

NUNAVUT

A REPORT ON LAND CLAIMS FROM THE TUNGAVIK FEDERATION OF NUNAVUT



Murray McComb, Canadian Parks Service

Three more agreements are initialled

TFN and Government were busy in June and July. They reached agreement on the meaning of Inuit Land Title; the structure of a wildlife compensation scheme; and a process to ratify the claim once an overall agreement-in-principle is reached.....see inside

Spectacular Wilberforce Falls near Bathurst Inlet



TUNGAVIK FEDERATION OF NUNAVUT

NUNAVUT is a report on the progress of TFN's land claims negotiations. We are at Room 1200, 130 Slater Street, Ottawa, Ontario, K1P 6E2, Phone (613) 238-1096.

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TFN, Government agree on ratification process

Close your eyes and imagine this newspaper headline.



If all goes according to plan over the next six months, it looks like TFN and Government may actually be able to reach a land claim agreement-in-principle by March, 1989.

And once an agreement-in-principle is reached, it won't be much longer before a Final Agreement can be submitted to Parliament to be legislated as law.

What does this mean for the Inuit of Nunavut?

It means that very soon it will be time for all future beneficiaries of the claim settlement—all Inuit—to see, in detail, what their land claim agreement looks like. It will be time for everyone to decide whether that agreement is what they hoped it would be; whether it meets their needs; and whether it addresses their concerns.

How will this be done?

Through a ratification process.

A ratification process is important because TFN's agreement-in-principle can go nowhere without the support of the people it will affect.

Ratification Provisions define steps toward Final Agreement

On July 11, TFN and Government initialled a short but significant agreement called the *Ratification Provisions of an Agreement-in-Principle*.

These provisions describe in detail the steps that must be taken after

TFN and Government reach their overall land claim agreement-in-principle.

First, TFN's negotiators will have to meet with the TFN Board to fully explain the agreement and get the Board's approval. Then, at special general meetings to be held in the Baffin, Keewatin and Kitikmeot regions, TFN will again explain the agreement and seek the support of each region. Only with this approval, will the full Board then be able to meet again to actually ratify the agreement.

After TFN's negotiators have had the agreement ratified, it is the Federal negotiators' turn to seek ratification, this time from Cabinet.

When the agreement has been ratified by both TFN and Government, then it will be made public. At this point, TFN and Government will be able to continue to negotiate, this time toward what is called a Final Agreement.

It is the Final Agreement that will be presented to Inuit for a *ratification* vote by secret ballot. A majority of eligible voters in each of the three regions of Nunavut must support the agreement before it is considered ratified. Only then, will it be **signed** by TFN and Government and then **legislated**.

Maybe it won't be long now until that happy headline imagined at the beginning of this story becomes reality!



Keith Hay

Soon it will be time for all future beneficiaries of the claim settlement to see what their land claim agreement looks like. Pictured enjoying a mug of tea, left to right, are: E. Peterloosie, Mosesee Koonark, James Attagootak and photographer Keith Hay.

Negotiators work out answers to tough questions

Who will own the soapstone?

What is soapstone?

Ask an Inuk and you'll hear the words *utkuhighaq* and *hananguagahaq*.

Ask a geologist and you'll hear the words *serpentinite* and *argillite*.

As long as Inuit are talking to Inuit and geologists are talking to geologists, it doesn't really matter that they use different words to describe the stone that Inuit carve.

But when the TFN and Government teams got together recently to negotiate the meaning of *Inuit Land Title*, they found that they needed a precise definition of soapstone—a definition that would be understood by everyone.

They came up with the term *carving stone*.

Why a precise definition?

Because ownership of carving stone and access to carving stone became important issues in the negotiations on *Title to Inuit Lands*.

The purpose of these negotiations was to reach agreement on the ways in which Inuit will own their land after the claim is settled.

It was decided that in some instances, Inuit will own everything on, in and under their land. And in other instances, Inuit will own everything on, in and under their land *except* for oil, gas and minerals.

These two types of ownership did not pose any problem to TFN. It expected to own oil, gas and minerals only under certain parcels of land. And the good news was that at least it was clear Inuit would own **all** the carving stone on, in and under **all** the land that ends up being their land after the claim is settled.

