

Aboriginal Self-Government in Canada: Cree-Naskapi (of Quebec) Act

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Introduction

For the past two decades, the aspirations and political goals of Aboriginal people in Canada have been geared to recognizing, developing and implementing Aboriginal self-government. Both Aboriginal and non-Aboriginal governments and groups have been attempting to find solutions to the self-government dilemma. On the one hand, there is the federal government position that affirms that self-government must be confined within the existing Canadian constitutional framework. On the other hand, some Aboriginal governments and groups call for complete, or nearly complete, sovereignty. There must exist a middle ground between these two positions. Because of the differing sociological and physical nature of many Aboriginal communities in Canada, a single definition of self-government appears unattainable. However, as this article will illustrate, there are a number of key factors that the majority of Aboriginal people consider crucial to the attainment of self-government.

This article examines the extent to which self-government exists for two Aboriginal groups, namely the Cree and Naskapi of northern Quebec. In order to ascertain the extent to which self-government is exercised by these groups, a discussion of the *James Bay and Northern Quebec Agreement*¹ (JBNQA) and its corresponding self-governing legislation, the *Cree-Naskapi (of Quebec) Act*² (the Act), is needed. The result is an illustration of a working model of self-government that combines the legislative controls demanded by the federal and provincial governments, and yet gives to the Aboriginal communities involved the desired autonomy and authority over their lives.

However, before a discussion of the relevant documentation, the various arguments concerning self-government will be highlighted to give some basis for the analysis of the JBNQA and the *Cree-Naskapi (of Quebec) Act*.

The Concept of Self-Government

To determine the extent to which the JBNQA and the *Cree-Naskapi Act* recognize self-government for the Cree and Naskapi, a brief discussion of some of the basic arguments put forth on the concept of self-

government is needed. The intent is not to develop an absolute definition of Aboriginal self-government, nor is it to offer a complete discussion of the wide spectrum of meanings given to the term. Rather, the intent is to offer a brief exposition of some of the major thoughts respecting the concept and, in the end, to determine what crucial elements must exist for the concept to be actualized to some degree. It is from this standpoint that the JBNQA and the *Cree-Naskapi Act* shall be discussed.³

One of the clearest positions articulated on Aboriginal self-government was that presented by Grand Chief Billy Diamond on behalf of the Assembly of First Nations (AFN) at the 1983 Federal-Provincial Meeting of Ministers on Aboriginal Constitutional Matters. Diamond made the following points about Aboriginal rights and self-government:

1. Our rights and titles to land based on our traditional and historic use or occupation;
2. The right of each of our nations and tribes to our own self-identity, including the right to determine our own *citizenship* and *forms of government*;
3. Our right to determine our own institutions;
4. The right to our governments *to make laws and to govern our members and the affairs of our people, and to make laws in relation to management, administration, and use of our lands and resources*;
5. Our right to hunt, to fish, to trap fish and game, and to gather and barter and trade at all times of the year, and to participate in resource management;
6. Our right and freedom to practise our own religions;
7. Our right and freedom to practise our own customs and traditions;
8. Our right to use, retain and develop our own languages, and to retain and develop our own cultures;
9. Our right to benefit from and participate in economic and renewable and non-renewable resource developments;
10. Subject only to our governments, our right to exemption from any direct or indirect taxation levied by other governments;
11. Our right to move freely within our traditional lands regardless of territorial, provincial, or international boundaries; and
12. *Our right to fiscal relationships with other governments.* [emphasis added]⁴

This statement indicates the wide array of activities, institutions and powers that Aboriginal people have in mind when expressing their desire for self-government. Although the concept of self-government is not mentioned in the statement *per se*, it is nevertheless the underlying theme.

The statement is important in a number of ways. The first is the fact that the desire for recognition of Aboriginal title and rights to land is mentioned explicitly. Of course, this issue has been at the heart of the Aboriginal crusade for many years. It came to the forefront with the 1973 decision of the Supreme Court of Canada in *R. v. Calder*⁵ and has suffered a recent setback in the British Columbia decision of *A.-G. of British Columbia v. Delgamuukw.*⁶

Second, it is important to note that Diamond refers to the right to control citizenship and forms of government. This is perhaps one of the most crucial points in the statement in that these two powers of government are indicative of sovereignty. Indeed, the control of citizenship and forms of government strike at the very heart of the state. The main issue here is the extent to which forms of Aboriginal government are subject to the protection of individual rights. That is, are individuals under the leadership of an Aboriginal government entitled to the full protection of the *Canadian Charter of Rights and Freedoms*,⁷ for example, and if not, to what extent?

Point four in Diamond's list is important in that the freedom to make laws is demanded. The ability to make laws provides to Aboriginal communities, like all communities, a means of controlling their lives and, to some degree, their destiny. Although municipal governments can make bylaws and regulations, they are creatures of the province and their bylaws can be overridden by provincial laws. However, by requesting more than municipal status, Aboriginal communities are demanding a recognition of different levels of government in Canada not previously envisaged. It has been argued that the JBNQA and the *Cree-Naskapi Act* constitute a new level of government that has been made constitutional by section 35 of the *Constitution Act, 1982*.⁸

Subsections 35(1) and (3) of the *Constitution Act, 1982* provide:

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. . . . (3) For greater certainty in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

The effect of subsection 35(3) is to incorporate land claims agreements into the substantive subsection 35(1).⁹ Thus, land claims agreements are made constitutional to the extent that they become "treaty rights" that are "recognized and affirmed" by subsection 35(1). This author has argued that because the *Cree-Naskapi Act* is such an integral

component of the JBNQA, it too is made constitutional, notwithstanding that it is not a land claims agreement *per se*.¹⁰

The desire to have the right to hunt, trap and fish recognized is legitimate especially when considering the importance that Aboriginal people place on their traditional way of life, which is subject to change over time.¹¹ This is true with respect to the demand to have control over their customs, traditions and religions. With respect to religion, a recent decision by the British Columbia Supreme Court raises the issue of the extent to which Aboriginal governments would be "above" the Charter. Hood, J. held that Native ritual spirit dancing is subject to Canadian law and is not protected by section 25 of the Charter or section 35 of the *Constitution Act, 1982*. Hood, J. concluded that since the plaintiff was involuntarily made a part of the ceremony, which included assault, battery and wrongful imprisonment, that his civil rights against such treatment superseded the band's collective right to practise spirit dancing on involuntary participants.¹²

Finally, there is the right to be tax-exempt, save for Aboriginal-based taxation, and the right to enter into fiscal relations with other governments. This is important in that many Aboriginal people, under any arrangement, will depend almost entirely on government for funding.

Diamond's statement provides a basic groundwork of demands that Aboriginal people have put forward. This is not to suggest that these are the only demands enunciated nor that they are generally accepted by all Aboriginal people in Canada. Nevertheless, they provide a structure against which to examine proposals for self-government. Indeed, the statement reflects many concerns that Aboriginal people have across the country.

