

Backgrounder on Negotiations

For Discussion at the Negotiations Sectoral Meeting, January 12th and 13th, 2004, Calgary, Alberta



ᐃᓃᐃᑦ ᑕᐱᓃᑦ ᑲᓇᑕᑦ
INUIT TAPIRIIT KANATAMI

Prepared by Inuit Tapiriit Kanatami

December 13, 2004

Ottawa, Canada

Table of Contents

I	Introduction.....	3
II	A New Land Claims Implementation Policy.....	3
III	Negotiating Self Government in Inuit Regions.....	4
IV	Negotiating Inuit Specific Self Government Arrangements: Nunavik.....	4
V	Labrador.....	5
VI	Inuit Core Funding.....	6
VII	Current Funding Arrangements.....	6
VIII	Regional Funding Issues - Comparison Inuit and First Nations.....	7
IX	A Partnership Agreement between the Inuit of Canada and the Crown in Right of Canada.....	9

Introduction

If the Prime Minister's commitment for a "renewed relationship" between the Government of Canada and aboriginal peoples made April 19, 2004 at the National Roundtable of Aboriginal Issues is to be realized, there must be a fundamental change in the way the government addresses and negotiates critical legal and organizational issues with Inuit. This paper identifies a number of documents and ideas relevant to those aspects of negotiations on behalf of Canadian Inuit.

- Land Claims Implementation
- Self Government in Inuit Regions
- Funding Arrangements
- An Inuit Specific approach through A Partnership Accord

A New Land Claims Implementation Policy

At the end of 2003, Inuit and other aboriginal peoples who are parties to modern land claims agreements formed a Land Claim Agreement Coalition to press the Government of Canada to adopt a formal, constructive policy on the implementation of modern land claims agreements. The discussion paper prepared by the Coalition is attached to this document.

The Coalition discussion paper notes a number of central problems with the federal government's current approach to the implementation of modern land claims agreements. One key problem is the lack of federal government commitment to achieve the broad objectives of land claims agreements and self-government agreements within the context of new relationships, as opposed to mere technical compliance with narrowly defined obligations.

The importance of this problem has been highlighted by the Auditor General of Canada in her most recent annual report to Parliament. The practical consequences of the problem for Inuit are enormous. To recite just one example, a study done jointly for Nunavut Tunngavik Incorporated and the Government of Nunavut by Price Waterhouse Coopers has identified alarming and unnecessary costs --- some \$65 million to the taxpayers of Canada annually for the recruitment and relocation of non-Inuit personnel from the South --- flowing from the failure to make progress against the Nunavut Land Claims Agreement objective of a public sector work force in Nunavut that reflects the population make-up of Nunavut.

Since the completion of the Coalition discussion paper, Coalition representatives have been engaged in some encouraging exploratory conversations with federal government officials about the scope for consensus follow up.

Negotiating Self-Government in Inuit Regions

Over a period of just over 30 years, Inuit have negotiated comprehensive land claim agreements in four Inuit regions of Canada., Labrador (Nunatsiavut), Northern Quebec (Nunavik), Nunavut and the Northwest Territories (Inuvialuit Region).

As acknowledged by the Government of Canada, the Inuit of Canada have an inherent right of aboriginal self-government under section 35 of the Constitution Act, 1982. In some Inuit regions of Canada, this inherent right has not been the topic of active negotiation. In those regions, Inuit have promoted the creation of territorial and regional governments that serve mixed Inuit and non-Inuit constituencies, reserving the right to consider exercising the right of self-government at a later date.

Negotiating Inuit-Specific Self-Government Arrangements:

Nunavik

The current negotiations on the creation of a new form of government for Nunavik provides an excellent example of why there is a need for an Inuit-specific approach in federal policies governing such matters.