What did become a problem and a subject of lengthy discussion was whether Inuit would own all the carving stone on, in and under **Crown Land**.

TFN has been told again and again by Inuit that they must be able to take carving stone from *anywhere* and *everywhere* in Nunavut, not just lands that end up being Inuit lands after the claim settlement!

Why do Inuit feel so strongly about carving stone?

"It is exclusively an Inuit resource. We are the sole users of carving

stone. Long ago, we used it for utensils and over the past thirty years, we have used it to make soapstone and other carvings," says TFN Deputy Chief Negotiator Paul Quassa.

TFN could not get Government to agree to Inuit **owning** all carving stone in Nunavut including that on, in and under Crown land.

"We would have no **certainty** of title because no one knows where all the soapstone is," says Federal Senior Negotiator Barry Dewar.

So TFN was faced with the challenge of looking for another equally sure way of guaranteeing that Inuit would always be able to get at Nunavut's carving stone.

Here's the compromise both sides finally came up with.

The agreement on *Title to Inuit Lands* describes **three** different ways that Inuit will be able to get at carving stone in Nunavut.

First and most important, each Inuk in Nunavut will be guaranteed the right to remove up to fifty cubic yards of soapstone a year from land that ends up being Crown land after the claim is settled. No permit will be needed.

Second, Inuit can make sure now that they *own* land where they know there is lots of carving stone. They can do this by picking this land during their current land identification process.

Third, if, after the claim is settled, Government happens to find some carving stone on Crown land that Inuit didn't know about, it must tell them. Then, if Inuit decide they want to own that land, they can trade some of their own land for the Government land that has the carving stone.

If Inuit decide to trade some of their land for Government land, both parties must agree to exactly which land will be traded. If they can't agree, then the matter will be referred to arbitration. In other words, a third party—someone other than Inuit or Government—will make a final decision.

Negotiators agree on the meaning of ownership

The Tungavik Federation of Nunavut (TFN) and Federal Government land claim negotiators initialled an agreement called *Title to Inuit Lands* on June 6, 1988.

TFN's position paper on this topic was first tabled in Yellowknife on April 9, 1988. There has been much discussion since then on exactly what it will mean to own land after the claim is settled. There has also been a lot of discussion on what it will mean to

own the materials found *on, in and under* the land.

What kinds of things are there on, in and under the land? Well, there's construction stone, sand, gravel, limestone, marble, gypsum, shale, clay, volcanic ash, earth, soil and diatomaceous earth, ochre, marl peat and minerals. And of course, there's *utkuhighaq* and *hananguagahaq* better known as soapstone or carving stone to most south-ers, *serpentinite* and *argillite* to most geologists.

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There are some other very important guarantees in the agreement on *Title to Inuit Lands*. For example, if they want to, Inuit can get a special quarry lease to remove carving stone from Crown land. The advantage of getting this special quarry lease is that it is *exclusive*—only Inuit can get such a lease. It means that the particular deposit of carving stone can then be used by Inuit and no one else.

If someone is using or occupying the Crown land where there is carving stone, Inuit can still take the stone but must not seriously damage the land or interfere with its use and quiet enjoyment.

When it comes to taking carving stone from National Parks, Territorial Parks and Conservation Areas, a few different rules apply. First, before a Park is even created, Inuit can request that Government do a detailed study to see if, where and how much carving stone is inside the proposed park boundaries. The boundaries can then be changed so the carving stone deposit falls outside the park.

If carving stone still ends up in a National Park, Territorial Park or Conservation Area, Inuit can get at it by negotiating an Inuit Impact and Benefit Agreement that gives them the right to remove the stone, subject to certain conditions.

That's how the concerns about carving stone have been addressed.

Government had a concern of its own, similar to the Inuit concern over access to carving stone: This one related to construction stone, sand and gravel.

Government wanted a guarantee that even though these things may be under Inuit land, it would be able to buy them if the materials were required for a public purpose.

