Such an assumption becomes self-fulfilling. By not allowing them the means to deal with their present problems on their own terms, their culture does, in fact, tend to become degraded and static. Their challenges to our assumptions and their assertion of their rights have made many white people in the Northwest Territories uneasy. Native organizations are resented, and the federal government is criticized for providing funds to them. A world in which the native people could not assert their rights is changing into a world in which they can insist and are insisting upon them.

Many white people in the North are convinced that it is wrong to concede that differences based on racial identity, cultural values and economic opportunities even exist. But it is better to articulate and understand these differences than it is to ignore them. The differences are real. They have always existed, but they have been suppressed. Now the native people are proclaiming their right to shape their world in their own image and not in the shadow of ours. As a result, some white people now resent what they regard as an attempt to alter the political, economic and social order of the Northwest Territories. They are right to regard this as an attempt to change the existing order. But they should not resent it, because a growing native consciousness is a fact of life in the North. It was bound to come. It is not going to go away, even if we impose political institutions in which it has no place.

Both the white and the native people in the North realize that the government's decision on the pipeline and on the way in which native claims are settled, will determine whether the political evolution of the North will follow the pattern of the history of the West or whether it will find a place for native ideas of self-determination. The settlement of native claims must be the point of departure for any political reorganization in the Northwest Territories. That is why the decision on the pipeline is really a decision about the political future of the Northwest Territories. It is the highest obligation of the Government of Canada, now as it was a century ago in the West, to settle the native people's claims to their northern homeland.

The pipeline project represents a far greater advance of the industrial system into the North than anything that has gone before it. The native people throughout the Mackenzie Valley and the Western Arctic sense that the decision on the pipeline is the turning point in their history. For them the time of decision has arrived.

Native Claims: Their Nature and Extent

Two Views of a Settlement

Many white people see the settlement of native claims as a necessary preliminary to the pipeline, a clearing of the legal underbrush; such a settlement would follow the pattern established elsewhere in Canada and the United States, by which the goal of the settlement of native claims is to facilitate agricultural and industrial development. Upon these grounds, a settlement along the lines of the Alaskan settlement has been urged.

Under the Alaska Native Claims Settlement Act of 1971 the native people of the state, in consideration of the extinguishment of their aboriginal claims to some 375 million acres of land, were granted 40 million acres and close to $1 billion. The settlement includes more land than is held in trust for all other American Indians, and the compensation is nearly four times the amount that all other Indian tribes have won from the United States Indians Claims Commission during its 25 years of existence. Under the settlement, an elaborate system of regional and village corporations has been established to hold title to the lands and to receive the monetary benefits. But the settlement gives no special recognition to the native economy in the form of hunting, fishing or trapping rights; nor does it establish any native political structures. In fact, the Act specifically states that no permanent, racially defined institution, right or obligation can be established by it. Under the Act, the special status of native lands comes to an end in 20 years. Emil Notti, former President of the Alaska Federation of Natives, told the Inquiry that the settlement could be viewed as:

> ... a means of transforming native peoples from hunters and gatherers into entrepreneurs and capitalists in as short a time as possible. [F23344]

The ultimate goal of the settlement, therefore, is the assimilation of the native people. The Dene and the Inuit of Canada, however, oppose any settlement that offers to pay the native people for their land and then to assimilate them into the larger society, without any special rights or guarantees for them or their land. Both the Government of Canada and the native people reject the policy of assimilation.

The differences between the two conceptions of what is involved in the settlement of native claims are fundamental. Many white northerners, who regard a settlement as the means of assimilating the native people, hold

The NWT Indian Brotherhood panel explains Dene use and occupancy of land. From left: Fred Greenland, Charlie Snowshoe, interpreter Louis Blondin, Wilson Pellissey, Betty Menicoche and Phoebe Nahanni. (D. Gamble)

Trapper David Nasagaloak with muskox Holman, 1976. (M. Jackson)

Harry Simpson and family in their tent, near Rae Lakes. (Native Press)

Winter hunting camp. (R. Fumoleau)

that if the native people will not settle their claims on these terms and assimilate, then they must be prepared to return to the bush or the barrens, or to live on reserves, as Indians do in the South.

The native people say this choice is too limited. They believe they have the right to fashion a choice of their own. At the community hearings the native people were at pains to articulate the nature and extent of their claims, and the main lines of these claims are now reasonably clear.