In his opening remarks at the 1987 First Ministers' Conference on Aboriginal Constitutional Affairs, George Erasmus, then National Chief of the AFN, stated that self-government was not a right that had to be established because it already existed. The right to self-government is "an historic right inherent in our unsundered sovereignty."¹³ Erasmus emphasized the connection in Native peoples' thinking between self-government and Native identity and cultural survival. "Nothing short of aboriginal self-government will achieve our aspirations for survival as distinct peoples."¹⁴ Full employment, strong and controlled regional economies, the alleviation of poverty and the achievement of self-sufficiency are the goals of self-government according to Erasmus.¹⁵

At the 1987 first ministers' conference, a joint Aboriginal proposal for self-government was put forward by the four major Aboriginal organizations in Canada. The Assembly of First Nations, the Native Council of Canada, the Metis National Council and the Inuit Committee

on National Issues supported a proposal to entrench in the Constitution an inherent right of self-government. The proposal included the following:

[T]he inherent right of self-government and land . . . is recognized and affirmed . . . the negotiations shall include such matters as self-government, lands, resources, economic and fiscal arrangements, education, preservation and enhancement of language and culture and equity of access to . . . ensuring that aboriginal governments have the legislative authority and other powers necessary to raise revenues and derive benefits by taxation and otherwise. . . .¹⁶

The joint proposal strikes at the issues and concerns raised by Diamond and Erasmus. Although self-government is listed separately, it can be assumed that, to some extent, the other listed powers are indicative of self-government, including education, resource management and the power to tax.

In a letter written to the author, then Minister of Indian Affairs and Northern Development Bill McKnight states that the three "pragmatic objectives" of self-government are:

. . . to increase substantially local control and decision-making capability; to recognize the diverse needs, traditions, and culture of Indian people; and to increase the accountability of Indian governments to their own electors, rather than to the federal bureaucracy.¹⁷

These three points make it clear that what the federal government has in mind for Aboriginal people is a form of local government similar to that of a municipality. Recently, the federal government's position on self-government has expanded to include a recognition of an Aboriginal right to self-government. In its 1991 "unity proposals," outlined in *Shaping Canada's Future Together*,¹⁸ the federal government proposed

. . . to entrench a general justiciable right to aboriginal self-government within the Canadian federation and subject to the [Charter].¹⁹

The federal government and the government of Ontario have indicated that they are willing to recognize, in some form, an "inherent" right of Aboriginal self-government.²⁰ This is a far cry from the federal

government's position some twenty years ago when it presented a policy akin to assimilation.²¹

David Hawkes has noted that there are three critical elements that are basic to self-government founded on a land base. They are:

1. whether the government is public (based on territory) or ethnic (based on ethnicity);
2. whether the government is regional or local/community in scope; and
3. the amount of power exercised by the government, be it autonomous (with legislative powers), or dependent (with administrative powers).²²

Therefore, in ascertaining the extent to which the *Cree-Naskapi Act* grants self-government, a number of factors are to be considered. First, what is the scope of power involved or how broad are the enumerated powers? Do they include all of the powers listed by Billy Diamond, George Erasmus and the 1987 Joint Proposal? Second, how does the form of self-government, if that is the term to use, compare with the analysis that David Hawkes provides? Is the government public or ethnic, regional or local, and autonomous or dependent? In examining these questions, an understanding of the significance of the JBNQA and the *Cree-Naskapi Act* will result.

The James Bay and Northern Quebec Agreement²³

On 30 April 1971, Quebec Premier Robert Bourassa announced the James Bay Hydroelectric Project. The \$5.6-billion project²⁴ included plans to flood approximately 8,800 square kilometres of land, out of about 363,000 square kilometres of Cree hunting land.²⁵ Prior to Bourassa's announcement, the Dorian Commission had released its *Report on the Territorial Integrity of Quebec*. The report concluded that, pursuant to the *Quebec Boundaries Extension Act, 1912*,²⁶ Quebec was obligated to recognize certain Aboriginal rights relating to the land. The report also concluded that the region should not be developed until the Aboriginal rights to the area had been ceded.²⁷

Prior to the announcement of the James Bay project, the James Bay Cree were not organized regionally in any substantial way. They consisted of eight communities that had little interaction with each other. In 1975, the Cree numbered about 6,500 and the Inuit around 4,200.²⁸ Following the announcement of the James Bay project, the Indians of Quebec Association (IQA)²⁹ began a process of educating their people about the project and the potential negative impact that it would have on their way

of life.³⁰ After coming to the conclusion that they did not want the project to go ahead, the IQA announced in March 1972 that it would seek an injunction to stop work on the project on the grounds that Quebec needed, and lacked, clear title to the land. The hearing began on 11 December 1972 and lasted until 21 June 1973. On 15 November 1973, Justice Albert Malouf of the Quebec Superior Court granted an interlocutory injunction to stop construction on the project.³¹ However, on 22 November 1973, as a result of an appeal launched by the James Bay Development Corporation and Hydro-Quebec, etc., the Quebec Court of Appeal granted a suspension of the Malouf injunction.³²

The parties agreed to a one-year timetable to come up with a suitable solution to the dilemma or else it would be left in the hands of the courts. As a result, intensive negotiations between the parties lasted for about a year. In August 1974, the Cree withdrew from the IQA and formed their own organization, the Grand Council of the Crees (of Quebec).³³ On 15 November 1974 the Cree, Inuit and the government of Quebec entered into an agreement-in-principle that would produce a final agreement within a year. On 11 November 1975 the government of Quebec, the James Bay Development Corporation, the James Bay Energy Corporation, Hydro-Quebec, the federal government, the Grand Council of the Crees and the Northern Quebec Inuit Association signed the *James Bay and Northern Quebec Agreement* (JBNQA).

The JBNQA is an extensive agreement containing 31 sections and more than 450 pages in length. In return for ceding, releasing and surrendering all of their Native rights in the territory in Quebec, the Cree and Inuit (and subsequently the Naskapi) received all the rights, privileges and benefits contained in the JBNQA.³⁴ The JBNQA provides for a total of \$225 million dollars to be paid to the Inuit and Cree by 1997.³⁵

One of the most important aspects of the JBNQA is the land regime that it establishes. The JBNQA sets out a land regime composed of three groups: category I, category II and category III lands. Within category I there are two sub-groups, category IA and IB. IA lands are set aside for the "exclusive use and benefit of the respective James Bay Cree bands."³⁶ These lands, about 1274 square miles, are under federal jurisdiction. However, bare title to the land remains with Quebec. Category IB lands come under provincial jurisdiction and they comprise an area of 884 square miles. The Crees own this land outright but it can be sold only to the province of Quebec. Thus, while the Aboriginal communities in the area retained about 3,200 square miles of land, they relinquished Aboriginal title to about 404,500 square miles.³⁷

The category I lands are those where the communities themselves are located. Eight Cree communities come under the jurisdiction of the

JBNQA: the Mistassini, Waswanipi, Nemaska, Waskaganish, Eastmain, Wemindji, Chisasibi and the Whapmagoostoo Bands.