TFN has agreed to this but has also made sure that Government must first ask and get the permission of Inuit. If Inuit say no, Government can then go to a Surface Rights Tribunal to get an entry order but it must prove that the construction stone,

sand and gravel belonging to Inuit are required for a *public purpose* and that no alternative supply is reasonably available. Government will have to pay Inuit for any construction materials it takes from Inuit land.

So whether it's mines and minerals; sand and gravel; or utkuhighaq and hananguagahaq; the agreement on *Title to Inuit Lands* clearly defines who **owns** what and who has **access** to what.



Inuit Tapiirsat of Canada

TFN had been told again and again by Inuit that they must be able to take carving stone from anywhere and everywhere in Nunavut, not just on lands that end up being Inuit lands after the claim is settled. "Carving stone is exclusively an Inuit resource," says TFN's Deputy Chief Negotiator Paul Quassa.



Rick Riewe

...and Government had a similar concern. It wanted to be able to take construction materials such as sand and gravel from everywhere in Nunavut, even if the sand and gravel happened to be on Inuit land.

Getting rid of the runaround

TFN speeds up compensation system

Remember a few years ago when ten thousand caribou died crossing the Caniapiscou River in Northern Quebec?

At the time, Inuit living in nearby Kuujjuaq were horrified to see all the carcasses lined up, sometimes eight deep, for miles along the river. They were also angry—angry because they believed that extra water released through the spillways of the Hydro-Quebec dam upriver raised the water to spring runoff levels and contributed to the animals' death as they were swept over Limestone Falls.

There was no public inquiry into the death of the animals. There had been a lot of rain that season and it was concluded that the accident could only be called an act of God.

The Inuit of Kuujjuaq were disappointed.

It wasn't so much that they disagreed with this verdict.

It was more that their voices seemed to go unheard.

Inuit found it frustrating to have their recommendation for a public inquiry turned down—a public inquiry that they believed would simply settle any doubts the public may have and would also look at ways that in future Inuit could seek compensation if a particular development project caused serious damage to the wildlife population.

The Inuit in Northern Quebec had not dealt with the possibility of damages and the need for wildlife compensation in their 1975 land claim agreement.

Inuit in Nunavut don't want to face the runaround

TFN has known for a long time that it must deal, through the land claim, with the possibility of damage to wildlife caused by development in Nunavut. Its position is that there is no point in protecting the Inuit right to hunt, trap and fish if there is no wildlife left to hunt, trap and fish!

So. In Section 5.4.10 of the 1981 *Wildlife Agreement*, TFN got a commitment from Government that it would negotiate a way of "protect-



Makivik Corporation

In 1984, ten thousand caribou died crossing the Caniapiscou River in Northern Quebec.

ing a beneficiary's right to harvest from unlawful loss or damage."

On June 19, 1988, this commitment was met. That's the date TFN and Government initialled their *Wildlife Compensation* agreement.

The ten-page document describes a way that Inuit will be able to make sure that they can be compensated for any loss of income, food and property caused by development activity in Nunavut.