The Land

The native people presented extensive evidence to the Inquiry to show that they have used and occupied vast tracts of the Mackenzie Valley and the Western Arctic since time immemorial, and they now seek recognition of their right as a people to their homeland. Only through their collective ownership can they ensure that their land will remain the birthright of future generations. Two members of the Andre family of Arctic Red River expressed the feelings of the Dene on this issue. Alice Andre:

> My grandfather, old Paul Niditchie, was elected first chief here in Arctic Red River in 1921. He was one of the chiefs that signed the treaty that year. ... It's going on to 55 years since the treaty was signed ... today no white man is going to make me give our land away. ... I am saying this for myself and the people, especially the children and the future generations to come, so they can make use of this land. ... There is no way I'm going to give this land away. I heard about Alaska and James Bay. I don't want it to happen around here. [C4579]

Agnes Andre:

> Should we be forced into a land settlement involving money, which we do not want, how long will the money last? Ten, fifteen, twenty years? ... We don't want this kind of a land settlement. We want a settlement where we can keep our land till the end of the earth and not have our future relatives to have to fight for it again and again, possibly till our land is ours no more. We want to keep our land, we don't want money. ... We want a settlement where not only us and our children will be happy, but [also] our great-grandchildren. A million times our thoughts will be happy. [C4591ff.]

The Inuit, no less than the Dene, see the land as their birthright. Peter Thrasher of Aklavik expressed the views of the Inuit:

> In many ways I inherit what my grandfather and my father have given me; a place to live in, a place to own, something I have a right to. ... I would like to give something for the future generations of my children, so they will have something ... to live on, and they also should have the right to inherit this country. [C14]

The special character of native land use explains why they seek title to areas of land that are, by southern standards, immense. Within living memory, the Inuit of the Western Arctic have used nearly 100,000 square miles of land and water to support themselves. The Dene presented evidence to show that they have used and occupied 450,000 square miles of land in the Northwest Territories. The native people rely not only on the areas in which they actually hunt, fish and trap, but they also need the areas that are of critical importance to the animal populations. At Sachs Harbour, David Nasogaluak explained to the Inquiry how the Bankslanders rely upon the whole of Banks Island, an area of 25,000 square miles, even though they do not hunt or trap in the northern part of the island. Andy Carpenter added, "We are saving the north end of Banks Island for breeding areas. That's for foxes, caribou, muskoxen." [C4120]

Daniel Sonfrere, Chief of the Hay River Indian Band, emphasized how his people saved some areas:

> ... just like they are keeping it for the future because they don't want to clean everything out at once. So they are kind of saving that area out there. [C522]

The native people maintain that the use they make of the land requires them to control vast tracts of it. They reject a land settlement that would give them title only to discrete blocks of land around their villages. They reject any suggestion, therefore, of an extension of the reserve system to Northern Canada. For this reason, also, they reject the model of the James Bay Agreement as a means of settling their land claims.

Under the James Bay Agreement, the Cree and Inuit of Northern Quebec have agreed to surrender their aboriginal rights over their traditional territory in return for cash compensation and for a land regime that gives them specific interests in three categories of land. Category 1 lands, allocated for the native people's exclusive use, consist of land in and around the native villages. These lands will be administered by the native people themselves, and although there are some differences in law, they roughly correspond to reserve lands. Subject to some important exceptions, no economic development on these lands can take place without the consent of the native people. Category 1 lands cover about 3,250 square miles for the Inuit, and about 2,100 square miles for the Cree. The James Bay Agreement covers a total area of about 410,000 square miles (an area roughly equivalent to that covered by Treaties 8 and 11 in the Northwest Territories). Thus, in the words of John Ciaccia, who negotiated the settlement for the Government of Quebec, Category 1 lands comprise but "a tiny proportion of the whole territory." [*The James Bay and Northern Québec*

Agreement, p. xvii] The Agreement also gives the native people hunting, fishing and trapping rights in Category 2 and Category 3 lands, to which I shall return later.

The native people of the North also reject the model of land selection used in the Alaskan settlement because such a model would not support a land-based economy. Under the Alaskan settlement, the native people have the right to select some 40 million acres of land from a checkerboard grid. Although such a distribution enables village sites to be retained, it cannot accommodate trap lines nor the migratory movements of caribou or fish. It is not designed to protect, and is not capable of protecting, a land-based native economy.