Category II lands are those over which the Cree have exclusive hunting, fishing and trapping rights. The Cree do not have a special right of occupancy on these lands save for the outlined benefits. The area of these lands is about 25,000 square miles. The province of Quebec has jurisdiction in these lands and may use the lands for development as long as an agreement is worked out with the Cree. Non-beneficiaries of the JBNQA are not permitted to hunt, trap or fish on category II lands unless permission is granted by the Cree.³⁸

Category III lands make up over 346,000 square miles of the land regime. Cree rights on these lands are very limited but they include some harvesting rights. The public is permitted access to and use of the land and development in the area is subject to the environmental regime of the JBNQA,³⁹ which also takes into consideration the JBNQA's hunting, fishing and trapping regime.⁴⁰

The JBNQA also provides for measures and powers relating to health,⁴¹ education,⁴² the administration of justice,⁴³ police,⁴⁴ economic and social development,⁴⁵ and income security for Cree hunters and trappers.⁴⁶ The Naskapi Band was brought into the framework of the JBNQA with the signing of the *Northeastern Quebec Agreement*.⁴⁷ The Naskapi are subject to the same land regime and other measures as the Cree.

Section 9 of the JBNQA is the most important for the purposes of this article because it states that special legislation must be created for local government affected by the JBNQA. Section 9.0.1 reads:

Subject to all other provisions of the Agreement, there shall be recommended to Parliament special legislation concerning local government for the James Bay Crees in Category IA lands allocated to them.

The special legislation referred to in section 9 was realized in the 1984 *Cree-Naskapi Act*. There are other local government matters discussed in the JBNQA such as the creation of a Cree Regional Authority.⁴⁸ However, for the purposes of this article, any further discussion of the JBNQA would be of no benefit. Therefore, a discussion of the "special legislation" required by the JBNQA shall be examined. The special legislation concerns the Cree and the Naskapi because of the Naskapi's inclusion into the JBNQA framework by the *Northeastern Quebec Agreement*.

Cree-Naskapi (of Quebec) Act

The *Cree-Naskapi (of Quebec) Act* has been called the first piece of Aboriginal self-government legislation in Canada.⁴⁹ This paper will outline the primary components of the act and give a brief discussion of its implementation to date. By doing so, the answer to the question of whether the act grants "self-government" will be addressed.

As noted above, the *Cree-Naskapi Act* is the result of section 9 of the JBNQA (and section 7 of the *Northeastern Quebec Agreement*). The federal government had an obligation to create the act that grants "local government" to the Cree and Naskapi bands. On 3 July 1984 the act was proclaimed law and replaced the *Indian Act*⁵⁰ with the exception that the *Indian Act* is still used to determine which of the Cree and Naskapi beneficiaries are "Indians" within the meaning of the *Indian Act*.

Section 21 states the objects and powers of the Cree and Naskapi bands. Because this section is so important in determining the self-governing nature of the bands, it is quoted in full:

21. The objects of a band are (a) to act as the local government authority on its Category IA or IA-N land; (b) to use, manage, administer and regulate its Category IA or IA-N land and the natural resources thereof; (c) to control the disposition of rights and interests in its Category IA or IA-N land in the natural resources thereof; (d) to regulate the use of buildings on its Category IA or IA-N land; (e) to use, manage and administer its moneys and other assets; (f) to promote the general welfare of the members of the band; (g) to promote and carry out community development and charitable works in the community; (h) to establish and administer services, programs and projects for members of the band, other residents of Category IA or IA-N land and residents of Category III land referred to in paragraph 6(b); (i) to promote and preserve the culture, values and traditions of the Crees and Naskapis, as the case may be; and (j) to exercise the powers and carry out the duties conferred or imposed on the band or on its predecessor *Indian Act* band by any Act of Parliament or any regulations made thereunder, and by the Agreements.

The Cree and Naskapi bands have, in addition to the powers they had as *Indian Act* bands (part (j)), powers that include local government, natural resources and promoting the general welfare of the members of a band.

The extent to which a Cree or Naskapi band can make bylaws exceeds

that of the typical municipality in that the Cree and Naskapi have control over matters such as health, education, pollution, natural resources and the environment. Section 45 of the act outlines the bylaws that a band can make for category IA or IA-N land. These bylaws are to be made for the "good government" and for the "general welfare of the members of the band."⁵¹ Since these provisions make up the bulk of the administrative powers that a band holds, it is useful to cite them. The following are excerpts from section 45:

a band may make by-laws . . . respecting (a) the administration of band affairs and the internal management of the band; (b) the regulation of buildings for the protection of public health and safety, . . . (c) health and hygiene, . . . (d) public order and safety, including (i) the establishment . . . of fire departments, . . . [etc] (e) the protection of the environment, including natural resources; (f) the prevention of pollution; (g) the definition of nuisances; . . . (h) the taxation for local purposes otherwise than by means of an income tax; . . . (i) the establishment, maintenance and operation of local services relating to water, sewers, fire protection, recreation, cultural activities, roads, garbage removal . . . heating, power, transportation, communication or snow removal, . . . (j) roads, traffic and transportation; (k) the operation of businesses and the carrying on of trades; and (l) parks and recreation.

The above powers are what "self-government" means in the act. The broad array of powers certainly indicates a large basis on which the Cree and Naskapi governments can govern. However, essential to the implementation of these provisions, and indeed striking at the very heart of their meaning, is the adequacy of the funding provided to the Cree and Naskapi. A band can make any bylaw that it desires but, if it cannot implement the bylaw because of a lack of financial resources, then the power is meaningless. Then acting Chief of the Waskaganish Band, Jack Diamond, makes this point:

In terms of justice, when the Cree-Naskapi Act was drafted, the prosecution of Band by-laws was an oversight. Consequently, Band [*sic*] are forced to finance the prosecution of Band by-laws and this has hampered the effectiveness of by-law power.⁵²

Other sections of the act deal with band elections, meetings of the band, financial administration of the band, residence and access rights to the land, policing, expropriation rights, etc. For the purposes of this

article, it is not necessary to enter into any discussions on these aspects of the legislation except to mention that they exist.

Part XII of the act creates the Cree-Naskapi Commission. The Commission is to perform the following:

The Commission shall (a) prepare biennial reports on the implementation of this Act . . . and . . . investigate any representation submitted to it relating to the implementation of this Act, including representations relating to the exercise or non-exercise of a power under this Act and the performance or non-performance of a duty under this Act.⁵³

The Commission cannot investigate a representation made to it if the matter is being dealt with in a judicial proceeding.⁵⁴ The three commissioners (maximum) appointed by the Governor-in-Council are recommended by the Cree Regional Authority and the Naskapi Band.⁵⁵

To better understand the ramifications of the *Cree-Naskapi Act*, it is necessary to examine briefly the 1986 and 1988 reports of the Cree-Naskapi Commission and the implementation of the act.

Implementation of the *Cree-Naskapi Act*

Pursuant to section 171(1) of the *Cree-Naskapi Act*, the Cree-Naskapi Commission submitted in January 1987 its first report to Parliament on the implementation of the act.⁵⁶ The *1986 Report of the Cree-Naskapi Commission*⁵⁷ is based primarily on evidence heard at a special hearing in October 1986.