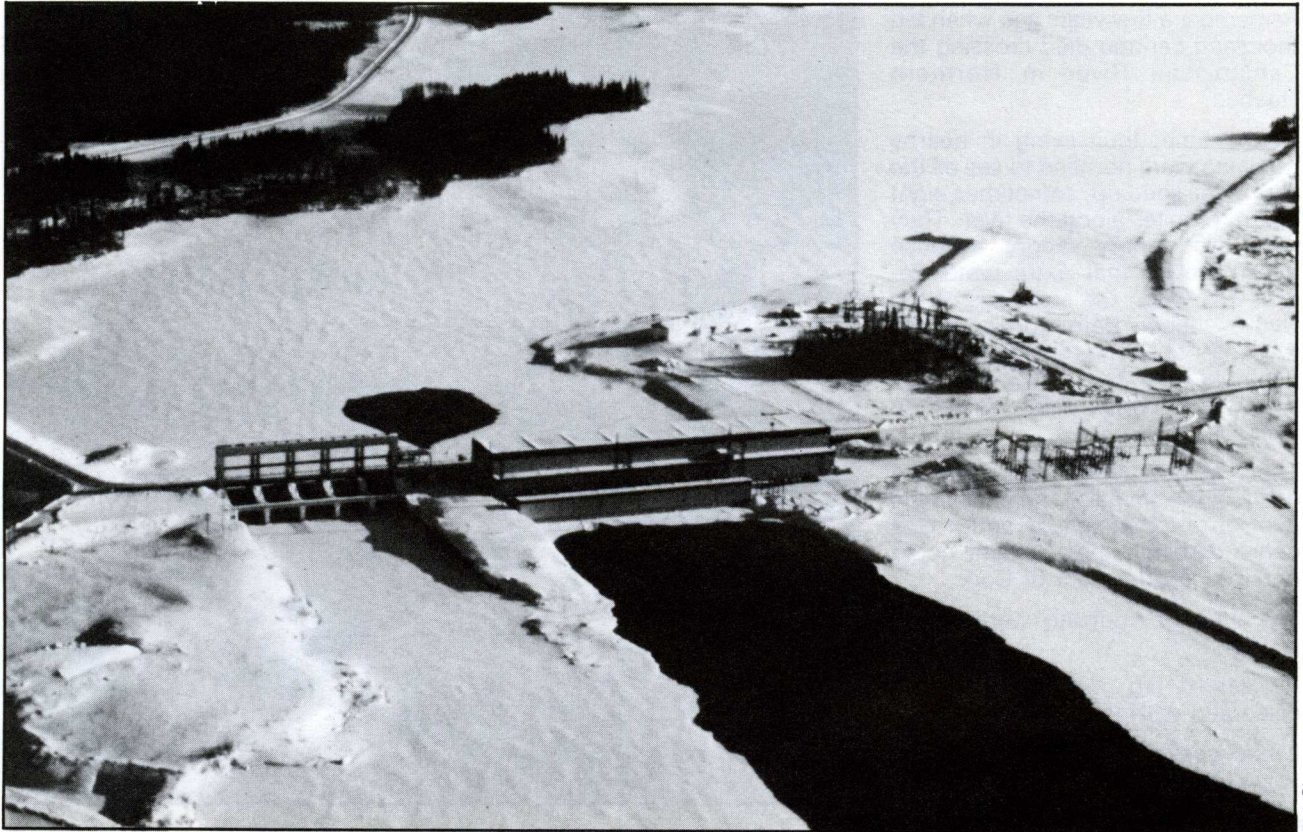
This agreement makes sure Inuit can get compensation quickly and without having to prove that a developer is at fault.

More important, the intent of the agreement on *Wildlife Compensation* is to make sure that the voices of Inuit are heard when it comes to claiming losses and damages caused by development.

"We want to make sure that people do not have to go through what they do now," says TFN Deputy Chief Negotiator Paul Quassa. "When people lose ski-doo's and hunting equipment because of some development project, it takes a long time to get everything replaced. Hunters sometimes get the runaround and end up losing an entire season of hunting. Our wildlife compensation scheme is designed to avoid this kind of runaround."

How?

First, Inuit do not have to prove that a developer is responsible for the loss and/or damage if the loss and/or damage relates to one or more of the following:



Rick Riewe

TFN has known for a long time that it must deal, through the land claim, with the possibility of damage to wildlife caused by development in Nunavut.

- property or equipment used in wildlife harvesting

- income from wildlife harvesting
- food, clothing and other personal uses of the harvested wildlife

Second, the agreement makes sure a developer will want to pay up compensation as soon as possible. That's because after receiving a written claim for loss or damage, a developer has thirty (30) days to settle it. If the developer does not settle the claim before the thirty days are up, then the matter is referred to a Surface Rights Tribunal.

After this Tribunal has heard the case, it has another thirty (30) days to make its decision. TFN and Government realized that up to two months could go by with no compensation for Inuit. They agreed that this was too much time. Inuit claimants could end up missing an entire hunting season. So they

agreed that the Tribunal can decide to:

- replace lost or damaged **equipment** and **property** right away, before actually waiting to hear all the evidence that relates to losses of things like *income, food and clothing*;
- begin charging interest right away on any cash compensation that may end up having to be paid to Inuit by the developer;
- pay extra cash as compensation if the delay in paying the final compensation has caused even more loss, damage and costs to the Inuit.