Regulation of Land Use

The native people want to entrench their rights to the land, not only to preserve the native economy, but also to enable them to achieve a measure of control over alternative uses of land, particularly the development of non-renewable resources. With such control, they can influence the rate of advance of industrial development in the North. Alizette Potfighter of Detah, the Dene village across the bay from Yellowknife, explained why the native people regard such control as essential:

> Yellowknife ... is in the process of becoming as large and as organized as the large towns down south. In the past, people here used to hunt moose and fish right by the Yellowknife Bay and used to hunt caribou. They used to go berry picking practically right in their back yards. Now the people have to travel miles and miles from home to hunt and trap, the fish are no longer good to eat, and [the people] have to go to the Big Lake if they want fish, which again means that we have to travel far.
>
> The mines have polluted our waters and the fish. ... The arsenic has caused this; it also affects the greenery around us. The people who live right in town are warned beforehand about planting gardens and how they may be affected by high arsenic levels....
>
> The wildlife has been driven further into the bush. The coming of the white man and the development he brought with him has only served to take away our way of life. [C8426ff.]

In virtually every native community in the Mackenzie Valley and Mackenzie Delta, the people complained of the impact of seismic exploration on the habitat of furbearing animals. They have no means of controlling the activities of the oil and gas industry. The Land Use Regulations provide for consultation with the communities when a company applies to the federal government to carry out seismic work, but the communities can only advise. Even the right to advise proved, more often than not, to be illusory. In Aklavik, Billy Stoor offered an example of this.

> We received the Land Use Application from Northwest Lands and Forests and they [said they] would like ... to take gravel out of the Willow River area, and they asked for Council's comments by April 2. That was yesterday and we only received the application today. The applications, when they are made, go to Fort Smith and [then] go to Inuvik and then they are forwarded to us for comment, if we have any, and it is supposed to be done in three weeks, but a lot of times they are late. And their application was received today, and they wanted our comments by yesterday, so they could start today. [C79ff.]

In light of their experience of the treaties, the native people insist that their hunting, fishing and trapping rights cannot be protected merely by just incorporating them in a settlement. They see ownership and control of the land itself as the only means of safeguarding their traditional economy.

The James Bay Agreement includes guarantees to protect hunting, fishing and trapping rights. Are they not adequate? In the Agreement, the native people have exclusive hunting, fishing and trapping rights in Category 2 lands, and the Cree may select 25,000 square miles, and the Inuit 35,000 square miles of such lands, but they have no special right of occupancy: the Government of Quebec may designate these lands for development purposes at any time, so long as the land used for development is replaced or compensation paid. Mining, seismic exploration and technical surveys are not, however, classified as development, so these activities may be carried out freely on Category 2 lands, without compensation or replacement of land, even though such activity may interfere with the native people's hunting, fishing and trapping. Category 3 lands are included in the public lands of the Province of Quebec: the native people have the right to hunt, fish and trap on them, and certain species of animals and birds may be reserved for their exclusive use. However, development of these lands may take place at any time without compensation in any form to native people.

The land regime of the Agreement is buttressed by provisions for sustained levels of harvesting, a guaranteed minimum annual income for hunters and trappers, and an elaborate scheme for the participation of native people in game management and environmental protection. However, in nearly every case, their participation in this scheme is advisory and consultative.

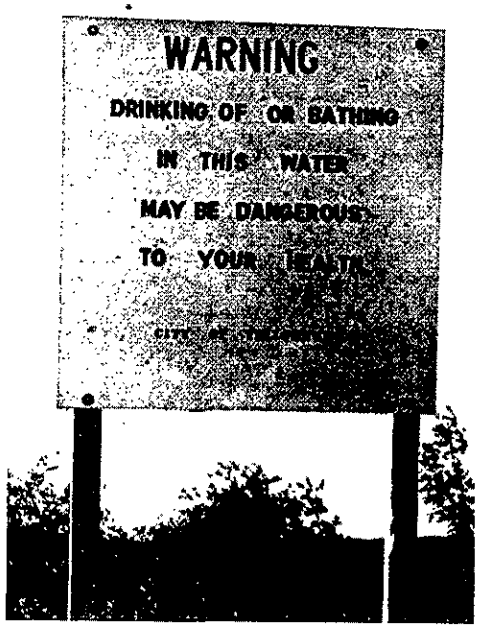
The native people of the North reject the James Bay Agreement model as inadequate to protect their traditional economy because it does not entrench hunting, fishing and trapping rights through ownership of the land. In that model, the native economy must

Rae Lakes. (GNWT)

Assistant counsel for the Inquiry, Stephen Goudge, with Russell Anthony and Andrew Thompson, for the Canadian Arctic Resources Committee. (Native Press)

Contaminated water, a Yellowknife problem. (Native Press)

Glen Bell, counsel for the NWT Indian Brotherhood and the NWT Metis Association. (Native Press)



be subservient and secondary to alternative uses of the land that will be incompatible with the native use.