The 1986 report stated that the Cree and Naskapi communities have adopted a "careful approach" to implement the provisions of the act because they are unfamiliar with the new system and because they lack the necessary financial resources. The report cites Naskapi Chief Joe Guanish:

We have experienced many difficulties in assuming our responsibilities of local government under the Cree-Naskapi Act. A major part of this problem has been the insufficiency of financial resources. . . . Of great significance however, is the process of adaptation and learning which the band members have had to undergo and are still undergoing in order that they can effectively carry out their responsibilities and exercise the powers of a local government under the Cree-Naskapi Act.⁵⁸

The 1986 report notes that the Cree and Naskapi bands have been

reluctant to adopt bylaws relating to hunting, fishing and trapping; access to and residence on IA and IA-N land for the public; the regulation of business activity; health and hygiene; public order and safety; and the protection of the environment. The lack of implementation is a result of a lack of financial resources and a lack of resources to enforce the bylaws; in particular, a police force and a justice system within the jurisdiction of the bands.⁵⁹ Needless to say, without the ability to implement Cree powers, a significant portion of the "self-governing" ability of the bands is diminished. The Mistassini Band indicated this problem succinctly, noting the following to the Cree-Naskapi Commission:

A related problem to this incredible lack of the basic elements of a viable justice system is our inability to properly and fully enforce our by-laws. Without the ability to enforce our by-laws, the powers and rights granted under the Act are rendered nugatory.⁶⁰

This inability to enforce band bylaws raises serious concerns in understanding the extent to which Cree and Naskapi local government is "self-government." The power to establish bylaws in many different areas is one of the most important powers that a band can possess. If it is unable to fulfil and exercise these fundamental powers, the essence of government is diminished. However, the 1986 report also notes a more positive aspect of the *Cree-Naskapi Act*. On the question of progress and self-government, Chief Abel Kitchen of the Waswanipi Band stated:

This Act, which is before this commission has taken years to come to this stage. At the local level, we have had many discussions, and feel that this Act is adequate and reflects the needs and aspirations of the council and the people of Waswanipi. It gives the Waswanipi Band the essential tools to deal with our own affairs and yes even to make our own mistakes.⁶¹

Although the above may be an accurate appraisal of the act, it fails to note that the "essential tools" depend on federal funds. The act is adequate only to the extent that funds are available. Although the Cree and Naskapi received cash settlements, they are still entitled to regular program funding by the federal government. The problem has been that the federal government has interpreted parts of the JBNQA as being independent of regular program funding. Of all the disagreements that have arisen over the act, none is sharper than that concerning fiscal relations between the federal and Quebec governments and the Cree and Naskapi. The 1986 report cites Chief Isaac Mastay:

We are . . . concerned that the continuing viability of our local government is jeopardized by the failure of the Government of Canada to provide us with adequate funding as negotiated in the funding formula and the repeated vacuum created in our budgetary planning process resulting from Indian Affairs' failure to provide us with the available budgetary amounts in advance of our fiscal year.⁶²

The Cree-Naskapi Commission was presented with the problem of determining to what extent the funding was inadequate. To illustrate, in its written brief to the 1986 hearing, the Department of Indian Affairs and Northern Development stated, "The government is honouring all of its funding commitments under the Cree-Naskapi Act and will continue to do so."⁶³ The 1986 report makes special note of the emphasis that the commissioners placed on fiscal relations. The report addresses general budgeting and cash flow problems and offers specific examples.⁶⁴ However, "the single most contentious fiscal disagreement" between the Cree and Naskapi and the federal government arises from the "Statement of Understanding."⁶⁵ The Commission describes the Statement as a

. . . companion document, a bilateral arrangement developed and negotiated along with the Act itself, which transfers financial resources from the federal government to the band corporations so that the Cree and Naskapi can implement the new Act. Without it, the Cree and Naskapi would not have supported the proposed legislation.⁶⁶

The primary problem is whether or not the Statement is binding on the federal government. While the Cree and Naskapi insist that it is, the federal government holds that it is not. In a letter to Grand Chief Ted Moses, the Minister of Indian Affairs wrote:

Your advisors know and, I hope, will have informed you that the memorandum [Statement of Understanding] is not viewed by the Government of Canada as a legal obligation but we have, to the maximum extent possible, used it as a guideline in our financial relations.⁶⁷

The Commission concluded that the federal government is bound legally to the Statement. The Commission writes:

[T]he Commission is of the opinion that the Statement of Understanding is both a moral and a legal obligation of Canada. . . . [T]he Commission considered the Statement the principal fiscal arrangement which ties both the Cree and Naskapi nations to their financial obligations. The evidence is substantial and convincing. . . . The Department's attempt to circumvent clear obligations, by relying exclusively on its own interpretation . . . without independent legal opinion, and without considering the facts of the matter and the principle of fairness, is unjust and must not be allowed to continue. . . . The Cree and Naskapi were clearly led to believe that the Statement of Understanding was binding and on this understanding accepted it as satisfying one of their main pre-conditions for agreeing to the Cree-Naskapi (of Quebec) Act.⁶⁸

The Cree-Naskapi Commission's 1988 report notes that an agreement was reached respecting the Statement of Understanding.⁶⁹ In July 1988, a \$16.9-million cash settlement was concluded. This agreement resolved the operations and maintenance funding issue between 1984 and 1989. Another agreement provides that a five-year agreement shall be negotiated to cover 1989 through 1994. To date these negotiations are still under way and no final agreement has been reached.⁷⁰

The commission's conclusion to its 1986 report is mixed. Because of its importance in understanding the significance of the *Cree-Naskapi Act*, a portion of it is quoted at length:

It will be evident now that this first biennial report of the Cree-Naskapi Commission expresses mixed feelings about the first two years' implementation of the Cree-Naskapi (of Quebec) Act. With respect to the Act itself, the Commissioners believe that this bold venture has laid the foundation for strong and vibrant Indian governments. . . . There are, however, serious problems that have arisen, and by necessity, it is these that we have highlighted in the report. We will speak of the accomplishments first. . . . [T]he Department of Indian Affairs . . . indicated much progress in substantive areas such as the development of regulations. The Cree and Naskapi drew attention to their achievements in establishing local governments and in acquiring the techniques of management and administration. . . . Removing authority from the federal government and placing it in the communities where it belongs has created a new sense of self-esteem. . . . Unfortunately,

successes in implementation have been overshadowed by major problems in the area of fiscal relations.

Principal concern here is with the Statement of Understanding. . . . In our opinion, it is a legal and moral obligation fully binding on the Government of Canada. In the course of Canadian history, a notion persists that governments make promises to induce natives to surrender their lands and other rights and then routinely break these promises, frequently hiding behind legal technicalities. Regrettably, the evidence supporting this notion is extensive. In a recent case in the Supreme Court of Canada, for example, Mr. Justice Dickson as he was then, addressed this very point: "The Crown cannot promise the band that it will obtain a lease of the latter's land on certain stated terms, thereby inducing the band to alter its legal position by surrendering the land, and then simply ignore the promise to the band's detriment."⁷¹

The Commission concludes, like this author, that program funding is at the heart of many of the problems facing the Cree and Naskapi.

The Cree-Naskapi Commission's 1988 report⁷² states precisely the way in which the structure of the Cree and Naskapi governments is viewed:

The Act is the first comprehensive attempt to realize Indian aspirations of political autonomy at the community level. The Act and the two agreements which gave rise to it create a new political relationship between the Cree and Naskapi on the one hand and the Government of Canada and the Government of Quebec on the other.⁷³

The 1988 report updates much of the information contained in the 1986 report. Underscored in the report is the importance of a strong financial base to any successful implementation of self-government.