Just to make sure that there is some way that Inuit can make sure developers honour their commitment to compensate Inuit for losses and damages, Inuit can get the Tribunal to register its compensation decision in the courts. This way, Inuit can use

the court to enforce the decision.

Inuit don't have to use the Surface Rights Tribunal to claim losses and damages if they don't want to. They can negotiate their own wildlife compensation agreement directly with a developer or they may decide to take a claim to Court.

The advantage of the Tribunal, though, is that TFN's Wildlife Compensation Agreement has made sure that it must respond **quickly** and that Inuit do not have to **prove** that a developer is at fault.

More highlights from the Wildlife Compensation Agreement

If an Inuk submits a claim against a developer to the Surface Rights Tribunal and the Surface Rights Tribunal decides not to consider it—to dismisses it—then the Inuk can re-submit the same claim against a different developer.

If an Inuk is going to make a claim against a developer because a certain development has resulted in his or her loss of equipment, income or food, the claim must be made within three (3) years of the loss or damage. In other words, if you lose your machine through an open lead in the ice, you should file your claim right away. But if you don't file your claim right away for some reason, you can claim a year later, two years later, even three years later. Three years, though, is the limit.

TFN and Government have already included some requirements for wildlife compensation in three other agreements they have initialled. These are the agreements on:

Inuit Impact and Benefits

Inuit Water Rights

Entry and Access

The *Inuit Impact and Benefit Agreement* calls for Inuit and developers to negotiate contracts—IIBAs—guaranteeing Inuit things like jobs and training. These contracts can also guarantee Inuit things like compensation for any losses or damages affecting wildlife harvesting.

The *Inuit Water Rights Agreement* and the *Entry and Access Agreement* also both look at ways of dealing with damages to wildlife. But they look at the kind of damages that can be determined beforehand—not unexpected damages.

If Inuit and a developer already have an IIBA, they cannot seek compensation from the Surface Rights Tribunal. And if they already have a compensation agreement arising either out of the *Inuit Water Rights* or *Entry and Access* agreements, they cannot seek compensation from the Surface Rights Tribunal unless, of course, the damages are unexpected.

There are two topics that relate to wildlife compensation that TFN and Government have still not dealt with: the impacts of **shipping**; and the **restocking** of wildlife. In their June 19 agreement, TFN and Government have committed themselves to deal with these two topics later.

What is meant by Wildlife Compensation?

TFN's recently initialled agreement on Wildlife Compensation defines compensation as being monetary, non-monetary or a combination of both.

In other words, compensation could be the payment of cash in a lump sum or by installments; it could be the replacement or repair of lost or damaged equipment; it could be the giving of wildlife to Inuit who miss a hunting season; it could be a developer covering the total cost of temporary or permanent relocation if such a move was necessary because of the impact of the development.

What is the Surface Rights Tribunal?

The Surface Rights Tribunal, mentioned in this agreement and others, is a body that will be set up by the Federal Government. It is not really a land claim body but through the land claim, TFN has got a guarantee from the Federal Government that there will be such a thing as a Surface Rights Tribunal. The Tribunal is important because it will make decisions affecting not only wildlife compensation but also access to Inuit land by non-Inuit. (see *Nunavut Volume 6, Number 8*)



Bob Bati, Legal Services, DIAND

On June 19, 1988, TFN and Government initialled their Wildlife Compensation Agreement. From left to right are Ross McKinnon representing the Territorial Government, TFN's Chief Negotiator Bob Kadlun and Federal Chief Negotiator Tom Molloy. Their beverage? It's not wine but genuine bottled Arctic Ice—carbonated water from the N.W.T.!