There are other reasons why the native people of the North seek recognition of their right to ownership of the land. Not only will such ownership give them the legal basis from which they can negotiate with government and industry to ensure that any proposed developments are environmentally acceptable, it will also enable them to share in the benefits of economic development. Royalties from the development of non-renewable resources could be used to modernize the native economy and to promote development of renewable resources. There may be other benefits from joint-venture arrangements with outside developers, by which the native people who wish to participate in various forms of development may do so, not merely as employees at the lowest level – which has been the experience of the past – but also as managers and contractors.

The question of royalties on non-renewable resources brings us to the question of subsurface rights. Dr. Andrew Thompson, a Professor of Law at the University of British Columbia, told the Inquiry that ownership of the surface of the land, without ownership of subsurface rights, is often of little value. Ownership of mineral rights usually carries with it a right-of-access: the surface owner has to give way when the owner of subsurface resources wants to exploit them. The James Bay Agreement, for example, requires, even in the case of Category 1 lands, the native people to permit subsurface owners to use the surface in the exercise of their rights. Indeed, they must permit surface use even to owners of subsurface rights adjacent to Category 1 lands.

The subservience of the surface owner is often economic as well as legal, particularly in the North, because the short-term value in dollars of oil, gas or minerals lying beneath a tract of land usually exceeds its short-term value for hunting, fishing and trapping. Thompson suggested that these legal and economic imperatives require that, if the integrity of surface rights granted by the settlement is to be ensured, the settlement of native claims should confer management rights over minerals, either by legislation or through ownership. There is significant support for this proposition from the Australian Aboriginal Land Rights Commission. The Commissioner, Mr. Justice A.E. Woodward, said in his report of April 1974 that oil, gas and minerals on aboriginal lands should remain the property of the Crown, but he recommended that the aborigines should have the right to refuse to allow exploration for such resources on their traditional lands:

> I believe that to deny to aborigines the right to prevent mining on their land is to deny the reality of their land rights. [p. 108]

This recommendation brings us to what may be the most important question raised by native claims. Are the native people to own subsurface rights to the land, as well as the land itself? If they do, will they be in a position to stand in the way of exploitation of those subsurface resources?

Mr. Justice Woodward urged that, in ordinary cases the aborigines should be free to decide whether or not they were prepared to consent to industrial development. If they were, they should be free to negotiate for payment for exploration rights, royalty payments, joint-venture interests, protection of sacred sites, aboriginal employment, and establishment of appropriate liaison arrangements between the aborigines and the developing agency. He concluded that the aborigines' power to control the nature and extent of development should be subject to one qualification: their views might be overridden if the government of the day resolved that the national interest required it. This is how he stated that limitation:

> In this context I use the word "required" deliberately, so that such an issue would not be determined on a mere balance of convenience or desirability, but only as a matter of necessity. [p. 108]
>
> In reaching its decision the government will no doubt have regard not only for the particular mineral but also for the fact that the national interest requires respect for Aboriginal rights and Aboriginal wishes. [p. 119]

The Inuit Tapirisat of Canada, in a submission to the Government of Canada in February 1976, grappled with this issue. On behalf of the Inuit of the Northwest Territories, they claimed ownership in fee simple of some 250,000 square miles of land and water, including the surface down to 1,500 feet, and they laid down criteria for the selection of these lands. Of particular importance is this provision: the Inuit should have the right to select 50,000 square miles in respect of which they could seek the cancellation of existing rights, for example oil and gas leases, subject to compensation being paid by the federal government. Petroleum and mineral development could then take place on the lands selected only under "an agreement for consent" given by communities that hold title to these lands. Such an agreement would include wide-ranging provisions for economic participation in any development by joint management employment and fixed royalties, together with provisions designed to avoid or reduce adverse social and environmental impacts. Under the Inuit proposal, the lands selected could be expropriated only by a special Act of Parliament. The Inuit proposal has since been withdrawn, but I mention it here to demonstrate that

claims can be formulated that do justice both to the aspirations that the native people have for control of their homeland and to the national interest in vital non-renewable resources.