However, political autonomy is not enough; there must be economic strength as well. If self-government is to achieve long-term success, native communities must have sound economic bases. . . . Chief Joe Guanish of the Naskapi Band stated the point this way: "Self-Government is also meaningless without an economic base, for the personal and collective growth that self-government is intended to permit and inspire can never be achieved among persons dispirited by poverty and unemployment."⁷⁴

Cree-Naskapi Self-Government

Using Diamond's, Erasmus' and Hawkes' statements cited earlier in this article, the following will discuss briefly some of these points in relation to the *Cree-Naskapi Act*.

With respect to land, the Cree and Naskapi under the Act and the JBNQA do not retain their rights and title to the land based on traditional and historic use and occupation. The JBNQA has a specific clause stating that the Cree (and the Naskapi under the *Northeastern Quebec Agreement*) "cede, release, surrender and convey all their Native claims, rights, title and interest" to the land in question.⁷⁵ Instead, the Cree and Naskapi receive the "exclusive use and benefit" of the land. This provision demonstrates the necessity for a fair and comprehensive arrangement under the JBNQA and the act. Because all other "Native claims" are surrendered, it appears as though the JBNQA and the act are *all* the Cree and Naskapi possess with regard to their treaty and Aboriginal rights. Thus, the importance of implementing fully the provisions of the JBNQA, the *Northeastern Quebec Agreement* and the *Cree-Naskapi Act* is underscored. However, the question must be asked, is it necessary that Aboriginal title be ceded?

All nine of the bands are separate corporate entities under an umbrella regional organization in the body of the Cree Regional Authority. Membership in the bands is regulated by section 17 of the act, which states that the procedures in the JBNQA relating to membership are to be regulated by the bands themselves.

The form of government in the communities is regulated by the act. For example, there must be a band council,⁷⁶ and certain rules of order must be followed at band council meetings.⁷⁷ These are outlined in the act. Band bylaws and resolutions must be enacted according to the procedures set forth in the act.⁷⁸ As well, band elections must be carried out in the manner established by the act,⁷⁹ and election bylaws must be approved by the Minister of Indian Affairs.⁸⁰ It is clear by the act that the federal government does not want traditional Aboriginal forms of government and elections to be used by Cree and Naskapi communities. The act establishes procedures that are consistent with the traditional democratic norms used in the rest of the country. In this way, the act stabilizes constitutional and international obligations whereas traditional Aboriginal practices may not. However, this provision contradicts directly the idea behind an "inherent" right to self-government. If such a right is made constitutional, as it appears it will, the crucial question is to what extent can traditional Aboriginal governments, and in this sense Aboriginal group rights, supersede the status quo of government power in Canada or the individual rights of Aboriginal persons? Because of the uncertain

quasi-constitutional nature of the *Cree-Naskapi Act*, it is difficult to anticipate whether it will be equal in authority to an inherent Aboriginal right of self-government. Suffice it to say that there is much work to be done in ascertaining the effect of making constitutional such a right in general, and on the JBNQA and the act in particular.

Noteworthy is that the governmental structure set out by the act conflicts with Diamond's statement, cited earlier, where he insists that the right to determine their own "forms of government" is essential to self-government.⁸¹

Section 45 of the act lists the areas in which a band council can make bylaws respecting local government. These powers include health, public sanitation, fire protection, possession and consumption of alcoholic beverages, protection of natural resources, pollution control, definition of nuisances, taxation for local purposes, sewers, water, roads, power, heating, traffic regulations, parks and recreation and trade, etc.

Notwithstanding its quasi-constitutional status, the act provides that where there is a conflict between federal laws or provincial laws of general application, the act prevails.⁸² This ensures that the act is the superseding legislation governing the Cree and Naskapi.⁸³

The authority of the Cree and Naskapi to make bylaws is not subject to a general disallowance power of the Crown. However, there are areas in which the Crown can create or disallow bylaws, including local taxation, hunting and trapping, elections, special band meetings, long-term borrowing, land registry system, band expropriation, and fines and sentences for breaking band bylaws. This is a major weakness in the act in that it exemplifies the continuing paternalistic nature of Crown relations with Aboriginal people. Provisions such as the above limit the extent to which "self-government" can be said to exist for the Cree and Naskapi in that the Crown represents a continuing force to be reckoned with in the day to day operations of an Aboriginal society (e.g., hunting and trapping).

Although not outlined in the act, the JBNQA and the *Northeastern Quebec Agreement* provide for the creation of education systems based on Cree and Naskapi control.⁸⁴ Underlying the recognition of self-government is the control over education, and this aspect of the arrangement appears to be working well with the notable exception of program funding. This aspect of the Cree and Naskapi situation is one that has continued to plague them since signing the JBNQA. In a brief presented to the Standing Committee of the House of Commons on Aboriginal Affairs and Northern Development, the Cree stated the following:

What the Crees and Inuit have learned over the last 11 years is that negotiation of a claim settlement is only half the battle and implementation is the other half.⁸⁵

Clearly, the act makes significant progress towards self-government by enabling communities to legislate in areas that dominate almost every aspect of activity in a community. The above areas include not only those usually considered to be municipal powers, but also areas that are reserved for provincial governments. The Cree and Naskapi bands have powers that exceed a municipality and, in some instances, equal those of a province (including health, the environment, education and natural resources).

There is nothing in the act that prevents the Cree and Naskapi from practising their religions, customs and traditions except where they conflict with provisions of the act. Indeed, they receive the benefit of protection by virtue of section 25 of the Charter should a conflict of rights develop.⁸⁶ Notwithstanding the above, it would be useful to have a clause in the JBNQA (and the *Northeastern Quebec Agreement*) that explicitly outlines certain Aboriginal rights in order that these rights may be constitutionally recognized without any doubt. For example, Aboriginal religious and cultural rights could have been explicitly recognized and protected in the JBNQA and the *Northeastern Quebec Agreement*.

One aspect of the act that is lacking is a constitutional provision similar to that provided by the *Sechelt Indian Band Self-Government Act*.⁸⁷ Section 10 of the Sechelt Act allows for the creation of a band constitution to govern a wide variety of affairs related to band government. Although dependent on Crown approval, which is a major weakness, the constitutional provision can give a band a vehicle by which to direct the course of its affairs. Such a provision would be a welcome addition to the *Cree-Naskapi Act*.⁸⁸

With respect to economic development, the Cree have made significant progress. The pride of Cree economic development is Air Creebec. The Cree own outright the airline, which has gross sales of \$8 million with a net profit of about 10 percent. Also, the Cree holding company CREECO operates construction and trucking companies. Individual bands operate outfitting operations, shopping malls, restaurants and stores.⁸⁹ The Cree estimate that

... along with health and education services, the total monetary input into the region is about \$150 million annually, generating an economic benefit of at least three times that.⁹⁰

Although this is impressive, it is important to note that when one speaks of the concept of self-government, the federal government insists that whatever the term might mean, "it must respect existing constitutional principles and be consistent with government practices."⁹¹ The federal government's view of self-government is one of delegated authority or municipal style government. It does not entail absolute Aboriginal autonomy. The *Cree-Naskapi Act* is comprehensive without offering total autonomy. The Cree and Naskapi have the ability to legislate in many realms of human affairs and have direct input in areas such as resource management. They have power without total autonomy. The Aboriginal quest for total autonomy and control may appear to be unrealistic in that it does not recognize the nature of the Canadian polity. Financial resources cannot be handed over without some accountability or guidelines on how they will be used. Although the government wants to preserve existing constitutional principles, it is interesting to note that the JBNQA and the act have been made constitutional by way of section 35 of the *Constitution Act, 1982*. In this way, the self-government manifested in the JBNQA and the act is given constitutional status, thereby making constitutional a form of Aboriginal self-government.⁹²

One way of characterizing what the *Cree-Naskapi Act* achieves with respect to self-government is to discuss briefly the act in relation to the three major components outlined by David Hawkes and referred to earlier.⁹³ The first classification that Hawkes uses is whether the government established is public or ethnic. On the face of it, the government is public in that it is described in relation to a certain territory (category IA and IA-N land). Yet, for the most part, the government will be based on ethnicity in that it will be the Cree and Naskapi beneficiaries that compose or participate in the government. Membership comes under the direction of the bands and it is possible that non-Aboriginal peoples living in their territory (category IA and IA-N) could be accepted by the band and participate in government. This type of involvement would most likely be very limited.