Quick Takes

TFN hopes to be able to get its Nunavut Wildlife Management Board off the ground very soon. An inaugural meeting of the *Working Group* to establish this Board on an interim basis is scheduled for September 1-2 in Rankin Inlet. Even though the Board is one of the things that will eventually come out of the land claim settlement, Government and TFN have agreed that an *interim* Board should be set up now, even before the claim is actually settled. A clause in the 1981 Wildlife Agreement-in-Principle commits them to setting up this *working group* which will "identify the resources and the measures that would be necessary to establish the board on an interim basis". Regional Hunters' and Trappers' Associations (HTAs) in the Keewatin, Baffin, High Arctic and Kitikmeot have now nominated their representatives to this working group. **Peterosie Qappik** of Pangnirtung is representing the South Baffin; **Olayok Naqitarvik** of Arctic Bay is representing the North Baffin and High Arctic; **Joe Allen** of Coppermine is representing the Kitikmeot; and **George Kuksuk** of Eskimo Point is representing the Keewatin. "We wrote to Government in March asking it to appoint its representatives to the working group so we may begin our work", says TFN President Donat Milortok. Government, in its recent response, said it would send delegates from the Departments of Fisheries and Oceans; Environment; Indian Affairs and Northern Development; and the Territorial Department of Renewable Resources

"Our archaeological heritage is an important national asset to be protected and managed for the benefit of all Canadians, now and in the future," says Communications Minister Flora MacDonald. Last May, MacDonald released a paper developed by the Departments of Communications, Environment, Indian Affairs and Northern Development and Transport calling on Canadians to participate in a national review of archaeological heritage protection and management issues. You can get a copy of this paper by writing to Information Services, Communications Canada, 300 Slater Street, Ottawa, Ontario, K1A 0C8 or calling (613) 990-4843.



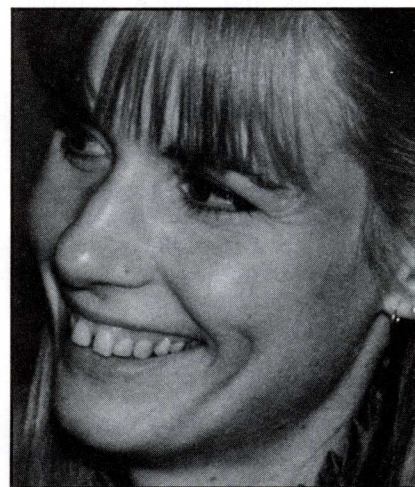
The Keewatin Inuit Association (KIA) has taken an important initiative. It plans to hire a regional information officer to work half time with KIA and half time with TFN. With a contribution of \$12,000 from TFN toward the salary of this position, there will be benefits to both organizations. "This person could liaise with the regional land claim negotiator and prepare monthly reports on land claim negotiations. Another possibility would be to have this information officer conduct radio reports as well," says KIA Executive Director Mike Lightstone.



Makivik's President Charlie Watt wrote to TFN's Deputy Chief Negotiator Paul Quassa on June 13 to update him on the status of overlap talks between the Inuit of Nunavut and the Inuit of Northern Quebec. The first of these talks was held May 3-5 in Ottawa (see *Nunavut* Volume 7, Number 4). TFN hoped to schedule another meeting by the end of June but Watt has indicated that Makivik must first complete its own internal community consultations. Watch this newsletter for an update soon.



TFN's Ottawa office welcomed some newcomers over the summer months. **Sam Dass** is now Financial Coordinator, taking over the job of balancing our budget from Gloria Bureau. Sam is no stranger to the Inuit world. He spent almost two years at the Inuit Tapirisat of Canada (ITC). Most recently, Sam was in Montreal enjoying a teaching stint at John Abbott College. His courses? Accounting. Administration. Investment. In the short time Sam has been with TFN, he's made many friends by introducing a water cooler into the reception area of our southern office in sweltering Ottawa!



Susan Black joined the southern team this summer too. She is Executive Assistant to President Donat Milortok, breaking new ground in this newly-created position. Susan's sunny smile is known to many, either from her days as a flight attendant with First Air or from her broadcasting days at CBC Northern Service Television. Susan's main responsibility so far has been to keep up with the tons of paper that cross her desk each day. In addition to assisting Donat with his correspondence, Susan plays an important role in keeping the President up-to-date on the status of TFN's research, negotiations, administration and finances. She also briefs the President on the activities of other Inuit organizations and attends meetings on his behalf. Susan is fluently bilingual in English and Inuktitut and can be reached at (613) 238-1096.

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