Self-Government

The native people have proposed a restructuring of political institutions in the Northwest Territories. This restructuring, which is the overarching feature of their claims, would reflect both in law and in fact the principle that the North is their homeland and that they have the right, under the constitution and within Confederation, to shape their future. The proposal of the Inuit Tapirisat of Canada called for the establishment of a new political entity comprising the land north of the tree line. Political control of that territory would lie with the Inuit, at least for the foreseeable future, by a 10-year residency requirement for voting.

The Dene, in their proposal to the federal government, stated:

> The Dene have the right to develop their own institutions and enjoy their rights as a people in the framework of their own institutions.
>
> There will therefore be *within* Confederation, a Dene government with jurisdiction over a geographical area and over subject matters now within the jurisdiction of the Government of Canada or the Government of the Northwest Territories. [para. 7 of the proposed Agreement in Principle]

The native people seek a measure of control over land use, and they see that the ownership of the land and political control of land use are intimately linked. They also seek control over the education of their children, and control over the delivery of community services, such as housing, health and social services. The native people acknowledge that these services have made important contributions to their material and physical well-being, but they reject the idea that they should continue to be passive recipients of these services.

These claims must be regarded together, for they are closely integrated. Many people in the native communities told the Inquiry that they want to continue living off the land. This would require changes in the present school curriculum and school year that would allow the children to accompany their parents into the bush without disrupting their education. Some families wish to move back into the bush more or less permanently. However, this option would require a change in not only educational policy, but also in housing policy to provide loans to build permanent log houses outside of the communities. Communications policy must be formulated to ensure an effective radio service between the bush and the communities. Transportation policy must be formulated to ensure the means of travel to and from bush camps. Land use and economic development policy must be formulated to ensure that the areas within which families are living the traditional life are not damaged by exploration for or development of non-renewable resources and to ensure that financial support is given to the native economy.

These claims leave unanswered many questions that will have to be clarified and resolved through negotiations between the Government of Canada and the native organizations. A vital question, one of great concern to white northerners, is how Yellowknife, Hay River and other communities with white majorities would fit into this scheme. Would they be part of the new territory? Or would they become enclaves within it? It is not my task to try to resolve these difficult questions. Whether native self-determination requires native hegemony over a geographical area, or whether it can be achieved through the transfer of political control over specific matters to the native people, remain questions to be resolved by negotiations.

Rick Hardy, President of the Metis Association of the Northwest Territories, told the Inquiry that his Association was considering yet other political possibilities. The Association is still formulating its claims, but Hardy intimated that it might propose that Metis be guaranteed a minimum number of seats on the Territorial Council and positions within the territorial administration. The Territorial Council of the Yukon has made a similar proposal to secure the political rights of the Indian people of the Yukon. This approach originated in New Zealand, where the Maoris have a specified number of seats in the New Zealand legislature. This proposal proceeds on the assumption that native people are to be a minority in a larger political entity, without institutions of their own. That is the case in New Zealand. The Dene and Inuit proposals, on the other hand, seek to establish political institutions of their own fashioning.

Native Claims: A Closer Examination

I have outlined the native claims as they have been presented to the Inquiry. I intend now to deal with two specific areas of the claims at length because it is my judgment that the claims of the native people of the North deserve our most serious consideration. They are, I believe, basic to the native people's view of what the future should hold for them. Let us take a closer look at native

NWT Indian Brotherhood President, George Erasmus (second from left) presenting Dene land claim to federal government, 1976. (DIAND)

Education programs run by native people:
Lunch at Koe-Go-Cho hostel in Fort Simpson. (Native Press)

Candy Beaulieu at Tree of Peace kindergarten, Yellowknife. (Native Press)

Florence Erasmus and kindergarten class, Yellowknife. (Native Press)

claims related to education and to renewable resource development, both of which are essential to the survival of the native culture and economy. Then we can understand better what a settlement of native claims would entail, both in terms of the kind of political control that the native people will require, and of the time that will be needed, not just to pass legislation, but to establish new institutions and to introduce new programs to make native self-determination a reality in the North. When we have done this, we shall be in a position to consider the impact of the pipeline on the achievement of the goals the native people seek through a settlement of native claims.