Hawkes' second point concerns whether the government established is regional or local in nature. As has already been noted, the governmental regime created by the JBNQA and the Act is both regional and local. While the Cree Regional Authority oversees the basic administrative functions for the nine bands, the individual bands operate at an autonomous and local level. As well, the Grand Council of the Crees (of Quebec) serves as the political umbrella organization for the bands. Therefore, the regime established is both regional and local in nature, thereby giving the Cree-Naskapi governmental regime a dynamic scope.

Finally, there is the question of whether or not the powers given to the governments are autonomous, semi-autonomous or dependent. Clearly, the powers granted to the bands are not dependent or merely administrative. At the same time, because the powers to legislate are by way of bylaws, the type or amount of power may be semi-autonomous. That is, the bylaws depend on the principal statute and are a creature of the federal Parliament: the *Cree-Naskapi Act*. However, because of the possible constitutional status that the JBNQA and the act may have as a result of section 35 of the *Constitution Act, 1982*, the legislative authority of bands under the JBNQA and the act may have more weight by way of their constitutional status.⁹⁴

Therefore, using Hawkes' analysis, the type of self-government established by the JBNQA and the act is based primarily on ethnicity, which has regional and local application, and has, at minimum, semi-autonomous powers. Indeed, no other form of Aboriginal government in Canada can claim such a broad scope of authority.

However, as noted above, the problems with adequate financial and infrastructure support pose a major dilemma to the full realization of self-government for the Cree and Naskapi. Without adequate program funding, the ability of the Cree and Naskapi to operate and conduct their affairs in an efficient and effective manner is severely curtailed. Therefore, any form of self-government, whether it be the *Cree-Naskapi Act* or the constitutionalization of a right of self-government, must secure an adequate financial arrangement with all levels of government. Without such financial guarantees, any efforts to implement self-government to its full potential are destined to fail.

Discussion of the Cree and Naskapi attempts to implement self-government cannot ignore the immense effect that the James Bay hydroelectric development project has had on their life-style. The Great Whale Project and the Nottaway-Broadback-Rupert Project will divert and destroy a number of rivers and flood about 5000 square miles of land in northern Quebec. The result will be a devastating effect on the Cree and Naskapi hunting areas, which in turn will have a direct negative effect on their traditional way of life. There is little doubt that the James Bay II project will have a devastating effect on the Cree and Naskapi culture, including their hunting, trapping and fishing in the area. The project represents the destruction of the Cree and Naskapi culture. With the maintenance of culture being a primary goal of self-government, the James Bay II project will limit severely or completely destroy any reasonable hopes for the Cree and Naskapi to attain "self-government."⁹⁵ If the project goes ahead, Cree-Naskapi "self-government," "traditional way of life" and "culture" may become things of the past. Recent indicators show

that Cree, Naskapi, as well as public and interest-group pressure may have resulted in the project being permanently halted.⁹⁶

Conclusion

The Cree and Naskapi of northern Quebec have achieved a major goal in the JBNQA, the *Northeastern Quebec Agreement* and the *Cree-Naskapi Act*, considering the pressure-cooker type atmosphere under which the negotiations took place during 1973 to 1975. The balance between Aboriginal aspirations for control over their lives and the federal government's constitutional requirements for responsible government appears to be tilted in favour of the federal and Quebec governments in that the federal government maintains ultimate control over the creation of a number of important bylaw-making powers and that both levels of government control program funding. Although there are a number of shortcomings in the JBNQA, the *Northeastern Quebec Agreement* and the act, they nevertheless provide for a large degree of control to their beneficiaries in their day-to-day lives.

Internationally the Grand Council of the Crees (of Quebec) was granted non-governmental organization status at the United Nations.⁹⁷ Grand Chief Moses indicated that the status was granted partly because of the advice that the Cree could offer as the Indians "who have negotiated and are implementing Canada's only modern treaty—the James Bay Agreement."⁹⁸

The federal government notes that the "nine bands covered by the Act are established and operating as self-government units and they are the first Canadian Indian self-governments."⁹⁹ The Grand Council of the Crees reported to the Cree-Naskapi Commission that they are "in the forefront of developments with respect to self-government."¹⁰⁰ Chief Simeon Trapper stated to the commission that the

Cree-Naskapi Act was a giant step towards Cree self-government in terms that the Act gave the bands greater autonomy over the administration of municipal type services, our lands and the provision of general welfare on behalf and for their membership.¹⁰¹

This is not meant to suggest that the road ahead for the Cree and Naskapi, or for that matter any Aboriginal community, is going to be easy and not filled with conflict. The particular situation that the Cree and Naskapi find themselves in may not provide a ready model for other Aboriginal communities. This is true in that the government of Quebec had a statutory obligation to negotiate, there was a great deal of land and

money involved for all the parties, the JBNQA and the *Northeastern Quebec Agreement* are almost twenty years old and they were the first real negotiators for a modern settlement treaty. Presently, the Cree and Naskapi are in the midst of a struggle with Hydro-Quebec over the construction of phase two of the James Bay project. James Bay II, if constructed, could have disastrous effects on the Cree and Naskapi way of life and on the environment in general. Therefore, while the JBNQA and the *Cree-Naskapi Act* are significant achievements for all those concerned, the struggle for implementing self-government for the Cree and Naskapi is far from over. The potential construction of James Bay II and problems with program funding are indicative of this dilemma.

The term *self-government* may not be the proper term to use in describing what the Cree and Naskapi have negotiated and have received. The act is not self-government if notions of sovereignty and total autonomy persist in association with the term.

If self-government means that the Cree and Naskapi have gained increased and substantial control, and responsibility for their own affairs along with the dignity that goes along with it, then the *Cree-Naskapi Act* confers a form of self-government on them. It offers the Cree and Naskapi a unique and autonomous level of government within Canada and is able to satisfy, to some degree, the Aboriginal aspirations for power and control along with the federal government's need to govern responsibly.¹⁰² The *Cree-Naskapi Act* can only be a success if the federal and provincial governments live up to their fiscal responsibilities to the Cree and Naskapi and if the Cree and Naskapi use the act and the JBNQA to their full potential. Although there are problems implementing the act, and the development of James Bay II poses new dilemmas, the JBNQA and the act provide the essential tools to enable the Cree and Naskapi communities to deal with and manage their own affairs. This represents a major accomplishment for both the Cree and Naskapi and the federal government because it attempts to strike a balance between the demands of both sides. The *Cree-Naskapi Act* is a unique fulfilment of Aboriginal demands in Canada.