Federal policy on self-government negotiations highlights the different circumstances of Aboriginal Peoples, makes mention of an Inuit approach to self-government, and recognizes that the “one-size-fits-all” form of self-government is not the way to go. But the truth of the matter is that the practical application of this policy and the elaboration of its details have taken place in a context where the federal government is involved in over 70 self-government negotiations with First Nations. This has resulted in an internal vetting process for provisions of draft agreements that is almost totally focused on the federal government’s concerns and policies vis-a-vis First Nation self-government arrangements.

The problem with this is that the objective of most First Nation negotiations is the creation of an Aboriginal government (ethnic based government). Many of these negotiations deal with the need to replace outdated aspects of the Indian Act. Most of these negotiations result in, or will result in agreements where the federal government would have a major, or lead role, in adopting enabling legislation and other implementation initiatives.

The situation is entirely different in Nunavik. Here, Inuit are negotiating a public (non-ethnic) form of government. The nature of this government would be the same as all the other public governments in Canada. As a rough estimate, 70% of what is being discussed at the negotiating table is primarily of concern to the Government of Quebec, and most, if not all of the enabling legislation would be the responsibility of the Quebec National Assembly.

It does not take much imagination to realize that the federal government’s current approach to vetting the product of such negotiations is largely inappropriate for a process leading to the creation of a public government in Nunavik. At one point, the negotiators from Nunavik were told that in order to ensure smooth sailing through the federal system, their draft agreement would have to be based on a table of contents lifted completely from a model of government for First

Nations. This necessitated the need to address the question of a “membership code” in the Nunavik negotiations, something which is completely irrelevant for a public form of government. Over time, all the parties in negotiations have developed a number of “work-arounds” to overcome some of the irritants.

It should be noted that the problem does not lie with the federal negotiating team in the Nunavik process. They have also at times, expressed frustration with the current situation, and have spent an inordinate amount of time educating the federal government’s internal system about the difference between these negotiations and those involving First Nations. Even so, there are occasions when the outcome of the Nunavik negotiations are met with suspicion and resistance within the federal government.

This is not necessarily the result of bad faith, or a conscious decision within the federal government to undermine the negotiation process in Nunavik. Rather, after having adopted a certain approach for dealing with over 70 self-government negotiations involving First Nations, the system is very leery of making any changes to accommodate the different circumstances which apply to Inuit. Mind sets build up over time. Making the necessary changes to the way things are done can sometimes be viewed as circumventing federal procedure or policies rather than responding to Inuit realities. The solution to this problem is for the federal government to stop using policies and approaches for First Nations as the default setting for its dealing with Inuit. This would require an official policy requiring an Inuit-specific approach for self-government negotiations.

Labrador

In Labrador, Inuit have decided to negotiate the concept of self-government directly into the final agreement of their land claim with the creation of Inuit-defined jurisdictional arrangements with the Province of Newfoundland and Labrador. The Labrador Inuit Land Claim was legislated by the Government of Newfoundland and Labrador on Dec.06 2004. It has yet to be ratified and legislated by Parliament and the Senate. It is 27 years in the making and is the first Land Claim Agreement in Atlantic Canada and closes the circle of Inuit Land Claims in Canada

The Labrador Inuit Land Claim Agreement is unique with components which have not been negotiated in any other Agreement in Canada. It provides direct benefits to beneficiaries who reside outside the Settlement Area. It also contains a detailed self- government component which establishes the Nunatsiavut Government at the regional level and Inuit Community Governments at the local level as well as an Inuit Community Corporation outside the Settlement Area with representation in the Nunatsiavut Assembly.

The Nunatsiavut Government is an ethnic form of Inuit Government and the Inuit Community Governments are public Governments that presently have a majority of Inuit representation. The Agreement contains a detailed commercial fisheries component and is the only Agreement in Canada which contains both a comprehensive Implementation Plan and an Implementation Fund.

Labrador Inuit are anxious to begin the Implementation process under this new arrangement and

are determined to fulfill promises and expectations of the claim. All that remains before the settlement comes into Force is approval by the Parliament of Canada which is expected in early 2005.