The Claim to Native Control of Education

The native people of the North claim the right to educate their children. This claim flows from their deeply felt need to transmit to their children their values, their languages and their history. It is also related to their experience with the present school system and its curriculum, which is based on Euro-Canadian ideals, values and standards. Bob Overvold, then Executive Director of the Metis Association, told the Inquiry:

> ... no imposed educational system, no matter how well-intentioned, will work for the Dene. Instead, only one that is initiated and developed by the Dene and that is rooted in Dene tradition, culture, and values will be successful. Such a system would be based upon a person's environment and then expanded to provide knowledge of the culture or society that surrounds him. [F23952]

Overvold explained that native children who enter the present system find that what they are taught in school is quite different from what they have learned in their homes. To Overvold,

> The importance of the Dene developing [their own] educational system ... is quite self-evident. If one buys my evaluation of the present system in the Northwest Territories as being essentially no different than any other system in Southern Canada, then I see the essence of that system for the average white child being such that when a child enters this formal system at the age of five or six, the system takes up without any break, reinforces and builds upon all that the child has previously learned in his home and in the community. For the Dene entering the system, the case is the complete opposite. For the Dene, the same system means a severe break with his culture and starts him off at a disadvantage from which he most often never recovers. [F23953]

The Hawthorn Committee had earlier reached the same conclusion:

> In sum, the atmosphere of the school, the routines, the rewards, and the expectations provide a critically different experience for the Indian child than for the non-Indian. Discontinuity of socialization, repeated failure, discrimination and lack of significance of the educational process in the life of the Indian child result in diminishing motivation, increasing negativism, poor self-images and low levels of aspiration. [*A Survey of the Contemporary Indians of Canada*, 1967, Vol. 2, p. 130]

The native people insist that they must control the education of their children, if it is to transmit their culture as opposed to ours. They say that the curriculum must include such subjects as native history, native skills, native lore and native rights; that they must determine the languages of instruction; and they insist that they must have the power to hire and fire teachers and to arrange the school year so that it accommodates the social and economic life of each community.

The native people's claim to control of education is not a rejection of all the knowledge that is basic to the society of Southern Canada. They made it quite clear that they seek a balance of the two cultures in the education of their children, but a balance of their own making. Nowhere did the native people contend that learning English was not worthwhile, but they insist that their own languages also be taught. Robert Sharpe, principal of the school at Old Crow, in outlining the mandate he felt he had from the local parents, said they had told him:

> ... we want our children to have the academic option open to them, so if they wanted, they could go on through university or whatever; but we don't want this at the cost of losing our life, our culture, our skills, our tradition, our language. [C1595]

Could not these aspirations be realized through a reform of the present system, a system under the control of the territorial government, rather than by transferring control to the native people? John Parker, Deputy Commissioner of the Northwest Territories, appeared before the Inquiry to argue that they could. He said that, since the early 1970s, the policy of the territorial government had been to transfer responsibility to the local communities, to make the curriculum culturally relevant, and to train native teachers. Other witnesses before the Inquiry, however, argued that, despite this new policy, little had changed in the schools in the native communities.

The new policy provides for instruction to native children in their mother tongue during the first three years of school. This has not come about: the language of instruction is still English, and the Alberta curriculum is still the basis of northern education. The new policy also provides a "cultural

inclusion" annual grant of $15 for each student to local school committees for their use in teaching native languages, arts and crafts, trapping or anything else that might be designated "cultural." Paul Robinson, former Director of Curriculum for the Northwest Territories Department of Education, said that this $15 per student is insignificant when compared with the average cost of $1,700 for each student every year.

Bilingual and bicultural educational programs require bilingual teachers. In the Northwest Territories there has been an education program designed to prepare such teachers since 1968, but, according to Robinson, its effectiveness has been limited. In 1974, for example, six native students graduated from the program; these six represent approximately 1.5 percent of the total complement of northern teachers required and would fill only four percent of the teaching vacancies in an average year. The remaining 96 percent of the vacancies must be filled by teachers from the South.

Could these deficiencies in the bilingual education program be remedied if more money and better facilities were provided? With additional funds, could the territorial government expand the teacher education program and increase the amounts spent on "cultural inclusion"? Robinson explained that these failures were not owing to lack of money:

> The question is not one of availability. In excess of $40 million is now spent on northern education.... How is the money expended?... The percentage increase in the cost of administration over the three-year period 1971-1974 indicates the priorities of the education system in this regard. The 45.5 percent increase in expenditures on administrative control of education can be contrasted with the 13.8 percent increase for improving education at the settlement level. [F27416]

The financial support available for higher education also indicates the priorities of the present education policy. In 1975-1976, some $311,500 was used to assist 183 students from the North. Of this number, only 10 were native. In the same year, native students were awarded two and one-half of the 18 bursaries available to university students. Robinson suggested that not only do these figures indicate the limited success that native students have in the schools, but they also reflect the motives underlying the system: higher education grants and bursaries are made available primarily as inducements to attract white public servants to the Northwest Territories. Robinson believes that, so long as control of education lies outside the hands of the native people, nothing in the system will really change:

> Native peoples continue to be regarded as essentially the wards of the state. The paternalistic, non-native administrators will determine the measure of local control to be permitted on the basis of the readiness of the Dene and Inuit ... but they are not ready. They are never ready. [F27418]

Bernard Gillie, former Director of Education for the Northwest Territories, told the Inquiry what he thought should be done to realize native aspirations:

> There must be an acceptance by all concerned ... that self-determination is the keystone of the new system. The decisions about what to do and how to do it must lie in the hands of the native people and reflect the values they believe in and respect. This is not to suggest that this should exclude the concepts and beliefs from other cultures, but the decisions as to what shall be incorporated in their own changing culture must be theirs to make. A mere patching up of the present system will not do what the Dene people want to accomplish. [F23924]

I think it should be understood that the Department of Education of the Government of the Northwest Territories has sincerely tried to establish an education system that would reflect Dene and Inuit desires. Its administrators, supervisors and teachers are dedicated educators. But, with the best will in the world and with ample funds, the department has not succeeded, and there are no grounds for believing that it ever will succeed. The reason is simple: one people cannot run another people's schools.

Precedents for the Claim

The concept of native control of the education of their children is not revolutionary. In 1975, the Congress of the United States passed The Indian Self-Determination and Education Assistance Act, Section 2 of which states:

> The prolonged federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities. [p. 1]

Section 3 of the Act states:

> The Congress ... recognizes the obligation of the United States to respond ... by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.
>
> The Congress declares its commitment ... through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning,

Mary Rose Wright teaching bush life skills to Judy Wright, Drum Lake. (Native Press)

Bedtime at Whitehorse residential school. (J. Falls)

Loucheux child at Old Crow. (G. Calef)

White and native children in northern kindergarten class. (GNWT)

conduct, and administration of those programs and services. [p. 1]

Ethelou Yazzie, Director of the Rough Rock Demonstration School in Arizona, told the Inquiry that under this legislation the Navahos have established their own school system. She described how, under the control of the locally elected Navaho School Board, a bicultural, bilingual school has been developed at Rough Rock: "Navaho people, through their elected administrative officers, are running a sophisticated school, unabashedly oriented to Navaho children." [Ex. F637, Appendix, p. 3] Navahos fill most of the administrative positions and more than 60 percent of the teaching positions at the school. All of the aides and support staff come from the native community.

The United States is not alone in accepting the principle of native self-determination in education. The principle has already been accepted in Canada. In 1972, the National Indian Brotherhood prepared a policy paper, *Indian Control of Indian Education*, which was accepted the following year by the Honourable Jean Chrétien, then Minister of Indian Affairs and Northern Development, as the basis for Indian education policy. The statement says:

> The past practice of using the school committee as an advisory body with limited influence, in restricted areas of the school program, must give way to an education authority with the control of funds and consequent authority which are necessary for an effective decision-making body. [p. 6]

From the Ts'zil Community School on the Mount Currie Reserve in British Columbia, to the Lesser Slave Lake Agreement in Northern Alberta, to the Tri-Partite Agreement involving the Micmac people in central Nova Scotia, the right to native control is being recognized and realized. The Ontario Task Force on Education has also recently supported this principle. In British Columbia, the Nishga Indian bands of the Nass Valley have recently established a fully native-controlled school board that will oversee bilingual and bicultural programs.

The James Bay Agreement provides for the establishment of Cree and Inuit school boards with all the powers of school boards under the Quebec Education Act. In addition, the native school boards may select and develop courses and teaching materials designed to preserve and transmit the languages and cultures of the native peoples; and they may, with the agreement of the Quebec Department of Education, hire native people as teachers, even though these candidates might not qualify as teachers under the normal provincial standards. The Agreement also provides that the languages of instruction shall be the native languages.

The Implications of the Claim

What is envisaged by the claim to control of education is the transfer from the territorial government to the native people of all authority over the education of native children. Whether or not there should be a native-controlled regional school board and native-controlled local school boards in each community, and other aspects of the institutional and legislative framework of native education would be resolved through negotiations. But it must be clearly understood that the transfer of control is not merely a decentralization of power under the general supervision of the territorial government – that would only perpetuate the existing state of affairs. The transfer of control must be real, and it must occur at all levels. Such a transfer can take place only over a period of time, but it must be agreed now that it will take place.