Notes

- 1 Canada. *James Bay and Northern Quebec Agreement* (Quebec: Editeur officiel du Quebec, 1976) [hereafter JBNQA].
- 2 *Cree-Naskapi (of Quebec) Act*, S.C. 1984, c.46.
- 3 For further discussion of the concept and right of self-government see B. Clark, *Native Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-Government* (Montreal: McGill-Queen's University Press, 1990); M. Asch, *Home and Native Land*, (Toronto: Methuen, 1984); F. Cassidy and F. Bish, *Indian Government: Its Meaning In Practice*

(Halifax: Institute for Research on Public Policy, 1989); D. Hawkes, *Aboriginal Self-Government: What Does It Mean?* (Kingston, Ontario: Institute for Intergovernmental Relations, Queen's University, 1986); and the Royal Commission on Aboriginal Peoples, *The Right of Aboriginal Self-Government and the Constitution: A Commentary* (Ottawa: February 1992).

- 4 Grand Chief Billy Diamond, "Presentation on behalf of the Assembly of First Nations" (28 Feb. - 1 Mar. 1983), Doc.: 830-126/009.
- 5 *R. v. Calder*, [1973] S.C.R. 313 (1973), 34 D.L.R. (3d) 145 [1973] 4 W.W.R. 1. The Supreme Court recognized Aboriginal title as a legal right.
- 6 *A.-G. of British Columbia v. Delgamuukw* [1991] 5 C.N.L.R. The decision of Chief Justice McEachern basically states that Aboriginal people in British Columbia have no rights to their traditional territory. For a discussion of the Delgamuukw decision see Thomas Isaac, "The B.C. Court and Aboriginal Rights," *Policy Options/Politiques* 13, no. 2 (1992).
- 7 *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982* (enacted by the *Canada Act 1982* (U.K.), 1982, c.11, Schedule B). Specifically, to what extent does section 25 of the Charter protect Aboriginal governments from being held accountable to the provisions of the Charter? Section 25 reads:

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal rights or freedoms that pertain to the aboriginal peoples of Canada, including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

 For a discussion of section 25 see Bruce Wildsmith, *Aboriginal Peoples and Section 25 of the Canadian Charter of Rights and Freedoms* (Saskatchewan: Native Law Centre, 1988); and W. Pentney, "The Rights of the Aboriginal Peoples of Canada and the Constitution Act, 1982; Part I: The Interpretive Prism of Section 25," *University of British Columbia Law Review* 22, no. 1 (1988).
- 8 *Constitution Act, 1982*, Schedule B of the *Canada Act 1982* (U.K.), 1982, c.11, as amended by the *Constitution Amendment Proclamation, 1983*, R.S.C. 1985, App.II, No.46, s.2; and see Thomas Isaac, "The *Constitution Act, 1982* and the Constitutionalization of Aboriginal Self-Government in Canada: *Cree-Naskapi (of Quebec) Act*," *Canadian Native Law Reporter* [1991], no. 1: 1.
- 9 For discussion of section 35 see K. McNiel, "The Constitution Act, 1982, Sections 25 and 35," *Canadian Native Law Reporter* [1988], no. 1; W. Pentney, "The Rights of the Aboriginal Peoples of Canada in the Constitution Act, 1982; Part II, Section 35: The Substantive Guarantee," *University of British Columbia Law Review* 22, no. 2 (1988); and B. Slattery, "Understanding Aboriginal Rights," *Canadian Bar Review* 66 (1987).
- 10 Isaac, *supra*, note 8.
- 11 The Supreme Court of Canada recognized the changing nature of Aboriginal rights in its May 1990 decision of *R. v. Sparrow*, [1990] 1 S.C.R. 1075, [1990] 3 C.N.L.R. 160, [1990] 4 W.W.R. 410, 46 B.C.L.R. (2d) 1, 56 C.C.C. (3d) 263, 70 D.L.R. (4th) 385. The court writes, "the phrase 'existing aboriginal rights' must be interpreted flexibly so

- as to permit their evolution over time." 70 D.L.R. (4th) 385 at p. 397. For a commentary see, Thomas Isaac, "The Honor of the Crown," *Policy Options/Politiques* 13, no. 1 (1992).
- 12 *David Thomas v. Daniel Norris* [Victoria Registry, 88/412]; and R. Matas, "Native Rite Ruled Subject to Law," *The Globe and Mail*, 8 Feb. 1992.
 - 13 George Erasmus, "1987 First Ministers' Conference on Aboriginal Constitutional Affairs" (26-27 Mar. 1987), Doc: 800-23/007), p. 1.
 - 14 *Ibid.*, p. 4.
 - 15 *Ibid.*, p. 5.
 - 16 Assembly of First Nations, Native Council of Canada, Metis National Council and the Inuit Committee on National Issues, *Joint Aboriginal Proposal for Self-Government*, First Ministers' Conference on Aboriginal Constitutional Matters (Ottawa: 26-27 Mar. 1987), Doc: 800-23/030.
 - 17 Hon. Bill McKnight, "Letter to Author" (Ottawa: Minister of Indian and Northern Affairs, 14 June 1988), p. 2.
 - 18 Canada, *Shaping Canada's Future Together* (Ottawa: 1991).
 - 19 *Ibid.*, p. 52.
 - 20 "Clark offers glimpse of revised unity package," *The Globe and Mail*, 15 Feb. 1992, and Ontario, Native Affairs Secretariat, *Statement of Political Relationship* (Toronto: 6 Aug. 1991). See also, Thomas Isaac, "The Storm Over Aboriginal Self-Government: Section 35 of the *Constitution Act, 1982* and the Redefinition of the Inherent Right of Aboriginal Self-Government," *Canadian Native Law Reporter* [1992], no. 2: 6.
 - 21 See Sally M. Weaver, *Making Canadian Indian Policy: The Hidden Agenda 1968-70* (Toronto: University of Toronto Press, 1981).
 - 22 David C. Hawkes, *Negotiating Aboriginal Self-Government* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1985), p. 6.
 - 23 For commentary and history on the JBNQA see B. Diamond, "Aboriginal Rights: The James Bay Experience," in M. Boldt and J.A. Long (eds.), *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: University of Toronto Press, 1985); H. Feit, "Negotiating Recognition of Aboriginal Rights: History, Strategies and Reactions to the James Bay and Northern Quebec Agreement" *Canadian Journal of Anthropology* 1, no. 1 (1980); P. Wertman, "Planning and Development After the James Bay Agreement," *Canadian Journal of Native Studies* 3 (1983); and W. Moss, "The Implementation of the James Bay and Northern Quebec Agreement," in B. Morse (ed.), *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada* (Ottawa: Carleton University Press, 1985).
 - 24 Richard F. Salisbury, *A Homeland for the Cree* (Montreal: McGill-Queen's University Press, 1986), p. 3.
 - 25 Feit, *supra*, note 23 at p. 159.
 - 26 *Quebec Boundaries Extension Act*, S.C. 1912, c.45.