Inuit Core Funding

The day-to-day representational and policy capacities of Inuit national organizations are crippled by a dearth and unreliability of core funding both nationally and regionally. Stable and continuing annual funding is essential if the Government of Canada and the department is to fulfill its own commitments toward Inuit. What is striking about the relationship between the National Inuit Organization and the department mandated by Parliament for Inuit Affairs, is the fact that after three decades of constructive work and unprecedented progress in the political, social, and human and aboriginal rights issues, the fact remains there is no long term financial arrangement between the National Inuit Organization and the Government of Canada.

Current Funding Arrangements

The consolidated financial statement for the Inuit Tapiriit Kanatami for the year ending March 31, 2004 totalled just over four million dollars, most of which comes from Government of Canada departments. Of that amount, only eight percent is committed funding. The remaining 92 % is the result of negotiating as many as 40 service contracts in any given year, raising the question of how effective would any organization or department in Government be if faced with comparable financial arrangements?

Through these initiatives, ITK has been able to provide federal departments and agencies with insights, technical information, advice and policy analysis on a variety of complex legal, environmental, health and socio-economic issues relating to Inuit and the Arctic regions of Canada, that arguably would cost substantially more money if they were done internally by government or through the use of outside consultants. The uncertain financial system seriously restricts “original thinking and innovative community generated program development that addresses the Inuit national interest, and reflects Inuit culture, environment and geography.” Moreover, this system is counter productive because it does not allow Inuit to assess or determine their national and or specific needs and priorities and offers policy or program solutions or recommendations.

In short, if the Federal Government is to honour the Prime Minister’s commitment for a renewed relationship, the foundation for that relationship must be stable funding.

Regional Funding Issues
Comparison - Inuit and First Nations

There is a striking inequity between the levels of core funding provided to Inuit organizations by the Government of Canada versus that provided to comparable First Nations organizations.

The Government of Canada currently provides core funding to Inuit organizations at the regional (IRC/NTI/Makivik/LIA) and national level (ITK) through Heritage Canada's (HC) Aboriginal Representative Organization Program (AROP). Funding is provided annually through a contribution agreement that requires a detailed application, provides little flexibility and demands extensive reporting. For example purposes, Inuvialuit Regional Corporation (IRC) receives an annual core funding AROP contribution of \$118,256. In recent years this has been supplemented by Gathering Strength Capacity Building funding of \$67,955 per year that must be directed at community level activities.

By comparison, the Government of Canada currently provides core funding to First Nations organizations at both community (Band Support funding) and regional levels (Regional & Tribal Council funding – TB authority, November 27, 1986). Funding is provided through DIAND on an annual basis in a manner that affords maximum flexibility in the delivery of specified services. These services include:

Band Councils - Chief and council allowances, travel expenses, administration overhead costs. No deliverables are specified.

Regional & Tribal Councils – Advisory services (band government, financial management, community planning, technical services, economic development), management and general administration costs including audit fees.

Both Band Support funding and Regional & Tribal Council funding are provided via formula. For example purposes, the Bands and Tribal Council within the Gwich'in Settlement Area of the Northwest Territories were provided with the following core funding from these two programs during the 1999/2000 fiscal year:

Band Councils (four)	\$912,527 (total)
Gwich'in Tribal Council.....	\$694,652
Total.....	\$1,607,179

It should be noted that the Inuvialuit and Gwich'in share the same region of the McKenzie Delta and Western Arctic of the NWT. The total Inuvialuit population (all ages) as of December 2004 was approximately 5,500 compared to 2700 for the Gwich'in Tribal Council. But in terms of committed federal funding, the Inuvialuit Regional Corporation, received about one eighth of the funding provided to the First Nations Tribal Council. In addition, IRC is not provided with any additional core support funding from other federal or territorial government departments.

In pointing out these ongoing inequities, Inuit have always taken the position that they are not asking the government to ‘take bread out of the mouths of First Nations or other aboriginal peoples’, but rather to develop a new receipt for funding; one that provides a larger loaf.