There are, at the present time, many white children in the schools of the North, and arrangements must be made for their education, also. It may be possible to incorporate a program for them into the native education system or a parallel school system for them may be necessary. Indeed, a combination of the two may be the best approach.

In the native villages, education would be under the direction of the native people. The children of white residents, the great majority of whom do not stay for very long, would attend local schools with native children. Because the native people think it is important for their children to learn English, as well as to preserve their own language, and to learn about white culture as well as to preserve their own, it is likely that white children who have spent a few years in such a school system would not suffer any disadvantage from it, and that in many ways they would benefit from the experience. It would also mean that only white families who have a genuine interest in the North and its people would choose to live in the native villages.

In the larger centres such as Yellowknife or Inuvik, where there are large numbers of white children, two parallel school systems may be the proper approach. Under such a system, the territorial Department of Education might continue to be responsible for the education of white children in the larger centres and to implement the kind of educational program that most of the white parents wish their children to have. However, there is no reason why the two school systems should have no relations with each other: some programs and facilities could be shared, and the special attributes of the two systems could be made available to students

of both systems. With time, it may be possible to offer in the larger centres an educational experience that would be truly bicultural. But that prospect can never be realized unless the native people are given the right to build their own educational system.

Native Languages

In many of the communities of the Mackenzie Valley and the Western Arctic, the native languages are still strong. In those places, the native people spoke to the Inquiry through interpreters, and those who are bilingual often preferred to address the Inquiry in their mother tongue. In places like Fort Franklin, Rae Lakes, Fort Liard and Trout Lake, the first language of the children is still the native language. Indeed, until they go to school, it is their only language. In other communities, like those in the Delta, use of the native languages has been eroded so far that young children now commonly use English, rather than their native language. However, Dr. John Ritter, a linguist who has studied the use of Loucheux in the Mackenzie Delta, told the Inquiry that even in these communities, where outsiders often think that the native languages are dead, young people have what he called a passive competence in them. He concluded:

> ... the native languages continue to be a fact of life for the children and play a vitally deep role in their cognitive development. In no sense are the languages yet "dead." [F30000]

Many people think that native languages, like native cultures, are not capable of change and growth, and that the loss of the native languages is inevitable. Just as they assume that progress in the modern world requires a shift from native to white values, so they assume that progress requires a shift from the native languages to English.

The evidence before this Inquiry showed this assumption to be mistaken. Dr. Michael Krauss, Alaska's leading expert on native languages, told the Inquiry:

> ... it is not the case that the native languages are intrinsically inferior to any other or incapable of development for meeting the needs of the twentieth century. ... The basic structures of the native languages are perfectly capable of handling modern ideas and concepts. [F29970ff.]

The native people want their languages to survive to become part of their future, not simply a reminder of their past. Krauss described in specific terms a program that would ensure the survival and development of the native languages. The first stage is the development of an orthography – a uniform system of spelling and writing the words of a language. Such an orthography, if properly designed, would enable native children to learn to read and write in their own languages faster than they can learn to read and write in English. The second stage is the development of general literacy, among both children and adults, in the native languages; and the third stage involves enlarging the vocabularies of the native languages. As an example of such a vocabulary development, Krauss cited the work done at the beginning of this century on the Hebrew language, which has meant that "men can successfully fly jet planes using the very language which in the past was the language of shepherds." [F29975] He pointed out, also, that the Inuit and Athabascan languages are renowned for their ability to form new words easily and quickly.

There are many elements and factors to be considered in the implementation of a program to ensure the survival and development of the native languages, but it is quite clear that the school system is at the core of it. The time needed to develop a bicultural and bilingual school system is considerable, for it will require not only trained teachers, but also the preparation of new texts and educational aids that are either not available at present or are available in very small numbers.

The experience of other countries indicates that these goals can be achieved. New orthographies have been developed and standardized; native teachers have been trained; and adequate new teaching materials have been prepared for small native populations in, for example, Greenland and the Soviet Union.

The transfer of the control of the education of native children, with all that it implies in the way of institutions, finance, legislation, and language rights, must be part of the reordering of relationships between the native peoples and the federal government that is inherent in the settlement of native claims. It should be quite clear, however, that the objectives of these programs for cultural and linguistic survival cannot be achieved simply by signing a piece of paper. The settlement of native claims and consequent enabling legislation is not the culmination but the beginning of a new process.