- 26 *Quebec Boundaries Extension Act*, S.C. 1912, c.45.
- 27 Canada, Indian and Northern Affairs, *Negotiating a Way of Life* (Ottawa, October 1979), p. 3.
- 28 Cree-Naskapi Commission, *1986 Report of the Cree-Naskapi Commission* (Ottawa: 1986), p. 2.
- 29 The IQA was established in the late 1960s with assistance from the Department of Indian and Northern Affairs. It consisted of three groups: (1) the Mohawks of Caughnawaga, (2) the Huron of Loretteville, and (3) the Montagnais of Pointe Bleue. See Salisbury, *supra*, note 24 at p. 33.
- 30 *Supra*, note 27 at pp. 4-5.
- 31 *Ibid.*, p. 7.
- 32 Robert Bourassa, *Power from the North* (Scarborough: Prentice-Hall Canada Inc., 1985), pp. 33-34.
- 33 *Supra*, note 24 at p. 55.
- 34 JBNQA; s.2.1:
... the James Bay Crees and the Inuit of Quebec hereby cede, release, surrender and convey all their Native claims, rights, titles and interests whatever they may be, in and to land in the Territory and in Quebec, and Quebec and Canada accept such surrender.
- 35 As of 31 Mar. 1988, the Cree have received \$136,625,450 of the original compensation funds; Cree-Naskapi Commission, *1988 Report of the Cree-Naskapi Commission*, p. 12.
- 36 JBNQA; s.5.1.2.
- 37 *Supra*, note 16 at p. 2.
- 38 *Ibid.*
- 39 JBNQA; s.22.
- 40 JBNQA; s.24.
- 41 JBNQA; s.14.
- 42 JBNQA; s.16.
- 43 JBNQA; s.18.
- 44 JBNQA; s.19.
- 45 JBNQA; s.28.
- 46 JBNQA; s.30.
- 47 Canada, *Northeastern Quebec Agreement*, (Ottawa: Indian and Northern Affairs Canada, 1984).

- 48 The Cree-Regional Authority (CRA) was created in 1978 by statute in Quebec. The CRA serves primarily as a regional administrative body. Under statute, the CRA is required to name Cree representatives to various bodies and organizations. The CRA controls the financial resources for the Cree, thereby giving it a political character.
- 49 Cree-Naskapi Commission, *Special Hearing on Implementation of the Cree-Naskapi (of Quebec) Act* (Hull: 28 Oct. 1986), p. 17.
- 50 *Indian Act*, R.S.C. 1985, c.I-5
- 51 *Cree-Naskapi Act*; s.45(1)
- 52 *House of Commons Debates* (8 June 1984), p. 4497.
- 53 *Cree-Naskapi Act*; s.165.
- 54 *Cree-Naskapi Act*; s.165(2).
- 55 *Ibid.*, s.158(1).
- 56 See E.J. Peters, "Federal and Provincial Responsibilities for the Cree, Naskapi and Inuit Under the James Bay and Northern Quebec, and Northeastern Quebec Agreements," in D. Hawkes (ed.), *Aboriginal Peoples and Government Responsibility* (Ottawa: Carleton University Press, 1989).
- 57 *Supra*, note 28.
58. *Ibid.*, p. 12.
- 59 *Ibid.*, p. 14.
- 60 Cree-Naskapi Commission, *Special Hearing on Implementation of the Cree-Naskapi (of Quebec) Act* (Hull: 29 Oct. 1986), p. 31.
- 61 *Supra*, note 28 at p. 16.
- 62 *Ibid.*, p. 17.
- 63 *Ibid.*
- 64 *Ibid.*, p. 18.
- 65 *The Statement of Understanding of Principal Points Agreed to by the Cree-Naskapi (of Quebec) Act Implementation Working Group* (19 Aug. 1984), pp. 10-11.
- 66 *Supra*, note 28 at p. 19.
- 67 *Ibid.*, p. 22.
- 68 *Ibid.*, pp. 27-28.
- 69 Cree-Naskapi Commission, *1988 Report of the Cree-Naskapi Commission* (Ottawa: 1989).
- 70 *Ibid.*, p. 12.
- 71 *Supra*, note 28 at pp. 35-36.

- 72 *Supra*, note 69.
- 73 *Ibid.*, p. 8.
- 74 *Ibid.*, p. 37.
- 75 JBNQA; s.2.1.
- 76 *Cree-Naskapi Act*; ss. 25-29.76
- 77 *Ibid.*, ss. 30-39.
- 78 *Ibid.*, ss. 49-57.
- 79 *Ibid.*, ss. 63-78.79
- 80 *Ibid.*, s.66(2).
- 81 *Supra*, note 4.
- 82 *Cree-Naskapi Act*; ss. 3(1) and 4.
- 83 One exception is the *James Bay and Northern Quebec Native Claim Settlement Act* (Canada, Bill C-9, 14 July 1977). This is the federal legislation that authorized the JBNQA for its purposes.
- 84 Sections 16 and 17 of the JBNQA, Quebec, *Bill 2: An Act to amend the Education Act* (18 June 1978), and section 11 of the NQA, Quebec, *Bill 26: An Act respecting the legislation provided for in the Northeastern Quebec Agreement and amending other legislation* (22 June 1979).
- 85 Grand Council of the Crees (of Quebec), The Cree Regional Authority, The Cree Bands of Quebec, *Brief Presented to the Standing Committee of the House of Commons on Aboriginal Affairs and Northern Development Respecting Bill C-93, The Sechelt Indian Self-Government Act* (13 May 1986), p. 3.
- 86 *Supra*, note 8.
- 87 *Sechelt Indian Band Self-Government Act*, S.C. 1986, c.93.
- 88 *Sechelt Indian Band Self-Government Act: Sechelt Band Constitution* (*The Canada Gazette*, 12 Sept. 12, 1987, p. 3248); as amended by *Amendments to the Constitution of the Sechelt Indian Band* (*The Canada Gazette*, 21 Nov. 21, 1987, p. 4416).
- 89 Rudy Platiel, "Crees move to expand their northern airline," *The Globe and Mail* (22 Oct. 22, 1988), p. 1.
- 90 *Ibid.*
- 91 Indian and Northern Affairs Canada, *Comprehensive Land Claims Policy* (Ottawa: 1987), p. 18.
- 92 *Supra*, note 8.
- 93 *Supra*, note 22.
- 94 *Supra*, note 8.

- 95 Grand Council of the Crees (of Quebec), *Our Way of Life* (Val d'Or, Quebec: n.d.); Sierra Club Northeast Regional Bulletin, "What's the Price of Cheap Electricity?" (Sarasota Springs, NY: c. 1991); P. Gorrie, "The James Bay Power Project," *Canadian Geographic* (Feb./Mar. 1990).
- 96 "Minister admits Great Whale may be delayed indefinitely," *The Globe and Mail* (14 Feb. 1992).
- 97 Rudy Platiel, "Cree council is granted status at UN," *The Globe and Mail*, 13 Mar. 1987, p. A16.
- 98 *Ibid.*
- 99 *Supra*, note 49 (30 Oct. 30, 1986), p. 23.
- 100 Grand Council of the Crees (of Quebec), "Presentation to the AFN Treaty Council," (14 Jan. 1987), p. 1.
- 101 *Supra*, note 49 at p. 4.
- 102 *Chisasibi Band v. Barbara Chewanishy* (Quebec Provincial Court, no: 640-27-000099-842), p. 27.