Federal response

Since 1999, IRC has communicated with successive Ministers of DIAND on this topic. In all cases the Minister has provided general recognition of IRC’s core funding concerns but failed to provide a definitive course of action to rectify the concern. His comments have included: “this is an issue that can be addressed through continuing dialogue between our respective officials” (Nault, September 1999); “I have asked my departmental officials to explore those [funding options outlined in your letter] further with IRC ” (Nault, September 1999); and “I want to assure you that your continued efforts to bring attention to the concerns you have regarding the level of ongoing administrative and program support capacity for Inuvialuit organizations are not going unheard” (Nault, August 2001).

It is noteworthy that nowhere in the correspondence between the Minister of DIAND and IRC does the Minister respond directly to the very clear question that, on the issue of federal policy- Does the Government of Canada support the provision of core funding to Inuit organizations in Canada at a level comparable to that provided to First Nations?

Given the situation as outlined above, it is clear that the Government of Canada has effectively discriminated, by negligence or otherwise, against the Inuit, by failing to provide adequate funding to support the ongoing operation and administration of their community, regional and national representative organizations comparable to that provided to Canada’s other original people, the First Nations. In doing so, the Government of Canada has diminished the capacity of Canada’s Inuit to advance their interests and presence within Canadian society.

If statements made by the Prime Minister of Canada, the Honourable Paul Martin during his term of office in relation to advancing the social and economic wellbeing of Canada’s aboriginal peoples are to be afforded any credibility by Canada’s Inuit, there must be immediate and vigorous effort by the Government of Canada to address this key element of Inuit capacity, without which Canada’s Inuit will continue to struggle with inadequate financial resources to fully participate in the initiatives that will advance their collective wellbeing.

The Government of Canada must recognize the necessity of this preliminary step in the collaborative review of Canada’s relationship with the Inuit.

A Partnership Agreement between the Inuit of Canada and the Crown in Right of Canada

The Prime Minister announced in April of 2004 the creation of the Inuit Secretariat within the Department of Indian and Northern Affairs. Ten months later the Secretariat is not operational. In its planning, it has not viewed or examined in detail the clear policy issues facing Inuit and raised here. The department's view, broadly speaking, is how it will relate with other government departments and perform a research and data gathering role, rather than tackle the underlying policy issues that Inuit believe are at the root of many systems that even the Prime Minister describes as "broken."

The ITK Board of Directors developed a proposal for a Partnership Agreement in response to the theme of partnership that was central to both the Report of the Royal Commission on Aboriginal Peoples and the federal government policy response, *Gathering Strength*. The proposed Partnership Agreement builds on the awareness that the relationship between the Crown and the Inuit of Canada has both legal and political dimensions, and each of these dimensions carries with it different but mutually reinforcing responsibilities and opportunities. The proposed Partnership Agreement, presented to federal government representatives in 2001, still awaits political uptake and negotiation with the Government of Canada. From an Inuit perspective, this partnership accord must be the foundation of the Prime Minister's commitment for a "renewed relationship between Inuit and the Government of Canada. Fundamental to the partnership is the acceptance and development of Inuit Specific approaches to land claims, self government, funding and addressing priority social economic issues.

Throughout the sectoral policy sessions, Inuit have demonstrated that their issues lack both policy and administrative focus within the federal government, with the result that Inuit circumstances and priorities are often lost in the design and delivery of initiatives intended to serve more broadly defined aboriginal populations.

No one in any government department would propose taking policies or programs designed for Inuit in the high arctic and imposing them on a First Nations Reserve on the southern Prairies. Repeatedly, Inuit have made the case that if the social economic realities in Inuit regions are to improve, it will only be done through programs that respond to and reflect the unique culture, environment, and geography of the Inuit regions.

What Inuit are demanding through the term Inuit Specific, is simply a regional approach to regional issues, a principle well understood and practiced in departments of the Government of Canada, such as transportation, economic development, forestry, fisheries and agriculture to name only a few.